

North Warwickshire Borough Council

Contract Standing Orders



North Warwickshire
Borough Council

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1 PURPOSE

- 1.1 The purpose of Contract Standing Orders is to provide clear rules for Officers and Members to use when purchasing and a structure within which purchasing decisions are made. They aim to ensure that the Council:
- Purchases legally, fairly and with regard to good practice to safeguard the Council's reputation.
 - Is protected from maladministration and vulnerability to Fraud, Bribery/Corruption in the letting of contracts.
 - Protects individuals from undue criticism or allegations of wrongdoing.
 - Purchases goods, services and works that are best value for money.
 - Uses procurement to support its objectives and priorities.
- 1.2 By law (Section 135 of the Local Government Act 1972) the Council must have Standing Orders which guide the letting of contracts and which cover securing competition and regulating the Tender process.
- 1.3 Any dispute or difference in the interpretation of Contract Standing Orders and the Council's Financial Regulations or any other relevant document shall be resolved by the Solicitor to the Council.
- 1.4 Advice on the application of these Orders is available from the Procurement Team and the Assistant Director (Corporate Services).

2 SCOPE

- 2.1 Contract Standing Orders apply to procurements and contracts entered into by, or on behalf of, the Council for:
- the provision of goods, services and works regardless of their value,
 - concession contracts, (these are subject to the Concession Contracts Regulations 2016).
 - the disposal of land, property or other assets (including surplus goods),
 - involvement by the Council in partnerships and other joint working where the money, including external funding, passes through the Council's accounts.
- 2.2 Contract Standing Orders DO NOT apply to:
- Goods, services or works purchased through an existing, valid Corporate Contract or provided by another division within the Council.
 - The purchase or hire of property.
 - Permanent staffing.
 - Engagement of legal Counsel or expert witnesses, or instructions to Solicitors to act on the Council's behalf; provided this is done with the prior approval of the ACE & Solicitor to the Council.
 - Lending or borrowing of money.
 - Grants from the Council (except where they are to buy services).
 - Procurements where there is a valid and approved Exemption ([Section 6](#)).
- 2.3 The terms and phrases used in this document are explained in "[The Glossary](#)" provided as [Appendix 1](#). All figures in Contract Standing Orders are net of VAT.

- 2.4 Elements of this document provide advice on how to procure. Further help is available from the Procurement Team and on the Council's Intranet.

3 RESPONSIBILITIES AND CONDUCT

- 3.1 Members and Officers shall be mindful of and must comply with relevant Legislation¹ and Directives and with Codes of Conduct, Protocols and Financial Regulations as set out in the Council's Constitution when dealing with procurement and contractual matters.
- 3.2 To minimise the risk of fraud, bribery and corruption within procurement, tendering and contracts particular attention should be made to NWBC Counter Fraud Policy and the Anti-Bribery Policy.
- 3.3 Information disclosed, obtained or stored as part of a procurement exercise must be handled in accordance with the Council's Information Security Policy and with regard to the Local Government Transparency Code, other relevant legislation and Council Policy such as that on Data Protection and Freedom of Information.
- 3.4 Senior Officers are accountable for purchasing and compliance in the Sections or Divisions for which they are responsible.
- 3.5 The appropriate Senior Officer is responsible for identifying a Procuring Officer to lead any procurement and contract award process.
- 3.6 Council employees, those engaged to act on behalf of the Council and all contracts made by the Council must comply with these Contract Standing Orders, the Council's Financial Regulations and Standing Orders and the Council's Procurement and Commissioning Strategy.
- 3.7 Officers, Members, and those acting on the Council's behalf shall maintain the highest standards of honesty, integrity, impartiality, independence and objectivity.
- 3.8 Officers, Members, and those acting on the Council's behalf must take appropriate measures to avoid, or properly declare, possible conflicts of interest (economic, financial or personal interests) which might be seen to compromise their impartiality or independence in the context of a procurement procedure.
- 3.9 The Deputy Chief Executive may revise any figures referred to in these Contract Standing Orders and report such changes to Resources Board.
- 3.10 Officers must follow the appropriate Procurement Route which is determined by the value of the goods, service or works being purchased.
- 3.11 The Procurement Team should be consulted before a procurement starts and it will advise on, and assist Procuring Officers with, all aspects of the procurement process, practices and documentation.
- 3.12 Once a Contract has been established by the Council, for use by all services (a Corporate Contract); it must be used by all services to ensure compliance with the terms of the Contract and avoid breach of Contract.

¹ Legislation including, but not limited to - Public Contracts Regulations 2015, Equality Act 2010, Bribery Act 2010, Public Sector (Social Value) Act 2012, Freedom of Information Act 2000, Modern Slavery Act 2015 and Data Protection Act 1998 (GDPR from 25th May 2018).

- 3.13 The Senior Officer or Procuring Officer should notify the Assistant Director (Corporate Services) of all contracts entered into or contracts being arranged to enable procurement planning and to facilitate best value for money.
- 3.14 The Procurement Team will provide advice and guidance to suppliers on the Council’s processes and systems (CSW-Jets).

4 PRINCIPLES APPLYING TO ALL CONTRACTS/PROCUREMENTS

- 4.1 Every contract entered into on behalf of the Council must comply with these Standing Orders. However, National and/or European Union (EU) Legislation and Directives take precedence.
- 4.2 These Contract Standing Orders take precedence over any supplier agreements and terms and conditions.
- 4.3 Contracts will typically be awarded on a “most economically advantageous basis” using criteria which take into consideration cost and quality.
- 4.4 All purchases made or procurements carried out must be undertaken and approved by Officers with the appropriate delegated authority regardless of the value, procurement route or method of payment.
- 4.5 An Officer may only procure, raise an order or enter into a contract where there is approved funding e.g. provision in the Revenue Budget or as part of a scheme in the agreed Capital Programme.
- 4.6 Any contract award that involves the transfer of staff from the Council to a third party needs the approval of the Council.
- 4.7 Officers are expected to manage contracts to cost, quality, time and budget. In the event of variation to any one of these Officers will follow the relevant Contract Standing Orders to resolve or report the variation.
- 4.8 The length of a contract should be appropriate for the goods, services or works being purchased. A Contract should be for no longer than 4 years unless it is tied to the completion of a specific job or the supply of a fixed quantity of goods or the nature of the procurement demands it and a longer timeframe has been approved by a Senior Officer or a Board.
- 4.9 When using a Framework Contract or an existing contract let by another body the Procuring Officer must ensure they comply with the processes laid down for its use and be aware of the Contract terms and any award conditions or restrictions.

5 PROCUREMENT PLANNING

5.1 Future Contracts

- 5.1.1 The Council will determine, where possible, what contracts are due to be awarded or re-tendered in the course of its financial year and issue appropriate plans and notices, which may include:
- Prior Information Notices (PIN) where required under EU Regulations.
 - Advisory notices to current contractors.
 - A statement of intent or a Procurement Plan on the Council’s website.

5.2 Need & Specification

- 5.2.1 Before starting any procurement activity or making a purchase it is essential that the Procuring Officer or Senior Officer (for procurements at Tender Level);-
- Is satisfied that the goods, service, or works are needed.
 - Has considered any alternative options for meeting the need.
 - Has established if there is an existing contract or corporate contract that must or should be used.
 - Sought advice from the Procurement Manager and for procurements at Tender levels obtained a procurement reference number.
- 5.2.2 A specification of what is needed must be decided on, regardless of the value of the procurement. This may range from a simple description and an estimated price to detailed specifications for high value, complex procurements.
- 5.2.3 Specification must not include requirements that are discriminatory or which may distort competition or contain non-commercial interests.
- 5.2.4 The Procuring Officer, and for Tender exercises the Senior Officer, must be satisfied that any specification is fit for purpose.

5.3 Estimating the Overall Value

- 5.3.1 An estimate of the total value of the procurement must be calculated at the outset to ensure the correct procurement route is selected and best value obtained. The [whole life cost](#) must be used to calculate the Overall Estimated Value which can be established by using one of the following: -
- the expected annual amount (purchase costs and on-going cost) multiplied by the number of years the contract is expected to operate,
 - the value of past annual expenditure multiplied by the number of years the contract is expected to operate,
 - the estimated cost of the good or service for a one off purchase,
 - or a value established through market testing e.g. indicative costs from potential suppliers.
- 5.3.2 The Council is aware of its duties under the Public Services (Social Value) Act 2012 to consider how what is to be procured might improve the economic, social or environmental well-being of the Borough. Procuring Officers and other Officers involved in procurement must therefore consider how their actions will improve the well-being of our communities.

5.4 Aggregation

- 5.4.1 The Council will make the best use of its purchasing power by aggregating its potential needs. It will consider all of its requirement and the likely total spend for similar goods and services across all Divisions when working out the Overall Estimated Value for a contract.

- 5.4.2 Officers **must not** deliberately split requirements to reduce the value of a contract in order to avoid certain procurement routes or to fall below EU procurement thresholds (see Table 1)².

6. EXEMPTIONS TO CONTRACT STANDING ORDERS

- 6.1 The requirement for the Council to purchase using a competitive process can be waived in certain or exceptional circumstances and for specific types of contract. The decision to use an Exemption must take into account value for money, probity and fairness. **An Exemption cannot be used for procurements above EU thresholds or if its use would result in a breach of UK or EU legislation.**

6.2 Exemptions and Approval to use an Exemption

- 6.2.1 Where it is intended to use a Standing Order for Exemption to having to follow a competitive Procurement Route the appropriate Senior Officer, in consultation with the AD (Corporate Services) or the Procurement Manager, must:

- For all purchases at or below Level B (Quotes, see Table 1) – approve the reason for the exemption and the specific Standing Order(s) to be used and ensure this information is documented,
- and for contracts valued at, or above Level C (Tenders), seek approval from the Deputy Chief Executive (DCE), or the Solicitor to the Council or MT,
- and where the value of the contract exceeds or is likely to exceed Level D seek approval from the relevant Board or CE using emergency powers.

- 6.3 Exemptions include:-

- 6a Using Framework contracts or collaborative procurements made by a body, legally able to let public contracts, such as a Professional Buying Organisation. Provided that the Council is clearly identified as able to use the framework and tenders or quotations have been invited and contracts awarded in accordance with procedures which are equivalent to these Contract Standing Orders and which comply with any national or EU Public Contact Rules, regulations or legislation.
- 6b The purchase of works, goods or services required in an emergency or in exceptional circumstances or so urgently that competition would not be in the Council's best interests or possible.
- 6c Where the purchase of goods, services or works from a different firm would result in incompatibility with existing goods, services or assets or would result in disproportionate technical difficulties or financial disbenefit.
- 6d When there are justifiable technical, specialist or supply market reasons and the works, goods, materials or services can only be obtained from one firm, and no reasonably satisfactory alternative is available.
- 6e Best value for money can be achieved by the purchase of used or pre-owned vehicles, plant, equipment or materials.
- 6f The purchase or sale of property or articles at an auction sale.

² See Table 1 for explanation of Tender Levels and respective values i.e. Levels 0, A, B, C, D and OJEU.

- 6g In exceptional circumstances; where the work to be done or the goods to be supplied constitute a valid extension to an existing contract and it is in the Council's best interest to negotiate with the existing contractor/supplier.
- 6h Where a Contract Award has been suspended under the 2009 amendment to the Procurement Regulations, the incumbent supplier can continue offering the supply or service until the dispute has been resolved.
- 6i When the contract or co-operation is between public bodies and provided that specific conditions around control, service provision and private sector involvement are met.

6.4 The Procuring Officer must document decisions made and retain relevant documentation if an Exemption is granted.

7. PROCUREMENT ROUTES

7.1 **This section does not apply if an Exemption has been agreed (see Section 6) or a Corporate Contract is to be used.**

7.2 Anyone procuring on the Council's behalf must ensure that opportunities to supply goods, services and works are advertised appropriately and that the conditions for competition are met.

7.3 Thresholds, Advertising and Competition

7.3.1 The Overall Estimated Value is used to determine the procurement method (quote or tender), the minimum number of firms to be invited, the requirements for advertising, and contract award /order process; these are summarised in Table 1.

Table 1– Levels and Procurement Route					
Level	Overall Estimated Value -	Method & Response	Number of Firms Invited	Advertising Method & Timescale	Order and Award Process
Level 0	Up to £1,500	Quotations – may be verbal ¹	At Least 2 Firms	Not Required	Confirmed & ordered using Council Purchase Order or Council P-Card.
Level A	£1,501 to £10,000	Quotations in writing.	At Least 2 Firms	Not Required	Confirmed & ordered using Council Purchase Order or Council P-Card.
Level B	£10,001 to £45,000	Quotations in writing.	At Least 3 Firms	Invitation to Quote on Council Website and relevant Procurement Portal for at least 5 working days.	Confirmed & ordered using Council Purchase Order.

¹ Details of verbal quote should be documented by the Procuring Officer (see 11.1.1)

Level C	£45,001 to £110,000	Tender Procedure-Responses in writing.	At Least 3 Firms	Invitation to Tender on Council Website and relevant Procurement Portal for at least 10 working days.	Confirmed by Award Letter & ordered against Contract and/or Council Purchase Order (PO)
Level D	£110,001 to OJEU Levels	Tender Procedure-Responses in writing	At Least 3 Firms	Council Website & relevant Procurement Portal for at least 14 working days.	Confirmed by Award Letter & ordered against Contract and using Council PO
OJEU	OJEU Levels and above	EU Tendering Procedure - Consult the Procurement Team before starting EU procurements. EU Thresholds from 1st January 2018:- Services and Supplies = <u>£181,302</u> , Works = <u>£4,551,413</u>			
Tenders should only be advertised in a publication (Local or Trade) if the Senior Officer believes it essential to achieve competition and it is best value for money.					

- 7.4 If sufficient Quotations have not been obtained after advert or the relevant Senior Officer feels that it is inappropriate in the interests of the efficient management of the service to advertise or seek the required number of quotations, then the reasons and proposed actions must be discussed with the Procurement Manager and a record of the decision kept.
- 7.5 Where the Tender value is at Level C and a sufficient number of suitable firms cannot be identified to Tender or have not Tendered approval must be sought from the DCE, CE or MT and at Level D approval from the appropriate Board, before proceeding with the Tender. The reasons and proposed actions must be discussed with the AD (CS) or the Procurement Manager and a record of the decision kept.

7.6 Advertising Requirements

- 7.6.1 Any Advert or Notice of a procurement opportunity and/or any Quote or Tender must set out details of the proposed procurement and clearly:
- Describe the required goods, services or works and the scope of the Contract.
 - State what Firms will have to do to quote or to tender.
 - Invite Firms to complete the document(s) needed to register their interest or detail their ability to supply what is required.
 - State the submission process, contact details and the Closing Date for receipt of the response.
 - Summarise the criteria the Council will be using to evaluate responses and award the contract.

8 QUOTATIONS AND TENDERING

8.1 Before Tendering or Obtaining Quotes

- 8.1.1 Before seeking Quotation or Tenders the Procuring Officer and/or Senior Officer must:
- Satisfy themselves that the Council does not already have a Contract in place for supplying the required goods, services or works.

- Decide if there is a case for an Exemption from the requirements for competition (Section 6).
- Decide if the potential works or services could be carried out or supplied by, or assistance is need from, another division of the Council.
 - (a) If the Supply-side Officer decides they want to submit a quotation or tender they will be included in the list of those to be invited.
 - (b) If the Supply-side Officer decides they wish to carry out the contract, free from competition, and provided that they can demonstrate that this constitutes best value for money, then the contract will be carried out by that Officer; unless the Solicitor to the Council, in consultation with the Deputy Chief Executive (DCE) determines otherwise.
 - i. At Level C or above this arrangement must be documented and approved by the Supplying and the Procuring Senior Officer.
- Consider which legislation, guidance and Council Policy would be applicable to the requirement and with which compliance should, or must, be sought from the supplier and ensure it is referenced in the specification and subsequent contract.
 - i. This includes compliance with the Modern Slavery Act 2015 and an accompanying declaration confirming the tendering organisation's compliance with the principles of the Bribery Act 2010 and their willingness to respond to any reasonable due diligence enquiries made by or on behalf of NWBC.
- Be satisfied that a specification has been prepared.
- Prepare or approve an Estimated Overall Value for the whole life of the contract, including, if appropriate, any maintenance costs.
- Ensure there is adequate approved budget.
- For Tenders (Level C and above)
 - (a) Have decided the preferred Procurement Route and Form of Contract or supply arrangement.
 - (b) Agree a Procurement/Contract Reference with Procurement

8.2 Determining the Evaluation Process and Selection and Award Criteria

- 8.2.1 The Procuring Officer must decide on the process, any relevant or mandatory exclusion criteria, the selection criteria, the award criteria and the relative weightings that will be used to shortlist firms and evaluate tender responses and ultimately select a successful tenderer(s) and award a contract an Invitation to Quote (ITQ) or Invitation to Tender (ITT).
- 8.2.2 Whenever possible and for procurements at or above Level C (Tenders) the selection criteria, award criteria and weighting must be documented and agreed with the appropriate Senior Officer and published at the time of the Invitation to Tender.
- 8.2.3 Selection criteria must focus on the company's ability to deliver the requirement. Criteria must be proportionate to the value of, and risk associated with, the procurement and should not disadvantage small firms able to meet the demand.

- 8.2.4 Award criteria must be designed to secure an outcome which gives best value for money for the Council. The basic award criteria are:
- “Most Economically Advantageous” Tender (M.E.A.T) where considerations in addition to price and quality apply.
 - “lowest price” where a payment is to be made by the Council (Level 0 or A only).
 - “highest price” where a payment is to be made to the Council
- 8.2.5 If the award is to be made to the Most Economically Advantageous offer then the criteria that demonstrate this, and the relative weighting to be used, will be determined based on the specific needs, features and risks associated with the individual procurement exercise. The table below gives some example criteria and their suggested maximum weighting.

Table 2 – Example Criteria and Suggested Maximum Weighting		
Criteria	Maximum Weighting	Notes
Cost	Up to 80%	Costs will be assessed for total Contract life based upon the lowest price received.
Quality	Up to 80%	Quality will be subjectively assessed in terms of performance against specification by relevant and competent Officers
Delivery	Up to 20%	Delivery will be assessed in terms of warranties, guarantees, and penalties against delivery to the Council’s schedule.
Social Considerations	Up to 40%	<u>Relevant</u> Social Considerations can be included in the assessment. Consult Procurement before use.
Environmental Impact	Up to 10%	A subjective assessment of the possible environmental consequences of the goods and services tendered.
Compliance	Some may be Mandatory	Compliance in accordance with legislation and relevant Council Policy will be considered. If there are no fully compliant responses the Procuring Officer may judge relative compliance for none Mandatory criteria.

- 8.2.6 The differences between selection criteria and award criteria and the need to separate the two stages and not duplicate criteria can be complex. The Procurement Team should be consulted for advice.

8.3 Electronic Procurement

- 8.3.1 Any Level B or above Quotation or Tender will normally be run by electronic means. Documents will be made available and returned via the Council’s approved e-tendering solution or in exceptional circumstances by email.
- 8.3.2 Electronic documents will be kept securely and as specified by the Assistant Director (Corporate Services) and not opened until the deadline for receipt has passed.

- 8.3.3 The Council may participate in on-line Auctions or reverse auctions as part of a Procurement process. The Procuring Officer must ensure the specification and award criteria are appropriate and the Council's commitment to any Firm is dependent upon their satisfying relevant criteria and obligations under these Contract Standing Orders.
- 8.3.4 Procuring Officers may use on-line auctions for purchases valued at Level A or below provided they have sufficient quotes, are able to prove best value for money, can obtain a VAT invoice from the supplier and they have checked the terms and conditions of supply and return. A pre-established Council user identity must be used to make purchases and payment must be made using a Council purchase order or Council payment card.

9. EUROPEAN UNION TENDERING PROCEDURES

- 9.1 This Contract Standing Order applies to high value contracts expected to be at or over the EU thresholds (see Table 1)
- 9.2 The Procurement Team must be consulted well in advance of any planned EU level procurement to ensure compliance with the most up to date Public Contracts Regulations (2015), legislation and Directives and the timescales and procedures dictated.
- 9.3 Contracts to which the EU rules apply will be awarded in accordance with those rules and by means of currently approved procedures:-
- **Open Procedure** – A single stage process, usually used when only a small number of Tenderers are expected to respond.
 - **Restricted Procedure** – A two stage process involving qualification and tendering. Usually used when a large response is expected.

Procedures with some degree of negotiation (only to be used in specific circumstances):-

- **Competitive Procedure with Negotiation** - Usually used for complex tenders where neither of the above is suitable.
- **Competitive Dialogue Procedure** – For highly complex tenders where the other procedures are not suitable and a solution cannot be easily identified.
- **Innovative Partnerships Procedure** – For developing goods, works or service not currently available in the market.
- **Negotiated procedure without prior publication** – Where previous procedures have resulted in irregular or unacceptable tenders or in extreme urgency.

10 COUNCIL TENDERING PROCEDURES

- 10.1 **These Contract Standing Orders apply to Tenders with an Overall Estimated Value of Level C or above, but below EU thresholds (or if Public Contract Regulations do not apply).**
- 10.2 The Procuring Officer will ensure that:
- Any early market engagement or discussions, with suppliers or expert bodies prior to starting the procurement, have ceased.

- Authority to Tender has been obtained and that the appropriate Tender procedure has been selected.
- That relevant Evaluation and Tender documentation has been prepared in terms of the specification of requirements, selection / award criteria and with regard to compliance with relevant Council Policy.

10.3 The Council's Tendering Procedures are based on Legislation and EU Public Procurement Rules as they are regarded as good practice. Whenever possible an Open or Restricted Tender Procure should be used.

10.4 The Procuring Officer will produce an Advert, Notice or Tender briefing Firms of the Council's requirements (see Section 7.6).

10.5 Open Tendering Procedure

10.5.1 The Open Tendering Procedure operates as follows:

- (1) The Procuring Officer will advertise in accordance with Table 1 for Firms to submit an Expression of Interest or respond to an Invitation to Tender by a specified date.
- (2) The Procuring Officer can contact Firms and invite them to respond.
- (3) All Firms that express an interest will be invited to submit a response to an Invitation to Tender.

10.6 Restricted Tendering Procedure

10.6.1 The Restricted Tendering Procedure operates as follows:

- (1) The Procuring Officer will advertise in accordance with Table 1 for Suppliers to submit an Expression of Interest or to respond to an Invitation to Tender (ITT) by a specified date.
- (2) The Procuring Officer can contact Firms and invite them to respond.
- (3) All firms expressing an interest will be provided with an Invitation to Tender (ITT) document. ITT's may contain specific qualifying questions, as part of a two stage ITT, prepared by the Procuring Officer. The Procuring Officer shall also prepare the selection criteria, which must focus on the financial and technical ability of the organisation to fulfil the contract.
- (4) All ITT's will be reviewed and evaluated by at least two relevantly skilled staff, one of whom should be the Procuring Officer. A shortlist which recommends at least the required number of shortlisted Firms (Table 1) will be provided to the appropriate Senior Officer for their agreement.
- (5) At least the required minimum number of Firms will be taken on to a second stage of evaluation if a two Stage ITT has been specified; otherwise all ITT's will be evaluated.

10.6.2 The Council can use a properly established and maintained Pre-Qualification service, e.g. Construction-line. The use of such services should not dis-advantage other suppliers, and where appropriate a mini-competition should be sought to maintain M.E.A.T. Any resultant approved list should only be used for that procurement project. Approved lists should not be used in any other circumstances. Procurement will offer further clarification if needed.

10.7 Procedures with Some Negotiation

- 10.7.1 Public Contracts Regulations 2015/EU Directives provide four additional Procurement Procedures which allow for some degree of negotiation. These procedures should only be used in specific and sometimes exceptional circumstances and must only be used in consultation with the Procurement Team.

11 SUBMISSION, RECEIPT AND OPENING OF TENDERS AND QUOTATIONS

11.1 Submission and Receipt of Quotations.

- 11.1.1 Written quotations (Level A and B) must be kept by the appropriate Procuring Officer and details of verbal quotations (Level 0) should be documented; both should be made available, on request, to the appropriate Budget Holder, Senior Officer or Member of the Procurement Team.

11.2 Submission of Tenders

- 11.2.1 Every Invitation to Tender must tell the Tenderer how, when (date and time) and where to submit their response. Tenders must be returned to the Council in one of the following ways:
- (a) By submitting it electronically via a specified website or to an advised e-mail address.
 - (b) In exceptional and agreed circumstances in the sealed envelope provided, or specified, by the Council and which does not bear a name or any mark which would identify the sender.
- 11.2.2 The contract award criteria will be summarised in the Invitation to Tender. The Council does not bind itself to accept the lowest or any tender.
- 11.2.3 The Council's Terms and Conditions form part of the Tender documentation and the Firm will be informed how they will apply to the award of the Contract.

11.3 Receipt, Opening and Registration of Tenders

- 11.3.1 Tenders and quotes received via the e-tendering portal, which provides a secure and fully auditable environment, are held securely until the published closing date and time. After which;
- a) Below Level D (£110,000) they may be opened by the Procurement Manager, AD (Corporate Services) or trained member of the Procurement Team.
 - b) Above Level D they will be opened by the Procurement Manager or AD (Corporate Services) and the Procuring Officer responsible for the tender.
- 11.3.2 A summary of the tender opening information, as detailed below, will be produced and made available to Democratic Services and the Chair of the relevant Board.
- Title of the Contract
 - Date and time of opening.
 - Name(s) of those present.

- Number of responses and Name of each tenderer.
- Verification that required documents are present.
- Detail any anomaly or problem with a return

11.3.3 The Procurement Team will download the tender responses from the portal and make them available to the Procuring Officer for record/audit and evaluation.

11.4 Alterations to Tenders, Abnormal Tenders and Post Tender Negotiations

11.4.1 No alteration of any Tender will be allowed after the date and time specified for the receipt of tenders, except:

- (1) Alterations - Where typographical or arithmetical errors or discrepancies are found. The Tenderer can be given an agreed period to confirm or correct the error or to withdraw the Tender.
- (2) Abnormal Tenders - If the Procuring Officer believes a Tender to be abnormal given the requirements, the Overall Estimated Value or in comparison with other tenders. The Tenderer may be asked to explain and clarify its Tender or parts of it.
- (3) Post Tender Negotiation – This is permissible when a procurement route which allows some negotiation has been used. Otherwise, discussions with Tenderers after the submission of a Tender and before award with a view to obtaining adjustments in price, delivery or content must only take place in consultation with Legal Services and the Procurement Manager and in exceptional circumstances such as where the lowest tender received exceeds the approved budget. In circumstances such as this:-
 - (a) An exception may be authorised by a member of MT or by a Board to which the power of making contracts has been delegated.
 - (b) The appropriate Senior Officer or the Procuring Officer may contact tenderers to discuss adjustments in rates, prices or terms but only on the basis of a change to quantities or scope. Negotiations must be documented.
 - (c) There must be no disclosure as to which Tender is currently the lower or the margin(s) involved.
 - (d) The tenderers taking part in this process are required to submit their revised prices or terms to the Council in the manner set out in paragraph 11.2 and revised offers will be opened in accordance with paragraph 11.3.
- (4) Qualified Tenders – When all tenderers are unable to meet the specification the Procuring Officer can discuss submissions with all Tenderers with a view to obtaining acceptably qualified tenders. This must only take place in consultation with Legal Services and the Procurement Manager.

11.4.2 Should these measures not deliver a Tender within the cost limits or where they result in a fundamental change to the specification or contract terms the procedure will be terminated and no contract awarded.

12. SELECTION AND CONTRACT AWARD

12.1 Accepting Quotations

12.1.1 The assessment of Quotations should be carried out by the appropriate Officer or Procuring Officer. Purchases and Contracts will be made via the Council's Purchase Order system using its Purchase Order Terms and Conditions.

12.1.2 Decisions on the acceptance of quotations will be taken as follows:-

Table 3 – Quotations (£0 - £45,000)	
Circumstance	Acceptance by:-
(a) Level 0 (£0 - £1,500) - Lowest or most economically advantageous quotation provided that it represents best value for money.	Officer & Order approved by the Appropriate Budget Holder or Authoriser.
(b) Level A (£1,501 -£10,000) and Level B (£10,001 - £45,000) - Lowest or most economically advantageous quotation provided that it represents best value for money.	Procuring Officer & Order approved by the Appropriate Budget Holder or Authoriser and at Level B agreed by the Senior Officer.
(c) A quotation other than the lowest or most economically advantageous received or in any other circumstances	Appropriate Senior Officer in consultation with the Deputy Chief Executive.

12.2 Evaluating and Accepting Tenders

12.2.1 Where the Contract value is at Level (C) or above; the assessment of Tenders should be led by the Procuring Officer and must involve at least 1 other person with the appropriate skills and knowledge.

12.2.2 The Tenders must be evaluated and scored using the process, criteria and weighting set prior to Tender.

12.2.3 Before a Tender can be accepted the Procuring Officer must ensure that the Deputy Chief Executive has approved the financial standing of the Firm to which it is proposed to award the contract, in accordance with Financial Regulations.

12.2.4 Decisions on the acceptance of Tenders for works, goods or services will be taken as follows:

Table 4 – Tenders (£45,001 & over)	
Circumstance	Acceptance by
(a) Lowest or most economically advantageous tender, provided that it represents best value for money and does not exceed the Overall Estimated Value or Approved Budget.	<p>Level C - Procuring Officer and approved by the Budget Holder and/or Appropriate Senior Officer.</p> <p>Level D (£110,001 and Above – Senior Officer and approved by the Chief Executive (CE) or DCE who will consult with the Leader of the Council or a Deputy Leader.</p> <p>* The CE or DCE may refer any decision on acceptance of a Tender to a Board.</p>

(b) A tender other than the lowest or most economically advantageous tender received, provided that it represents best value for money or in any other circumstances.	<p>Appropriate Board</p> <p>* A written report must be submitted to the appropriate Board detailing the decision and the supporting data (e.g. Evaluation Criteria and scoring).</p>
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12.3 Tenderer Notification and Standstill Period

- 12.3.1 Once the decision to award a contract is made each Tenderer must be notified in writing of the outcome of the tender process including details of the award criteria, their performance against the criteria and the name of the successful tenderer.
- 12.3.2 For Tenders over EU Thresholds there must be a “standstill” period between the notification and signing the contract and/or raising of an order. This is ten days but can be extended, if a challenge is lodged by a Tenderer, in which case the Procurement Manager will advise on the relevant standstill period and process.
- 12.3.3 For Tenders below EU Thresholds a “voluntary standstill” period is good practice and can help prevent future challenge. The Council uses a 10 day period between notification and contract signing.

12.4 Nominated or Named Sub-Contractors and Nominated Suppliers

- 12.4.1 This Contract Standing Order applies where a sub-contractor or a supplier is to be nominated to an existing main contractor or contract.
- (1) Where it is not reasonably practicable to obtain competitive tenders, the appropriate Senior Officer may nominate or agree the nomination of a Sub-Contractor or supplier.
 - (2) Where competitive quotes or tenders are available, then dependent on the estimated value of the sub-contract or the estimated value of goods or materials to be supplied by a nominated supplier, tenders or quotations must be invited.
 - (3) The terms of any invitation for nominated sub-contractors or suppliers must require that, if selected, the Firms would be willing to enter into:-
 - (a) A contract with the main contractor on terms which indemnify the main contractor against the main contractor’s own obligations under the main contract in relation to the work and goods or materials included in the subcontract; and
 - (b) An agreement to indemnify the Council in such terms as may be prescribed.
 - (4) The provisions of Contract Standing Orders relating to the submission of quotes or tenders; their opening and registration; late tenders; alterations to tenders; and tender acceptance apply to this Contract Standing Order.

13. CONTRACTS AND TERMS

- 13.1 Before entering into a contract with any Firm, the appropriate Senior Officer must:-
- (1) Be satisfied about the selection, capability, legitimacy and financial standing of the Firm.

- (2) Ensure that these Contract Standing Orders have been complied with and that the proposed contract represents best value for money.
- (3) Ensure the successful Firm has been made aware of and has confirmed compliance with the legislation, regulation and Council Policies applicable to the Contract.
- (4) Be satisfied that reasonable and proportionate due diligence enquiries have been carried out to ensure Bribery Act compliance.
- (5) Be satisfied that successful and unsuccessful tenderers have been informed of the decision and that any standstill period has been properly observed.

13.2 Orders and Contracts

- 13.2.1 Where the Contract Price of a procurement is valued at Level A or less, the works, goods or services to be supplied will be purchased using a Council Purchase Order or a procurement card payment and must be approved by the Budget Holder.
- 13.2.2 Where the Contract Price is at Level B the works, goods or services to be supplied will be purchased on the basis of a duly signed Contract and/or a Council Purchase Order approved by the appropriate Budget Holder and/or Senior Officer.
- 13.2.3 Unless the Solicitor to the Council decides otherwise, every contract must be in writing and every contract with a value of Level C or above must be in a form prepared or approved by the Solicitor to the Council.
- 13.2.4 Contracts at Level D and above must be under seal. The appropriate Senior Officer must liaise with the Solicitor to the Council and decide if it is appropriate to Seal a contract priced at below Level D if:
 - The Council may wish to enforce the Contract more than 6 years after its end.
 - The price paid or received is a nominal one and does not reflect the true value of the goods or service.
- 13.2.5 The Council's Purchase Order Terms and Standard Contract Terms and Conditions are available on the Internet. If these are not used the Procuring Officer or Senior Officer must ensure that the contract used covers those sections and topics detailed in the Standard Contract and that it is approved by Legal Services before signing or sealing.
- 13.2.6 At the Senior Officers discretion and for all Tenders over Level D the Procuring Officer must consult with the Deputy Chief Executive to determine if the Contract is to include Parent Company Guarantees, Bonds or Liquidated Damages.

13.3 Using other Organisations Contracts

- 13.3.1 The Council may choose to use Contracts and Contract terms other than its own, if the Senior Officer determines the needs of the Council can be met. This can be efficient, reducing contracting activity, and may include the following types of Contracts:
 - (1) ICE (Institute of Civil Engineers) and JCT (Joint Contracts Tribunal) Contracts and Agreements and NEC Contracts.
 - (2) Contracts established by organisations with the legal remit to award public contracts such as Professional Buying Organisations e.g. ESPO.

- (3) Contracts tendered and awarded by Government or public sector organisation, which are open to Local Government or this Council, provided they have been let compliantly, legally and under their CSOs.

13.3.2 It is the responsibility of the Procuring Officer or Senior Officer to ensure that such Contract terms are appropriate and that the Solicitor to the Council has had the opportunity to review any Contract and decide if such a Contract is applicable and acceptable to the Council.

13.3.3 If necessary, it is the responsibility of the Senior Officer to negotiate modifications to the Contract to properly represent the requirements of the Council. Any substantive change must be agreed with the Solicitor to the Council.

13.4 Variances to Terms and Conditions

13.4.1 Any variations to the Council's Standard Contract Terms and Conditions submitted by Firms shall not be accepted without advice from the Solicitor to the Council.

13.4.2 Payment arrangements other than the Council's normal payment terms e.g. "payment on delivery" must be discussed with and agreed by the DCE.

13.5 Contract Disputes

13.5.1 The Council will, in its Contracts, identify a Dispute Resolution Process. The principles of such will be to establish mutually acceptable resolution of any dispute; to maintain good working relations and avoid lengthy and costly delays for all parties.

14 USING CONTRACTS

14.1 Placing Orders

14.1.1 Where there is a need and within approved budgets Officers may raise Orders, for approval, against Contracts which have been entered into by the Council.

14.1.2 To purchase goods, services or works Orders must be raised, at the time of committing expenditure, using the Council's Procurement System (TOTAL) and approved by the Budget Holder, unless;

- (1) Financial Regulations state that Orders do not need to be raised for a specific type of spend e.g. Utility payment, Rent.
- (2) A Council approved payment card is used for a low value purchase.

14.2 Authorising Payment

14.2.1 In accordance with Financial Regulations, and within approved budgets and where relevant Contract Price, Authorised Officers or Budget Holders may authorise payments of invoices raised by a Supplier against a Council Order or Contract, on the following conditions:

- (1) That the Council has a duly authorised Goods Receipt Note to match against the order and invoice; or
- (2) That the Procuring Officer has authorised payment against the satisfactory delivery of a service or schedule of services; or

- (3) That it represents an agreed stage payment, provided that the Procuring Officer can determine and demonstrate that the stage has been reached; or
- (4) That it is a retained payment, now due; or
- (5) That a Senior Officer authorises payment.

14.3 Variations within Contracts

- 14.3.1 All Variations must be in the form of written instruction to the contractor. The validity and likely cost effect of each variation should be assessed before the issue of the instruction to proceed.
- 14.3.2 If the variation is valid and its cost can be contained within the Contract Price and Approved Budget the instruction may be approved by the Contract Officer or Procuring Officer at Level B and below and by the relevant Senior Office at Level C and above.
- 14.3.3 Any variation, which will result in the Approved Budget being exceeded by £5,000 or 10% of the contract sum (whichever is the greater) must be reported to the appropriate Board by the Senior Officer in accordance with Financial Regulations.
- 14.3.4 If the variation would cause the Contract Price to be exceeded, but is within the tolerance defined in Financial Regulations (£5,000 or 10% of the contract sum), the Senior Officer should liaise with the AD (Finance and HR) to establish how any overspend could be contained within Approved Budgets. If alternative funding cannot be found, the appropriate Board will need to submit a supplementary estimate request to Executive Board.
- 14.3.5 In cases when a variation is urgent and requires immediate action the instruction may be issued by the appropriate Senior Officer without prior written costing. If there is any expectation that the variation could result in the Contract Price being exceeded by £5,000 or 10% of the contract sum the appropriate Officer must consult the Chief Executive with regard to use of his emergency powers. Details of the cost of the variation or overspend and the reason(s) for it, must be reported to Board as soon as practicable in accordance with Financial Regulations.

14.4 Adjustments and Extensions to Contracts

- 14.4.1 Where the timing of any Contract changes for reasons beyond the control of the Procuring or Contracting Officer, a Contract may be lengthened or adjusted with the approval of the appropriate Senior Officer. Such discretion is to recognise the efficiency in procurement in situations where issues pull forward or delay a particular programme of expenditure.
- 14.4.2 Where the scope of any Contract changes the Procuring Officer must carry out an assessment to determine if the change would have impacted on the Tender and its outcome. Such discretion is to recognise adjustments to account for minor changes to scope and efficiency in procurement where identical or equivalent goods or services are required, but these must not result in material changes.

14.5 Emergency Orders

- 14.5.1 Where an emergency demands a response outside the practical timescales of these Contract Standing Orders, the Procuring Officer, in liaison with a Senior Officer, is authorised to set aside requirements for tendering and competition; working if at all

possible within an existing Contract or with an existing Supplier. Action under this Contract Standing Order will be made compliant with Exemption to Contract Standing Order (Section 6) soon as possible.

15 DISPOSAL OF ASSETS

- 15.1 Assets including property, vehicles, equipment, furniture, stocks or stores which are no longer required or needed for re-use should be disposed of in accordance with the law, Financial Regulations and any Council Protocol for Disposal of Assets.
- 15.2 Low value items Level A or less may be disposed of by written bid/quotation, auction or by electronic auction. Where an electronic auction site is used the placement and sale must be through a Council, not a personal, account. The Assistant Director (Finance and HR) should be informed of disposals.
- 15.3 Where assets for disposal are valued at Level A and above (see Table 1) the relevant Senior Officer must give approval for the disposal; at Level C and above approval must also be given by the Deputy Chief Executive.
- 15.4 The method of disposal for assets valued at Level B or above should be by tender or quotation following the processes laid out in sections 10 -13. Written tenders or quotes received must be kept securely by the ACE & SttC or their representative, until the time of opening.
- 15.5 The Assistant Director (Finance and HR) must be informed of these disposals to ensure the Council's Asset Register is maintained.
- 15.6 Tenders or Quotations received for the disposal of assets will be awarded on the basis of the "Highest" or most economically advantageous offer.

16 LAND TRANSACTIONS

- 16.1 This Contract Standing Order applies where there is a land transaction. With the exception of Sections 1, 2, 3 and 4 none of the Council's other Contract Standing Orders apply to land transactions, unless otherwise stated in this section.

16.2 Approval of Major Disposals

- 16.2.1 The method of each major disposal must be approved by the Solicitor to the Council or the Resources Board as appropriate. When determining such matters the Solicitor or Board shall:
- (1) specify the land to be disposed of;
 - (2) confirm that the land has been declared surplus to Council's requirements;
 - (3) advise upon the proposed method of disposal and set out the reasons for selecting that method;
 - (4) in matters where the Council must achieve best consideration, confirm that the proposed method of disposal which has been selected, is most likely to achieve this; and
 - (5) in matters where it is proposed that the disposal should be for less than best consideration, give reasons for and against seeking best consideration and, specify the relevant legal powers of the Council to accept less than best consideration.

- 16.2.2 The principal terms of major disposals (except where the approved method of disposal is by auction) must be approved by the Council on the recommendation of the Resources Board. When determining such matters, the Board shall ensure, after considering advice from the Council's Valuer, either that the consideration agreed represents best consideration, or following advice from the Solicitor to the Council that the Council has the relevant legal powers to accept less than best consideration.
- 16.2.3 In major disposals where the approved method of disposal is the inviting of formal tenders or informal offers, the disposal must be advertised on the Council's Website and in at least one local, national or specialist newspaper or publication, as determined by the Solicitor to the Council, after consultation with the Council's Valuer. Tenders shall be submitted in accordance with the Council's Tender Procedures.

16.3 Dealing with formal tenders and informal offers

- 16.3.1 Tenders and offers shall be opened at one time in the presence of either the Leader of the Council or one of the Deputy Leaders and the Solicitor to the Council or his/her representative. The names of tenderers and/or offerors, and the amounts of tenders/offers shall be recorded in a register kept by the Assistant Chief Executive & Solicitor to the Council. Persons present at the opening of tenders/offers shall record their presence by signing the register against the specified details. Alterations/errors in tenders/offers and late or otherwise invalid tenders/offers shall be dealt with in consultation with the Solicitor to the Council.

16.4 Disposals by Auction

- 16.4.1 In disposals where the approved method of disposal is by auction, the auction shall be conducted by the Council's Valuer, if he/she is a practising Auctioneer. Where this is not the case, at least two practising auctioneers must be invited to provide a written quotation as to commission and additional costs, and the lowest quote must be selected by the Solicitor to the Council.
- 16.4.2 A "reserve price" must be set by the Solicitor to the Council, in consultation with the Council's Valuer or selected auctioneer. The reserve price must be disclosed only to the auctioneer and the Council's legal officer attending the auction.

16.5 Approval of Land Transactions other than major disposals

- 16.5.1 The principal terms of land transactions other than major disposals (except where the method of disposal is by way of auction) must be approved by the Solicitor to the Council or the Resources Board, as appropriate. When determining such matters, the Solicitor or Board shall consider the proposals in an agreed format confirming either that the consideration agreed represents best consideration, or following consultation with the Solicitor to the Council that the Council has the relevant powers to accept less than best consideration.

16.6 Application of the Property Procedures

- 16.6.1 All land transactions must be conducted in accordance with the property procedures.

16.7 Formalities

16.7.1 All contracts and other documentation entered into pursuant to all land transactions shall be in writing, and shall be signed or sealed, as appropriate.

16.8 Accepting Tenders for the Disposal of Land, Property and other Marketable Assets.

16.8.1 Decisions on the acceptance of tenders for the disposal of land, property and other marketable assets will be taken as follows: -

Table 5 – Disposal of Land, Property and Assets	
Circumstance	Acceptance by
(a) The highest tender, provided that it is considered to be in the Council's interests, after taking professional advice.	The Chief Executive, (or in his absence the Solicitor to the Council) after consultation with the Leader of the Council or one of the Deputy Leaders
(b) A tender other than the highest received, provided that it is considered to be in the Council's interests; is in accordance with statutory requirements; and a written report has been submitted to the appropriate Board by the relevant Senior Officer.	Appropriate Board
Any other circumstances	Appropriate Board

APPENDIX 1 - GLOSSARY

Authorised Officer	An Officer of the Council with authority to raise a purchase order or purchase within an existing Contract and their delegated authority.
Authority to Tender	Means there is approved budget and a need has been established in an agreed Service or Strategy Plan or approval has been sought and given by Management Team (MT) or if required a Board.
Best consideration	Legal obligation upon the Council to achieve a consideration which is the best that can reasonably be obtained.
Bribery	Giving someone a financial or other advantage to encourage that person to perform their functions or activities improperly or to reward that person for having already done so.
Contract	Agreement between the Council and a Firm for the carrying out of work, or for the supply of goods or services. Such agreement may be made by Contract, Purchase Order, Procurement Card or other approved method.
Contractor	A firm with which the Council enters into a Contract.
Contract Officer	An Officer who has been given specific responsibility by a Senior Officer or Budget Holder to manage a Contract once established.
Contract Price	The price at which the successful Tenderer has agreed to provide the goods, works or services.
Corruption	Offences defined by the Bribery Act 2010 which makes offering or accepting a bribe a criminal offence.
Corporate Contract	A contract which has been set up as the means of purchasing specific goods, services or works by all Officers.
Council	Any of the following acting under delegated powers: A Board, Committee, Panel, Area Forum, Joint Committee or Senior Officer.
Deputy Leader	The Chairman of the Resources Board, of the Community and Environment Board or of the Planning and Development Board.
Firm	A sole trader, partnership or company or any duly incorporated trade, professional, commercial or voluntary body.
Land transaction	The acquisition or disposal of, or other dealing with land whether or not buildings, plant and equipment, fixtures and fittings, or other assets are included in that transaction.
Leader of the Council	The Chairman of the Council's Executive Board.
Major disposal	A land transaction (not under Right to Buy provisions) which consists of a disposal of the freehold where the consideration exceeds £52,000 or the grant of a lease where the rent exceeds £21,000 per annum or where the premium exceeds £52,000.

M.E.A.T	Most Economically Advantageous Tender. A combination of price and quality criteria against which tenders are evaluated.
Officer	An employee of the Council.
Order	Order placed by the Council usually to its own terms and conditions.
Overall Estimated Value.	The estimated total of all the cost associated with the goods, services or works being procured over the number of years the contract is expected to operate.
Partnership	A form of Contract between the Council and any Firm that includes some form of arrangement for sharing risk and/or reward in addition to the usual considerations for payment
Procuring Officer	An Officer who has been given responsibility by a Senior Officer or Budget Holder to run procurement exercises (Quote or Tender) and who may be required to establish and manage Contracts.
Professional Buying Organisation	An organisation which is legally able to procure and establishes contracts on behalf of the public sector.
Quotation	A formal verbal or written offer to supply or purchase goods or services or to carry out work where the Overall Estimated Value is expected to be low.
Senior Officer	The Chief Executive, the Deputy Chief Executive, an Assistant Chief Executive or an Assistant Director or equivalent post.
Social Considerations	The additional benefits to the community over and above the direct benefits of purchasing the goods or services.
Supplier	A Firm with whom the Council has entered into a Contract for the supply of goods and services.
Tender	An offer from a Firm to provide goods, services or works required at a specific cost or rate following a Tendering Process.
The property procedures	The procedures adopted by the Solicitor to the Council from time to time, in consultation with the Deputy Chief Executive.
Written or "in writing"	Includes paper and electronically transmitted documents in a format defined or approved by the Council.
Whole life cost	All the costs associate with buying a good, service or work and can include, planning, design, construction and acquisition, operations, maintenance and finance, purchase and disposal cost.