

Agenda item:

[No.]

**Procurement Committee**

**On 25<sup>th</sup> November 08**

<b>Report Title.</b> Review of Contract Standing Orders (CSOs)	
<b>Report authorised by</b> Julie Parker, Director of Corporate Resources <i>J.Parker 17/11/08</i>	
<b>Contact Officer :</b> Michael Wood – Head of Procurement	
<b>Wards(s) affected:</b> All	<b>Report for:</b> Key Decision
<p><b>1. Purpose of the report - This report sets out proposed amendments to the Council's Contract Standing Orders (CSOs) so as to?</b></p> <p>1.1.1 Ensure a regulatory framework that continues to reflect good procurement practice and governance.</p> <p>1.1.2 Provide clarity where necessary to avoid any mis-interpretation.</p>	
<p><b>2. Introduction by Cabinet Member (if necessary)</b> Cllr Adje (Chair of Cabinet Procurement Committee)</p> <p>2.1 The amendments in the report further strengthen good procurement practice and governance in the Council's Contract Standing Orders. I commend it to the Committee.</p>	
<p><b>3. State link(s) with Council Plan Priorities and actions and /or other Strategies:</b></p> <p>3.1 Contract Standing Orders form part of the Council's Constitution.</p>	
<p><b>4. Recommendations</b></p> <p>4.1 To consider and agree proposed amendments of the Council's Contract Standing Orders.</p>	

4.2 That the Constitution Working Group be requested to recommend the amendments to the Council for approval.

**5. Reason for recommendation(s)**

5.1 Contract Standing Orders set out the rules that must be observed to ensure compliance with procurement legislation and therefore need to be reviewed from time to time to reflect any changes in legislation (typically the Public Contracts Regulations 2006) and to ensure they remain "fit for purpose"

**6. Other options considered**

6.1 n/a

**7. Summary**

7.1 To review the Part Four (Rules of Procedure Section J– Contract Procedure Rules) of The London Borough Of Haringey Constitution  
Last Updated 17 April 2007

**8. Chief Financial Officer Comments**

8.1 There are no direct financial implications arising from the contents of this report.

**9. Head of Legal Services Comments**

- 9.1 Local authorities have a duty under Section 135 of the Local Government Act 1972 to establish and maintain standing orders with respect to the making of contracts for the supply of goods, works and services.
- 9.2 The Council has accordingly established Contracts Standing Orders which are contained within the Council's Constitution (Part 4, Section J).
- 9.3 In order to improve clarity of the provisions of the Council's Contract Standing Orders, the current Contract Standing Orders have been reviewed, and a need to amend its provisions as out in Paragraph 18 of this report has been identified.
- 9.4 The Head of Legal Services has been involved in the review of the Council's Contract standing Orders and supports the recommendation to amend them in the manner set out in Paragraph 18.
- 9.5 Under Part 2, Art 4.2(a) of the Council's Constitution, full Council has the power to approve amendments to the Constitution (including Contract Standing Orders). Part 2, Article 15.3(a) of the Constitution however provides that full Council should approve amendments to the Constitution following recommendation of the proposals by the Constitution Review Working Group.

9.6 A further report will therefore need to be made to the Constitution Review Working Group following consideration of the proposals of this report by the Procurement Committee.

**10. Head of Procurement Comments (provided by Head of Supplies & Services)**

10.1 Contract Standing Orders are the rules by which the Council procures works, goods and services. These rules are designed to ensure compliance with prevailing procurement legislation and best practice and to set down a framework within which all Council officers must work.

10.2 It is necessary from time to time to review CSO's to ensure their continued relevance and to address any queries raised by officers in their application and/or interpretation.

10.3 The proposed changes contained within this report will provide greater clarity to officers where necessary e.g. the rules to follow in cases of contract termination.

10.4 The Head of Supplies and Services is therefore satisfied that the recommendations in this report will ensure continued good governance and compliance.

**11. Equalities & Community Cohesion Comments**

11.1 n/a

**12. Consultation**

12.1 Chief Officers and their management teams have been afforded the opportunity to comment on these proposed changes.

**13. Service Financial Comments**

13.1 n/a

**14. Use of appendices /Tables and photographs**

14.1 n/a

**Note:** Strikethrough indicates items to be deleted, highlighting indicates changes/amendments

## **15. Background Information**

- 15.1 s 135 of the Local Government Act 1972 requires local authorities to establish and maintain standing orders with respect to the making of contracts for the supply of goods works and services. It further sets out the expectation for securing contracts by way of competition.
- 15.2 Contract Procedure Rules commonly referred to as Contract Standing Orders are contained within Haringey's Constitution (Part G.3) and is the legal instrument by which the Council adheres to the duty cited at 4.1 above.
- 15.2.1 The Constitution allows the Cabinet Procurement Committee powers to consider amendments to Contract Standing Orders and to make recommendations to the General Purposes Committee to amend the Constitution accordingly.

## **16. Proposed Amendments**

### **16.1 Statement of Principles**

**Principle 4** has been amended to include the public sector and to emphasise Council's commitment to collaboration.

Recent guidance from the Office of Government Commerce (OGC) suggests that **Principle 11**, which implies open contract arrangements without committed volumes and values of spend from other authorities, would be contrary to EC Directive principles. It is therefore proposed to delete **Principle 11** in favour of amended **Principle 4**.

### **16.2 Contract Standing Orders**

For consistency throughout the document such cross reference terms as "paragraphs" and "Contract Standing Orders" have been standardised to that of simply CSO.

For consistency, procurement related references to "EU Regulations", "Public Contract Regulations 2006", "EU or UK Law" have been standardised.

**CSO 2.02** is deleted in favour of full explanation within the body of CSOs where the term "Cabinet" was used previously. This is to avoid any confusion between Cabinet and Cabinet Procurement Committee.

**CSO 3.01 and 3.01(n)** is amended to reflect that contracts are no longer let on a Directorate basis but are awarded Council wide under the Category Management Strategy. Directors therefore have a responsibility to effectively manage contracts under their control rather than restricted to within their directorate area.

**CSO 5.02** makes clear that contract values must include any anticipated extension periods.

**CSO 6.12.** In accordance with the requirements of the Council's Scheme for Financing Schools, and the Financial Regulations for Schools, **where a school acts as an agent for the Council**, these Contract Standing Orders apply to all schools within the London Borough of Haringey with the exception of **Academy and Trust** schools. A school's governing body shall have the powers of and duties of a Director specified in these Contract Standing Orders, except in relation to waiver (CSO 7.02).

A new **CSO 6.15** is proposed to include powers already being exercised by the Council's Pensions Committee and allowed within the constitution.

A new **CSO 6.16** is proposed for Proprietary products, software and support.

**CSO 8.02** has been amended to include a sub-paragraph limiting the duration of Framework Agreements as allowed for within EC Directives and the existing sub-paragraph has been renumbered.

A new **CSO 8.03** – justifies use of the negotiated procedure without publication of a contract notice as allowed for within EC Directives.

A new sub-paragraph (f) is proposed to renumbered 8.04 to allow for single tenders where there is genuinely no competition.

**CSO 13.01** is amended to include a link to **CSO 11.02** and the financial powers of Directors.

CSOs are currently silent on any powers to terminate contracts. For this reason, a **new CSO 15** is proposed with existing CSOs 15 and 16 being renumbered accordingly.

**CSO 16.01** is amended to exclude buildings.

**NOTE: with regards the new CSO 6.16:**

There are cases where it is necessary to purchase products, software licences and/or support of a proprietary nature. This has meant requesting a waiver of Contract Standing Orders, usually requested and approved under CSO 7.03(a)

whereby the justification is that the nature of the market for the works to be carried out or the goods or services to be provided has been investigated and is demonstrated to be such that a departure from the requirements of Contract Standing Orders is justifiable – in such cases the market investigations shows that no other supplier can provide the goods or services so we have to depart from CSOs as no competition is available.

In the past, Legal has advised that officers should try to include a caveat in the original order that would allow us to seek alternative third party support after the expiry of the initial support agreement but, in the cases of proprietary products, there may not be other authorised maintenance providers. Another suggestion from Legal has been to let shorter support agreements then re-tender the whole requirement but some of these requirements involve significant investments in strategic programmes where the return on investment period is longer than two or three years so, even where this is an alternative output solution, to change product/supplier every three years would not be cost-effective for the Council and would not provide value for money.

Examples of such cases are:

- Strategic programmes with significant investment and long-term return where a short-term change of supplier would not provide overall value for money - iWorld (supplier is Northgate Solutions, aggregate value is approx £90k per year); Microsoft Support Agreement (with Microsoft, estimated value is £50k per year).
- Low value requirements where a proprietary product/solution has been chosen but even though the value is minimal, we need a waiver approval from Procurement Committee for subsequent support renewals – e.g. public-i meeting webcasting (approx £5k per year), maintenance of data centres Uninterrupted Power Supply (UPS) systems, (proprietary equipment, annual renewal approx £23k per year, equipment has 5 years life expectancy remaining).

For reasons stated above, it is proposed to amend CSOs to take account of proprietary products/solutions, to cover such circumstances from being part of a strategic, long-term investment programme to a low-value support product/solution only available on an annual basis:

## **17. Implications**

The Councils' CSOs are maintained in accordance with changes to legislation and known best practice.

## **18. Conclusions**

Existing Council CSOs require some minor cosmetic changes but also need to be explicit in regards the decision making powers of the Pensions Committee, Contract Termination and Proprietary Products and Services. The proposed amendments in this report will address these issues and will ensure CSOs continued good governance.

## **STATEMENT OF PRINCIPLES**

1. The Contract Standing Orders provide the framework rules for the Council's procurement of works, goods and services. Following them will ensure value for money, propriety and the proper spending of public money.
2. The Procurement Code of Practice provides more detail and shall govern Council tendering and contract procedures. The Director of Corporate Resources and Head of Procurement shall maintain and issue the Procurement Code of Practice. Any procurement activity shall proceed in accordance with the Contract Standing Orders the Procurement Code of Practice and all such other guidance issued by the Head of Procurement.
3. The Head of Procurement shall make the latest version of the Contract Standing Orders and the Procurement Code of Practice available to every Director and Member of the Council. Directors or officers acting on their behalf shall apply the requirements of the Standing Orders and the Procurement Code of Practice when engaging in any procurement activity.
4. The purpose of procurement activity shall be to achieve best value in accordance with the Council's statutory or approved objectives. This should include an innovative approach to building partnerships with the private and not-for-profit sectors and collaborating with other public sector bodies within a robust contractual framework. Officers with responsibility for procurement shall ensure that they are able to demonstrate achievement of best value by having regard to a combination of economy, efficiency and effectiveness.
5. Every contract or official order for works, goods or services made by the Council shall be for the purpose of achieving the Council's statutory or approved objectives and shall conform to all relevant English and European Union legislation.
6. Nothing in the Contract Standing Orders or the Procurement Code of Practice shall be construed as removing or diminishing the responsibility of all involved to meet individual and collective accountabilities.
7. Directors shall ensure that the Cabinet, Cabinet Procurement Committee or appropriate Member of the Cabinet or Cabinet Procurement Committee is consulted on any procurement activity of a controversial nature.

8. Directors must ensure that audit trails are in place for all procurement activity in accordance with the Procurement Code of Practice.
9. No Member shall enter into any contract on the Council's behalf.
10. No Member shall be permitted to become security under any agreement between the Council and a contractor employed by it.
- ~~11. Where Haringey Council is the procuring authority, and it is practical to do so, contracts shall be advertised and awarded as a minimum "on behalf of public sector bodies in Greater London".~~



# CONTRACT STANDING ORDERS

## 1. INTRODUCTION

- 1.01. Procurement decisions are among the most important decisions a manager will make because the money involved is public money and the Council is concerned to ensure that best value goods, works and services are provided. Efficient use of resources in order to achieve best value is therefore an imperative. The Council's reputation is equally important and should be safeguarded from any imputation of dishonesty or corruption.
- 1.02. For these reasons it is a disciplinary offence to fail to comply with Contract Standing Orders and the Procurement Code of Practice when letting contracts and employees have a duty to report breaches of Contract Standing Orders to an appropriate senior manager and the Head of Audit & Risk.
- 1.03. Reference should be made to the Procurement Code of Practice for more detailed procurement procedures.

## 2. DEFINITIONS AND INTERPRETATION

- 2.01. These Contract Standing Orders are made pursuant to section 135 of the Local Government Act 1972 and shall come into force with this Constitution.
- 2.02. Unless the context otherwise requires, in these Contract Standing Orders the terms below shall have the meanings ascribed to them.
  - a) **"Director"** means an employee of the Council holding a post designated as Director, Chief Executive or Assistant Chief Executive.
  - b) **"EU"** means European Union.
  - c) ~~**"Cabinet"** means the "Executive" Cabinet of Haringey Council or any other formally constituted Member body operating within the terms of its reference (e.g. the Cabinet Procurement Committee).~~
  - c) **"General Manager"** means the person holding the position of General Manager of Alexandra Palace and Park Charitable Trust.

- 2.03. In the event of any conflict between EU law, English law and Council policy, the requirements of EU law shall prevail over English law and the requirements of English law shall prevail over Council policy.
- 2.04. In the event of any doubt as to the interpretation of these Contract Standing Orders, or as to the proper procedure to be followed, reference should be made to the Head of Procurement.

### **3. THE ROLE AND RESPONSIBILITIES OF DIRECTORS**

- 3.01. The Director has responsibility for all contracts tendered and let by under his/her control. He/she is accountable to the Cabinet for the performance of his/her duties in relation to contract letting and management, which are:
- a) to ensure compliance with English and EU legislation and Council Policy;
  - b) to ensure value for money in all procurement matters;
  - c) to ensure compliance with Contract Standing Orders and the Procurement Code of Practice;
  - d) to maintain a departmental scheme of delegation;
  - e) to ensure that all relevant staff are familiar with the provisions of Contract Standing Orders and the Procurement Code of Practice and that they receive adequate training on their operation;
  - f) to ensure compliance with any guidelines issued in respect of these Contract Standing Orders;
  - g) to take immediate action in the event of a breach of Contract Standing Orders or the Procurement Code of Practice within his or her area;
  - h) to keep proper records of all contracts, tenders etc. including minutes of tender evaluation panels and other meetings;
  - i) to keep records of waivers of any provision of these Contract Standing Orders;

- j) to make appropriate arrangements for the opening of tenders and their secure retention so as to protect the integrity of the tendering process;
- k) to ensure that the Council's seal is affixed to any document required to be executed as a deed and that where a document is
- l) not expressed to be under seal, it is signed by two people as provided for in these Contract Standing Orders;
- m) to ensure original contract documents are forwarded to the Head of Legal Services for safekeeping;
- n) to record all contracts in the Contract Register;
- o) to ensure effective management of all contracts in under his/her control area and to a level deemed appropriate in regard to risk or value of each contract.

## **4. THE ROLE AND RESPONSIBILITY OF THE CABINET PROCUREMENT COMMITTEE**

- 4.01. The Cabinet Procurement Committee will hold Directors accountable for any decisions he/she makes under his/her delegated authority or under these Contract Standing Orders.
- 4.02. The General Purposes Committee will keep under review these Contract Standing Orders and recommend amendments to full Council for adoption.
- 4.03. The Cabinet Procurement Committee will approve extensions & variations to contracts valued over £150,000 (one hundred and fifty thousand) and award contracts valued over £250,000 (two hundred and fifty thousand) provided that the award of any contract valued over £500,000 (five hundred thousand) is a 'key decision' and as such must be in the Council's Forward Plan and comply with the other procedures in that regard set out in the Constitution.

## **5. CALCULATION OF CONTRACT VALUES**

- 5.01. Directors must ensure that a pre-tender estimate of anticipated costs is prepared and recorded in writing. Where the Public Contract Regulations 2006 EU Public Procurement rules apply, Directors must also ascertain the value of a contract in accordance with those rules.

- 5.02. Unless otherwise specifically provided, reference to contract value or an estimated contract value in these Contract Standing Orders means the aggregate value payable in pounds sterling exclusive of Value Added Tax over the entire contract period, including any extension periods as anticipated in the proposed contract.
- 5.03. Contracts must not be artificially under or over estimated or divided into two or more separate contracts where the effect is to avoid the application of Contract Standing Orders or the Public Contract Regulations 2006 EU legislation.

## **6. SCOPE OF CONTRACT STANDING ORDERS**

- 6.01. These Contract Standing Orders shall apply to all contracts "for the procurement by the Council of works, goods and services" unless otherwise expressly stated or these requirements are waived in accordance with CSO 7. ~~paragraph 7.~~
- 6.02. Where the Council secures funding from an external funding body, and the funding is conditional upon the grant monies being used to facilitate service delivery, Contract Standing Orders shall apply to procurement by the Council of the works, goods, and services to facilitate the service delivery.
- 6.03. Where a contract has an estimated value of less than £5000 (five thousand), the relevant Director should act in the manner most expedient to the efficient management of the service, having kept a record for so doing.
- 6.04. Where a contract has an estimated value of more than £5000 (five thousand), but less than £25,000 (twenty-five thousand) quotations should be obtained or the tender procedure followed. However the Director may decide that such processes are not appropriate in order to secure value for money for the Council. If that is the case, the Director may determine another process of selecting a contractor which will meet best value criteria. The decision and process must be properly documented.
- 6.05. Except as otherwise provided, contracts with an estimated value of more than £25,000 (twenty-five thousand) must be let following a competitive tendering process in accordance with the procedures set out in these Contract Standing Orders and any guidelines or Codes of Practice issued from time to time under these Contract Standing Orders.
- 6.06. No contract shall be let unless the expenditure involved has been fully considered and approved and sufficient money has been allocated in the relevant budget.

6.07. It shall be a condition of any contract between the Council and any person (not being an Officer of the Council) who is required to manage a contract on the Council's behalf that, in relation to such contract, he/she shall comply in all respects with the requirements of these Contract Standing Orders as if he/she were an employee of the Council.

6.08. These Contract Standing Orders shall not apply to contracts of employment, or to contracts relating to any interest in land. For the avoidance of doubt, there are excluded from these Contract Standing Orders any agreement relating to the provision of nomination rights to housing, collateral management arrangements in respect of social housing and the acquisition of rights or benefits pursuant to the Council's Private Sector Temporary Accommodation Leasing Scheme.

### **Framework and Consortia Arrangements**

6.09. Subject to the provision of CSO 6.10, these Contract Standing Orders shall not apply where the Council procures particular goods, services or works:

a) as part of a group of public sector bodies contracting with one or more contractors (consortium arrangement), provided the contract standing orders of one of the public sector bodies constituting the group and/ or where applicable the Public Contract Regulations 2006 EU Regulations have been followed,

Or

b) by selecting one or more contractors from a Framework or similar arrangement (including approved lists), established by a public sector body in accordance with the contract standing orders of that public sector body and/ or where applicable the Public Contract Regulations 2006 EU regulations.

6.10 The Council's decision to enter into a contract with the recommended contractor must be made in accordance with ~~Contract Standing Orders CSO 11.02 to 11.04.~~

6.11. The Council shall observe these Contract Standing Orders where it procures goods, services and works for the benefit, or on behalf of, other public bodies.

### **Schools**

6.12. In accordance with the requirements of the Council's Scheme for Financing Schools, and the Financial Regulations for Schools, where a school acts as an agent for the Council, these Contract Standing Orders apply to all

schools within the London Borough of Haringey with the exception of Academy and Trust Schools. A school's governing body shall have the powers and duties of a Director specified in these Contract Standing Orders, except in relation to waiver (paragraph CSO 7.02).

## **Care Contracts for Individuals**

- 6.13. Adults, Culture and Community Services and the Children and Young People's Service care contracts may be 'block' contracts (where a number of beds, places or services are provided by the contractor at pre-agreed pricing schedules, to which the Council may refer users over the contract period) or 'spot' contracts (one-off contracts meeting an individual user's needs, or contracts where a number of beds, places or services are provided by the contractor without pre-agreed prices, such prices to be agreed upon each referral of a user over the contract period). The Directors of the Adults, Culture and Community Services and the Children and Young People's Service will seek to maximise the use of block contracts where this represents best value for the Council. The following provisions shall apply to the Adults, Culture and Community Services and the Children and Young People's Service care contracts:
- a) All Contract Standing Orders apply to block contracts;
  - b) ~~Contract Standing Orders CSO 8, 9, 10 and 11~~ (in relation to tender procedures and formation of contract) shall not apply to spot contracts;
  - c) The Directors of the Adults, Culture and Community Services and the Children and Young People's Service may award all spot contracts, which shall be reviewed at least annually as part of the review of whether the service provided continues to meet the needs of the service user;
  - d) The Directors of the Adults, Culture and Community Services and the Children and Young People's Service shall provide monthly reports to the relevant Cabinet Member and a quarterly report to the Cabinet Procurement Committee detailing the nature, extent and value of spot contracts entered into in the previous quarter.

## **Alexandra Palace and Park**

- 6.14 These Contract Standing Orders apply to the procurement of works, goods and services by or on behalf of Alexandra Palace and Park Charitable Trust on the following basis:

- a) The General Manager shall have the powers and duties of a Director specified in these Contract Standing Orders;
- b) The Alexandra Palace and Park Board and Panel shall have the powers and duties of the Cabinet Procurement Committee and an Cabinet Member specified in these Contract Standing Orders;
- c) In the event of any conflict, the requirements of the Charities Act 1993, any regulations made under that Act or charity law in general shall prevail over the provisions of Contract Standing Orders.

### **Pensions Committee**

- 6.15 The Pensions Committee shall have the same powers and duties of the Cabinet Procurement Committee specified in these Contract Standing Orders but limited to procurement decisions and award of contracts relating to the Pension Fund.

### **Proprietary products, software and services**

- 6.16 A Director may award a contract for a proprietary product, software license, software support, product support and/or the renewal thereof in accordance with the procedure set out in 8.04(f). The award must be compliant with the Public Contract Regulations 2006.

## **7. WAIVER OF CONTRACT STANDING ORDERS**

- 7.01. Where these Contract Standing Orders apply to a contract (see CSO 6) any individual provision in Contract Standing Orders other than paragraph CSO 8.01 (which relates to the Public Contract Regulations 2006 EU procedures) may be waived by the appropriate person specified in paragraph CSO 7.02 on the basis set out in paragraph CSO 7.03.

- 7.02. Subject to paragraph CSO 7.05, a waiver of a provision of these Contract Standing Orders may be agreed by:

a) the Cabinet Procurement Committee;

**Or**

b) a Director where the contract value is £50,000 (fifty thousand) or less (save that the Director shall not have authority to waive any of the provisions of Contract Standing Order CSO 12 which relate to conditions applying to contracts unless expressly stated in CSO 12);  
or

c) a Cabinet Procurement Committee Member where the contract value is between £50,000 (fifty thousand) and £250,000 (two hundred and fifty thousand).

7.03. A waiver may be agreed by the appropriate person if they are satisfied after considering a written report by the appropriate officer that the waiver is justified because:

- a) the nature of the market for the works to be carried out or the goods or services to be provided has been investigated and is demonstrated to be such that a departure from the requirements of Contract Standing Orders is justifiable; or
- b) the contract is for works, goods or services that are required in circumstances of extreme urgency that could not reasonably have been foreseen; or
- c) the circumstances of the proposed contract are covered by legislative exemptions (whether under EU or English law); or
- d) it is in the Council's overall interest; or
- e) there are other circumstances which are genuinely exceptional.

7.04. A record of the decision approving a waiver and the reasons for it must be kept and an entry made in a central register maintained and monitored by the Head of Procurement.

7.05. Where a waiver of Contract Standing Orders is sought for the second time in relation to the same contract, then regardless of the value of the contract, that waiver may only be agreed by the Cabinet Procurement Committee.

## **8. TENDER PROCEDURES**

8.01 Where the value of a works, goods or services contract is equal to, or exceeds, the applicable threshold set out in the Public Contracts Regulations 2006, the provisions of those Regulations shall govern the tendering process and shall take precedence over the provisions of these Contract Standing Orders in the event of any conflict.

8.02. In respect of contracts to which CSO 8.01 apply:

- a) where the tender is for appointment to a Framework Agreement, the total period of the Framework Agreement including any possible



extension, shall not exceed four years except in exceptional circumstances relating to the subject of the Framework Agreement;

- b) all bidders must be notified in writing of a tender selection decision by the Council at least 10 (ten) calendar days prior to the proposed contract award date. Where the last day of this ten-day notice period falls on a non-working day, the period must be extended to the next working day.

8.03 Where the subject matter of a contract is not exempt under the Public Contract Regulations 2006 and when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, it may be awarded only to a particular contractor, a negotiated procedure without prior publication of a contract notice may be used for such award

8.04 Where tenders are to be invited the procedure to be followed shall be determined prior to advertising and shall be one of the following:

- a) open tender (all interested contractors submit a tender in response to an advertisement);
- b) restricted procedure (expressions of interest from interested contractors in response to an advertisement, with a selection of those contractors being invited to submit a tender);
- c) c) negotiated procedure (expressions of interest from interested contractors in response to an advertisement, with a selection of those contractors being invited to negotiate);
- d) d) competitive dialogue (expressions of interest from interested contractors in response to an advertisement, followed by dialogue with a selection of those contractors to identify a solution (or solutions) which meets the Council's requirements, and an invitation to the selected contractors to submit tenders based on the solution/s resulting from the dialogue);
- e) where a Framework arrangement (including approved lists) exists in respect of the subject matter, tenders shall be invited using the Framework arrangement from all capable contractors having regard to the principles of best value.
- f) single tender where the product and/or support is for a proprietary product, software or service which, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract may be awarded only to a particular contractor. Where applicable, this must be compliant with the Public Contract Regulations 2006. Where this procedure is used, an advertisement is not required.

## 9. RECEIPT AND OPENING OF TENDERS

9.01. Contractors must be informed that their tenders will only be considered if they are:

- a) sent in a plain envelope or parcel with a label on which is printed the word "Tender" followed by the subject of the contract; and
- b) contained in a sealed envelope or parcel which does not show the identity of the tendered in any way;

**and**

- c) delivered to the place and by the date and time stated in the tender invitation.

9.02. Tenders which do not meet the requirements of ~~Contract Standing Order CSO 9.01~~ may only be considered if the other tenders have not yet been opened and:

- a) failure to comply is the Council's fault; or
- b) a tender is late, and it is clear without any contact with the contractor that the tender was sent in such a way that in the normal course of events it would have arrived on time.

9.03. In accordance with the responsibilities set out at CSO 3.01 (j), tenders must be kept safe until the date and time for their opening by the officers given this duty by the Director responsible for the tendering process. Records of non-compliant bids and of the date and time of receipt of all unopened tenders must be kept by those officers.

9.04. Tenders for a particular contract must be opened at the same time in the presence of two officers who have had no involvement in the tendering process. These officers shall be responsible for properly recording the price, duration of any works and all other relevant details of each opened tender.

9.05. The Head of Procurement must approve the training and seniority of all officers employed to open tenders and also the arrangements in each Directorate for ensuring the independence of such officers from the teams involved in the tendering process.

## **E-Tendering**

- 9.06 Invitations to tender may be dispatched, and tenders received, by electronic means with the prior approval of, and in accordance with a procedure specified by the Head of Procurement.
- 9.07 Tenders received electronically must be stored securely, and must not be accessible until after the closing date and time in respect of submission of the tenders.
- 9.08 At an appointed time for opening the electronically submitted tenders, two authorised officers who have had no involvement in the tendering process shall access the submitted tender data simultaneously, open the tenders and record the price, duration of any works and all other relevant details of each opened tender.

## **E-Auctions**

- 9.09 In appropriate cases, the submission of prices for a tender may be conducted by e-auction using an on-line facility, with the prior approval of, and in accordance with a procedure specified by the Head of Procurement.

## **10. POST TENDER NEGOTIATIONS**

- 10.01. Except where the negotiated procedure referred to in paragraph CSO 8.04(c) applies, negotiation after receipt of formal bids or tenders and before the award of contract is only permitted:
- a) with those tenderers submitting the most economically advantageous tender, and
  - b) with a view to obtaining an improvement in content in circumstances which do not put other tenderers at a disadvantage, distort competition or adversely affect trust in the competitive tendering process, and
  - c) if the prior authority of the Director has been obtained.
- 10.02. There may be circumstances where an officer authorised by the Director may contact a contractor in order to clarify an ambiguous tender. This does not constitute post tender negotiations.
- 10.03. All communication with contractors under this Contract Standing Order must be in writing or recorded in writing.

## **11. TENDER ACCEPTANCE AND CONTRACT AWARD**

11.01 Tenders are to be accepted on the basis of either:

a) The lowest price;

Or

b) The most economically advantageous tender (i.e. the tender providing the most benefit to the Council) as determined by such criteria, to include whole life costing methodologies, as are relevant to the type of works, goods or services.

11.02. A Director may award, assign, or novate contracts valued at £250,000 (two hundred and fifty thousand) or less.

11.03. Subject to the provisions of paragraph CSO 11.04 and 11.05, all contracts valued over £250,000 (two hundred and fifty thousand) at the time of award may only be awarded, assigned, or novated by the Cabinet Procurement Committee.

11.04. The award of any contract valued at over £500,000 (five hundred thousand pounds) is a 'key decision' and as such must be in the Council's Forward Plan and comply with the other procedures in that regard set out in the Constitution. In accordance with Part 5 Section C of the Constitution, the award of spot contracts and contracts for the supply of energy to the Council are not "key decisions".

11.05. Contracts for the supply of energy to the Council valued over £250,000 may be awarded by a Director or in accordance with CSO 6.09.

## **12. CONDITIONS APPLYING TO CONTRACTS**

### **Form and execution of contracts**

12.01. Except as provided in CSO12.02, all contracts above £50 (fifty) in value must be in writing by way of a document prepared, or on a basis approved, by the Head of Legal Services.

12.02. Where the works, goods or services to be provided under a contract are required to commence prior to the issuance and execution of a formal contract, a Director, if satisfied that it is in the Council's best interest in the particular circumstances, may approve issuance of a Letter of Intent pending the issuance and execution of a formal contract. However, the maximum cover afforded by any Letter of Intent shall not exceed 10% of

the contract price in respect of works or services contracts, or £50,000 in respect of supplies contracts.

12.03 A contract made in extreme urgency need not be in writing so long as it is confirmed in writing within four weeks

12.04. Every contract shall specify:

- a) the works, goods or services to be provided or executed;
- b) the price to be paid or the precise method of its ascertainment and a statement of any discounts or other deductions; and
- d) as appropriate, the start and finish dates, or delivery dates, and any maintenance or defects liability period.
- e) compliance with the Council's insurance requirements. The requirement to comply with the Council's standard insurance requirements may only be waived with the Director of Corporate Resource's approval.
- f) compliance with the Council's equality policy.

12.05. A contract up to and including £150,000 (one hundred and fifty thousand) in value does not require sealing and should be signed on behalf of the Council, by both the relevant Director and by the Head of the relevant business unit.

12.06. A contract over £150,000 (one hundred and fifty thousand) in value must be executed on behalf of the Council under seal as a deed.

### **Conditions applying to all contracts with value of £25,000 (twenty-five thousand) or more**

12.07 Every contract with a value of £25,000 (twenty five thousand) or more must unless the Head of Legal Services and Director of Corporate Resources agree to the contrary contain clauses to cover the following:

- a) compliance with all applicable legislation;
- b) a prohibition on assignment and/or subletting without the written consent of the Director;
- c) a provision allowing the Council to cancel the contract and recover any resulting loss from the contractor if the contractor does anything which is contrary to the Prevention of Corruption Acts 1889 to 1916 or incites breach of Section 117 (2) of the Local Government Act 1972;

- d) a provision to ensure the Council is protected against the contractor's defective performance by default provisions which are appropriate to the contract;
- e) if the contractor is in breach of contract the Council can do any or all of the following:
  - i. determine all or part of the contract or determine the contractor's appointment;
  - ii. itself perform the contract in whole or in part;
  - iii. recover from the contractor any additional cost resulting from the completion or cancellation of the contract.
- f) If the contractor has obtained or received by whatever means any information which gives or is intended or likely to give the contractor any unfair advantage over any other tenderer (including the Council's own workforce) in relation to the tendering for, and award of, any works/services contract, that the Council shall be entitled to terminate that contract;
- g) that the contractor shall be required to make available to the Council or its auditors such documents or access to information or access to the staff/officers of the contractor as is necessary to conduct any audit investigation into the contract;
- h) that the contractor shall be required to make available to the Council upon request such information the Council considers necessary whether in relation to staff or otherwise, to enable the Council to meet its duties in relation to re-tendering the contract.

**Conditions applying to all contracts over £250,000 (two hundred and fifty thousand)**

12.08. Every contract which exceeds £250,000 (two hundred and fifty thousand) in value must contain clauses to cover the following:

- a) if it is a contract for works, that the Council may require the contractor to provide security for completing the contract in the form of a bond;
- b) that where the contractor is a subsidiary or group company, the contractor may be required to provide a parent or group company guarantee.

12.09 The decision as to whether or not a bond or parent company guarantee will be required in respect of a contract will ultimately be made by the Director of Corporate Resources, or an officer acting under his/her delegated authority.

### **Conditions applying specifically to computer software contracts**

12.10. All computer software contracts shall contain a clause to the effect that use of the software by the Council's contractors shall not amount to use by a third party for which an additional software licence might otherwise be required.

### **Conditions applying specifically to contracts involving Children and Vulnerable Adults**

12.11. All contracts for the provision of services which may potentially involve either direct contact with children and vulnerable adult or access to their personal records shall contain a provision requiring the service provider (including agents and assigns) to undertake a Criminal Records Bureau check on relevant employees prior to provision of the services under the contract and at appropriate intervals thereafter.

## **13. VARIATIONS AND EXTENSIONS**

13.01. Subject to the provisions of CSO 11.02 5, any-statutory the Public Contract Regulations 2006 restrictions and compliance with Financial Regulations, a Director may authorise the following extensions and variations to an existing contract:

- a) Either:
  - (i) an extension for a particular period provided for within the terms of the contract (but subject to satisfactory outcomes of contract monitoring, such information having been provided to the relevant Cabinet Procurement Committee Member); or
  - (ii) a single extension of the contract by up to six months, or half the contract term (whichever is less); and
- b) any other variation, and if relevant a consequent change in price, determined in accordance with the contract terms.

13.02. In any other circumstances the Cabinet Procurement Committee may vary or extend a contract providing that to do so is consistent with the Public Contract Regulations 2006 and the Council's Financial Regulations.

13.03 In addition a Director may authorise variations to a contract where either delay would incur substantial cost penalties to the Council or the proposed

variations are unavoidable and/or essential for the contract to proceed or continue, and the additional cost of such variations does not exceed 25% of the value of the contract, up to a maximum of £150,000 (one hundred and fifty thousand). Variations above this level may be authorised by a Director, where the Director considers that circumstances require such authorisation, as long as such variations are reported to the Cabinet Procurement Committee at the earliest opportunity.

13.04. All variations and extensions must be recorded in writing.

## **14. NOVATIONS (TRANSFERS)**

14.01 In appropriate circumstances the Council may agree to the novation or assignment of a contract. This decision must be taken based on the value of the contract at the date of award and subject to CSO 11.02 – 11.04.

## **15. CONTRACT TERMINATION**

15.01 In the event of a supplier being declared bankrupt, going into administration, receivership or liquidation then a Director may terminate any associated contract(s) and initiate alternative arrangements as may be required taking into account CSO 14 in cases of novation or CSO 6 in cases that warrant the re-letting of the contract(s).

15.02 The decision to terminate a contract early in all other circumstances must be approved by a Director.

15.03 In all cases of contract termination for whatever reason where the awarded contract value was more than £250,000, a report must be presented at the earliest opportunity to Cabinet Procurement Committee.

## **16. DISPOSAL OF ASSETS**

16.01 Where Council assets (other than land & buildings) are to be disposed of because they are surplus to requirements, damaged or obsolete, reasonable endeavours must be undertaken to realise the residual value of the assets.

16.02 Assets having little or no realisable value may be disposed of as waste with the approval of the relevant Head of Business Unit, provided the disposal shall be in favour of recycling wherever possible.



- 16.03 In respect of assets to be disposed of having an estimated value of less than £5,000 (five thousand), the Director concerned should act in the manner most expedient to the efficient management of the service, having kept a record for so doing.
- 16.04 Assets recommended for disposal with an estimated value of more than £5,000 (five thousand), shall be disposed of in such a manner as to secure best value.
- 16.05 Disposal of assets valued at more than £150,000 (one hundred and fifty thousand) must be approved by the Cabinet Procurement Committee.
- 16.06 Under no circumstances shall disposal of Council assets be made to employees or Members of the Council without the prior approval of the Director.

#### **17. URGENT DECISIONS**

- 17.01 These provisions apply where action needs to be taken urgently on any matter between meetings of the Cabinet Procurement Committee and that action would be outside the powers given to a Director or an individual Cabinet Procurement Committee Member. They may only be used in cases of genuine urgency and not to avoid proper forward planning.
- 17.02 All urgent decisions, including waivers and awards of contract, that are not "key decisions", may be taken by the Chair of the Cabinet Procurement Committee or in his/her absence by the Leader of the Council.
- 17.03 All urgent decisions, including waivers and awards of contract, that are "key decisions", may be taken by the Leader of the Council in accordance with his/her powers under the Constitution and subject to the statutory "Special Urgency" rules where these apply. In the absence of the Leader, the decision may be taken by the Chair of the Cabinet Procurement Committee subject to the same procedures being followed.