

CONTRACTS PROCEDURE RULES (STANDING ORDERS RELATING TO CONTRACTS)

Adopted [23 May 2018 – Special Full Council meeting]

LOCAL GOVERNMENT ACT, 1972, SECTION 135

- (1) A local authority may make Standing Orders with respect to the making of contracts by them or on their behalf.
- (2) A local authority shall make Standing Orders with respect to the making of them, or on their behalf, of contracts for the supply of goods or materials or for the execution of works.
- (3) Standing Orders made by a local authority with respect to contracts for the supply of goods or materials, or for the execution of works, shall include provision for securing competition for such contracts and for regulating the manner in which tenders are invited, but may exempt from any such provision contracts for a price below that specified in Standing Orders and may authorise the authority to exempt any contract from any such provision when the authority is satisfied that the exemption is justified by special circumstances.
- (4) A person entering into a contract with a local authority shall not be bound to inquire whether the Standing Orders of the authority which apply to the contract have been complied with, and non-compliance with such Orders shall not invalidate any contract entered into by or on behalf of the authority.

CONTRACT STANDING ORDERS

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These Contract Standing Orders (“CSOs”) are made pursuant to section 135 Local Government Act 1972 and apply when the Authority expects to spend money or provide other value for goods, works or services, regardless of whether a procurement exercise s required or not.

1 Definitions

1.1 Unless otherwise required by the context, the following words shall have the following meanings.

“Annual Procurement Plan”	A plan identifying major procurement projects for the next financial year or as soon as reasonably practicable thereafter so that (1) appropriate resources can be identified; (2) the Authority may issue OJEU Prior Information Notices to enable compliance with EC Legislation; and (3) Suppliers, Contractors and Consultants, (collectively “the Supplier”), have advance notice of bidding opportunities in relation to proposed works, services or supply agreements (collectively “Services”) or a combination of two or more of those categories
“Authorised Officer”	A person who has been tasked with procuring or obtaining Services on the Authority’s behalf
“Authority”	Sedgemoor District Council
“Award Assessment Report”	A document to be kept on the tender file that sets out the nature of the tender and the reasons for why the Tender is recommended for acceptance
“Below Threshold”	Contracts having an estimated value of at or above £25,000 and below EU Thresholds
“Best Value for Money”	The optimum combination of whole life costs and quality to meet the Authority’s requirement. This term equates to the EU procurement requirement “most economically advantageous tender”
“Cabinet Office Guidance”	guidance issued by the Minister for the Cabinet Office from time to time in connection with Procurement Exercises
“Chief Officer”	Chief Executive, Corporate Director, Monitoring Officer, S151 Officer, Group Managers or authorised deputies for each of those roles

“Consultant”	A person or organisation appointed to provide specialist services to the Authority, as evidenced by a Contract
“Contract”	A written order placed or agreement entered into with a Supplier for the supply of goods or materials, the carrying out of works or the provision of services and/or a combination of two or more of those categories For the avoidance of doubt, the term ‘Contract’ specifically excludes a contract of employment
“Contracts Finder”	a web-based portal on which procurement requirements having an estimated value of £25,000 or more are to be advertised in accordance with Cabinet Office requirements
“Contracts Register”	A register held and maintained by the Authority that shall contain details of all Contracts entered into by the Authority above a threshold value of £25,000
CSO	Contract Standing Order
“Data Sharing Agreement”	A written agreement setting out the legal basis on which personal/sensitive information as defined by the Data Protection Act 1998 and the GDPR is to be shared and the arrangements for how, to whom, why and when data may be shared
“Data Sharing Protocol”	Overarching principles governing how and when data may be shared, to ensure that appropriate security measures and safeguards are in place. Such protocol must comply with, the Information Commissioners Code on data sharing as the same may be amended from time to time and the GDPR
“EU”	The European Union
“EU Thresholds”	The EU thresholds shall be the monetary values determined by the EU Commission from time to time as published in the Official Journal
“Executive”	The Executive of Sedgemoor District Council or any other formally constituted body operating within its terms of reference
“Form of Tender”	A document that forms part of the Procurement Documents that must be signed and returned by the tenderer as part of a tender, to indicate that the Tenderer understand the tender, accepts the various terms and conditions of the invitation to tender and proposed contract, and other requirements of tender participation
“Framework Agreement”	An agreement or other arrangement between one or more contracting authorities and one or more Supplier that has been

	concluded in accordance with the Regulations, that establishes the terms (in particular the terms as to price and quality) under which the Authority is to procure Services, as defined by these Contract Standing Orders
“GDPR”	The General Data Protection Regulation (“GDPR”) that will become effective on 25 May 2015
“IR35”	Legislation that seeks to (1) identify the true employment status of a Worker and (2) the tax position of such person
“Key Decision”	Decisions to be taken by the Executive, following publication in the Register of Key Decisions, which are likely (i) to result in expenditure or savings which are significant having regard to the budget for that service or function i.e. more than 0.5% of the net approved budget requirement for the financial year, or (ii) to be significant in terms of its effect on communities living or working in an area comprising two or more Wards or electoral divisions in the Authority’s district
“Member States”	For the purposes of these Contract Standing Orders the term ‘Member States’ shall be deemed to include (1) the EU Member States and (2) other countries who are signatories to the Government Procurement Agreement who enjoy the same rights as EU suppliers
“Monitoring Officer”	The person nominated to this position from time to time. All references to the Monitoring Officer shall include the post of the Group Manager – (Legal) and Monitoring Officer
“OJEU”	Official Journal of the European Union
“Partnership Policy”	The adopted policy of the Authority dealing with collaborative arrangements and partnership working
“Portal”	The Supplying the Southwest Portal or such other web based facility or facilities that the Monitoring Officer may specify from time to time for advertising the intended procurement of Services provided that the Portal directly links to Contracts Finder and enables procurement requirements having an estimated value of £25,000 or more to be advertised on Contracts Finder
“Procurement Document/s”	Any document produced or referred to by the Authority to describe or determine elements of the procurement or the procedure, including a contract notice, a prior information notice where it is used as a means of calling for competition, an invitation to tender document, the evaluation criteria and scoring mechanisms, the technical specifications, the descriptive

	document, proposed conditions of contract, formats for the presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional documents;
“Procurement Exercise”	The appropriate tendering or other approved procurement procedure that Authorised Officers may follow to identify a preferred Supplier
“Publication Procedure”	The Authority’s procedures to ensure the publication of all contracts it enters into having a value of £500 or more and of all payments over £500, or such other value as the Monitoring Officer in consultation with the s.151 Officer shall prescribe
“Recruiter”	the services of a personnel placement provider, employment or recruitment agency to engage one or more Workers
“Regulations”	The UK regulations implementing the EU public procurement directives as the same may be amended from time to time, the Treaty of Rome, Commission Interpretative Communications and general principles of EC law and case law
“Services”	Any order or contract to which the Authority is a party that is subject to CSO 3.1.3 or that provides the Authority with a benefit of any kind whatsoever, including without limitation, the supply of goods, services, works including any services provided by a Consultant, the sale of land or property in exchange for a benefit (financial or otherwise) to the Authority, (other than arrangements that exclusively relate to the sale or purchase of land or property. For the avoidance of doubt, a works contract is defined by the common procurement vocabulary codes referred to in the 2015 Regulations), and if not defined by the 2015 Regulations as a works contract shall be regarded as either a requirement for goods or services.
“SME”	an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises
“Supplier”	Any person or body of persons providing, or seeking to provide, goods, services or works to the Authority
“Treaty”	The Treaty of Rome 1974
“Treaty Principles”	The principles of the Treaty of Rome that all Procurement Exercises, regardless of size or scope shall observe to ensure non-discrimination and equal treatment, transparency, proportionality and mutual recognition

“VCSE”	a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives
“Worker”	A person referred to the Authority by a Recruiter or a deemed employee within the meaning of IR35
2015 Regulations	The Public Contracts Regulations 2015

2 Compliance

2.1 Procurement decisions are important decisions. The purpose of these Contract Standing Orders is to provide a structure within which purchasing decisions are made and implemented and which ensure that the Authority:

- 2.1.1 Furthers its corporate objectives:
- 2.1.2 Uses its resources efficiently:
- 2.1.3 Purchases quality goods, services and works:
- 2.1.4 Safeguards its reputation from any implication of dishonesty or corruption.

2.2 Purchasing by the Authority, from planning to delivery, shall incorporate (where appropriate) principles of sustainability, efficiency, whole life costings and cost savings

2.2.1 Sustainable procurement is a process whereby Suppliers meet the Authority’s requirements for Services in a way that achieves value for money on a whole life basis in terms of generating benefits not only to the Authority, but also to society and the economy, whilst minimising damage to the environment.

2.2.2 Efficiency means that the Authority must continuously improve all its Services. It should purchase the most appropriate Best Value for Money Services and deliver continuous improvement throughout each Contract. The Authority will need to exercise ongoing monitoring and review of the Contract to ensure;

- a) customer satisfaction;
- b) continued high quality delivery;
- c) compliance with environmental and equality standards; and
- d) the opportunity to identify service improvements and cost savings.

2.2.3 Whole life costing requires the Authority to ensure that the whole potential cost of the Contract is taken into account.

2.2.4 Cost savings mean that each contract for purchase must set out the agreed price to be paid by the Authority to the Supplier. Conditions relating to long term service improvement and efficiencies can be incorporated into the Contract documents.

- 2.3 Save as otherwise provided by these Contract Standing Orders, every Contract entered into by the Authority shall be entered into pursuant to or in connection with the Authority's functions and shall comply with:
- (a) All relevant statutory provisions:
 - (b) The Regulations:
 - (c) The Authority's Constitution including these contract standing orders and the Authority's financial regulations and scheme of delegation:
 - (d) The Authority's strategic objectives, procurement strategy and policies.
- 2.4 Save as permitted by CSO 3, it shall be a condition of any Contract between the Authority and any person who is required to supervise and/or perform a Contract on its behalf that, in relation to such Contract, they shall comply with the requirements of these Standing Orders as if they were an employee of the Authority and shall require their sub-contractors to do the same.
- 2.5 Save as permitted by CSO 3, the provisions of these Standing Orders shall apply to Contracts made with sub-contractors where the Authority is a main contractor or identified as being the 'employer' under that contract.
- 2.6 The highest standards of probity are required of all Authorised Officers and members involved in the procurement, award and management of Contracts.
- 2.7 Members and Authorised Officers must comply with the respective codes of conduct that bind them and the respective requirements regarding hospitality.
- 2.8 In no circumstances whatsoever may an Authorised Officer or Member accept gifts or hospitality from Suppliers, sub-contractors, associates or partners or from any person, firm or organisation who is/are currently involved in a Procurement Exercise.
- 2.9 Failure to comply with any of the following may be regarded as a disciplinary matter:

2.9.1 Contract Standing Orders:

2.9.2 Any Procurement Code of Practice or Policy made in accordance with or referred to in these Contract Standing Orders:

2.9.3 Any Code of Practice or Policy that relates to procurement issues:

2.9.4 The Protocols on gifts and hospitality

3 Scope of Contract Standing Orders

3.1 Save as provided by the remainder of this CSO 3 and CSO 4 [Exempt Contracts] below, these Contract Standing Orders and any Codes made thereunder apply to:

3.1.1 All contracts for the acquisition or the procurement by the Authority of goods, works or services, referred to collectively as “Services”, unless otherwise permitted, exempted or waived in accordance with these Contract Standing Orders:

3.1.2 Procurement Exercises required in accordance with other legislation:

3.1.3 All applicable contracts, (but not grants), which are subsidised by 50% or more of public funds must be advertised in the OJEU. From time to time the Authority may part fund a project and, where appropriate, request that the recipient of funding must advertise the procurement in line with the 2015 Regulations even if the Authority’s contribution is less than 50% of the overall value.

3.2 Authorised Officers may promote and encourage partnership and collaborative working with other agencies, enter into call off contracts or procure or enter into a framework or consortium arrangement without adhering to all of the provisions of these CSOs provided that:

- 3.2.1 Legal and procurement advice is requested in writing and is obtained both before and throughout the Procurement Exercise
- 3.2.2 Every Contract or official order for Services, as defined by these CSOs, is for the purpose of achieving the statutory or approved objectives of the Authority:
- 3.2.3 Every Contract or official order for Services, as defined by these CSOs shall conform to all English and EU legislation:
- 3.2.4 Where relevant, full, open and proper competition in respect of the creation of the framework or consortium arrangement has taken place or will take place in accordance with relevant EU legislation and rules and/or relevant contract standing orders or a waiver from these requirements is first obtained:
- 3.2.5 The Authority's financial regulations and scheme of delegation are observed:
- 3.2.6 The Authority is legally entitled to rely on a framework arrangement and, the proposed arrangements are approved by the Procurement Officer in consultation with the legal department:
- 3.2.7 CSO 8 is complied with.

4 Exempt Contracts

- 4.1 The Contracts referred to in CSO 4.2 are exempt from the requirement to procure in accordance with these CSOs but must nevertheless:
 - 4.1.1 Be authorised in accordance with the scheme of delegation:
 - 4.1.2 Be evidenced in writing:
 - 4.1.3 Be reported as required:
 - 4.1.4 Demonstrate the achievement of overall Best Value for Money:

4.2 The Contracts to which CSO's shall not apply are:

4.2.1 A traditional employer/employee relationship whereby an individual is engaged directly by the Authority, using a contract of employment, on either a temporary or a permanent basis.

4.2.2 Contracts between a Recruiter and the Authority for the services of a Worker where: (1) A Worker is recruited via a Recruiter and it is intended that the Worker(s) will become employees of the Authority and/or; (2) Where the Authority pays the salary of the Worker direct to that Worker. The appointment of a Recruiter is subject to the provisions of CSO 9.0

4.2.2 Contracts relating solely to disposal or acquisition of an interest in land save for the provisions regarding the submission and opening of Tenders as set out in CSO 25 which must be complied with:

4.2.3 Grants to external organisations:

4.2.4 Contracts for Services where services are being paid for with grants received by the Authority and the conditions of grant require the use of specified contractors and/or prescribe a particular selection or tendering process:

4.2.5 Legal Services including without limitation Counsel's and/or external legal opinion, representation or specialist investigation services on a particular issue or matter:

4.2.6 Arbitration or conciliation services relating to a particular issue or matter;

4.2.7 Emergency action required to preserve life or property

4.2.8 Tenders for utility supplies, (i.e., gas, electricity and water) for the benefit of Authority owned or managed property, procured by an

external organisation provided that the requirements of the Regulations, where applicable, are complied with. The decision to accept the most economically advantageous tender is delegated to the Monitoring Officer in consultation with the relevant Portfolio Holder.

- 4.2.9 Contracts between the Environment Agency and the Authority that relate to the proposed Parrett Barrier

5 Delegated Authority

- 5.1 Any procurement carried out on behalf of the Authority may only be undertaken by Authorised Officers on behalf of a Chief Officer and in accordance with the Authority's scheme of delegation. Authorised Officers shall be informed in writing by their Chief Officer, (normally their Group Manager) of the extent of any delegated authority and any applicable financial thresholds for each procurement.
- 5.2 Within approved budgets and in accordance with the Annual Procurement Plan where applicable, Chief Officers may authorise Authorised Officers to undertake a mini competition and place orders against Framework Agreements or to enter into Contracts up to £250,000, without the need for Executive approval, providing the Regulations, Financial Regulations including without limitation the requirements relating to the publication of Key Decisions and these Standing Orders have been complied with.
- 5.3 Where the estimated contract value is above £250,000 or involves any potential transfer of the Authority's employees, the proposed procurement shall be referred to the Executive for permission to tender. Such Contracts shall be referred for a further decision by the Executive to award the Contract following a tender evaluation, unless the permission to enter into a contract is specifically delegated by the Executive to named individuals.

6 Annual Procurement Plan

- 6.1 For each financial year, the Authority shall agree a Procurement Plan setting out its current Contracts and contracts to be procured for the forthcoming financial year.
- 6.2 At the beginning of each financial year, the Authority shall where required by the Regulations publish prior information notices in the OJEU listing the Contracts which it expects to procure for that financial year.

7 Pre-Procurement Procedure

- 7.1 Before commencing a Procurement Exercise, it is essential that the Authorised Officer leading the procurement has:
 - 7.1.1 Allowed a sufficient period of time for the Procurement Exercise to complete:
 - 7.1.2 Delegated authority:
 - 7.1.3 An appropriate budget:
 - 7.1.4 Identified the need and fully assessed any options for meeting those needs:
 - 7.1.5 Considered the Authority's Procurement Strategy:
 - 7.1.6 Provided a completed legal/procurement instruction sheet and obtained procurement and legal advice:
 - 7.1.7 Consulted with the Information Systems (IS) department concerning any specific requirements for software, hardware or data sharing that may prompt the need to ensure that a Data Sharing Protocol, Data Sharing Agreement or other data sharing licence is required:
 - 7.1.8 Where a contract is above the OJEU threshold and includes the provision of services the proposed tender must consider whether the proposed contract will advance the economic, social and environmental well-being of the Authority's area:
 - 7.1.9 Considered whether it is practical or desirable to sub-divide the requirement into lots.

- 7.2 In identifying the need and fully assessing any options for meeting those needs as required by CSO 7.1.4 above the Authorised Officer shall:
- 7.2.1 Consider all other means of satisfying the need (including recycling and reuse where appropriate):
 - 7.2.2 Consider whether there is an appropriate Framework Agreement that may be used:
 - 7.2.3 Establish a business case for the procurement:
 - 7.2.4 Consult the Capital Planning Group where the requirement is being funded using capital, in addition to obtaining all other internal consents or permissions that may be required at the appropriate time to enable the proposed contract to be let:
 - 7.2.5 Consider the likely on costs, for example, maintenance and support.
- 7.3 Any intended procurement that does or may involve the transfer of staff shall be subject to prior consultation with Personnel and the prior approval of the Executive
- 7.4 The Authorised Officer shall in any event maintain a tender file and a list of all tenders received and for all Procurement Exercises that are above EU Thresholds shall ensure that the information required by regulation 84 of the 2015 Regulations are recorded, as required on the tender file.
- 7.5 The Authorised Officer shall consider its requirements for Liquidated Damages, Bonds, Guarantees and Insurance requirements and ensure the same are reflected in the requirements of the relevant Procurement Documents.
- 7.6 Where a proposed procurement involves the acquisition of software, hardware, systems or telecommunication equipment or the need for a Data Sharing Protocol, Data Sharing Agreement or other data licence, the agreement of the

Group Manager responsible for IT must first be obtained.

8 Joint Procurement

8.1 All joint procurement arrangements regardless of value and regardless of whether the Authority or another public body leads on the procurement, shall offer Best Value for Money and conform to all English and EU legislation.

8.2 The Procurement Officer and the legal department shall be consulted prior to and throughout the Procurement Exercise.

8.3 Where another partner authority leads on the procurement the contract procedure rules of that public body shall prevail over this Authority's Contract Standing Orders in relation to:

8.3.1 Approved lists and pre-vetting of potential tenderers provided that they comply with the requirements of the Regulations:

8.3.2 The appropriate Procurement Exercise to be adopted:

8.3.3 Advertising requirements provided that they comply with the requirements of the Regulations:

8.3.4 The submission and opening of tenders.

8.4 The Authorised Officer of this Authority shall participate in the setting of evaluation criteria and the scoring of tenders.

8.5 The terms and conditions of contract shall be subject to the prior written approval of the legal department

8.6 For contracts of over £50,000 consultation with the Portfolio Holder must first take place and in any event for all contracts with a value of £250,000 or under,

no contract may be awarded unless the written approval of the Monitoring Officer is first obtained

8.7 In relation to joint procurement arrangements including membership of purchasing consortia, in excess of £250,000, Executive Approval is required. Approval shall only be given where the joint procurement arrangement assures compliance with the Regulations and offers Best Value for Money for the Authority.

8.8 Where appropriate, it shall be the responsibility of the Authorised Officer to liaise with the Team Leader – Democratic Services to ensure that the requirement to publish in the Register of Key Decisions, is observed.

9 Consultants and Recruiters

Consultants

9.1 All Consultants shall be procured and appointed in accordance with these Contract Standing Orders, the requirements of IR35 and the appointment is to be evidenced by a written Contract. The Chief Officer or Authorised Officer shall first consult with the Service Manager – Personnel to establish the extent to which IR35 applies

9.2 The Authorised Officer shall ensure that the Consultants involved in any subsequent procurement comply with these Contract Standing Orders. No Consultant shall make any decision on whether to award a Contract or to whom a Contract should be awarded.

9.3 The Authorised Officer shall ensure that the Consultant's performance is monitored.

Recruiters

9.4 Where the appointment of any Recruiter is proposed:

9.4.1 The Authorised Officer shall first consult with the Service Manager – Personnel to establish the extent to which IR35 applies:

9.4.2 For all proposed contracts under EU Threshold, the Authorised Officer shall be required to seek a minimum of three quotations before an official purchase order is issued to the supplier specifying the services to be provided.

9.4.3 The Authorised Officer shall recommend for acceptance by the Chief Officer the quotation that offers overall Best Value for Money.

9.4.4 In order to demonstrate that a clear audit trail has been followed, an official Purchase Requisition to approve and commit the expenditure must initially have been completed and then signed by the relevant Chief Officer prior to any purchase order being raised

9.4.5 Where appropriate, the Authorised Officer shall ensure that details of the Contract are published on the Register of Key Decisions and entered on the Contracts Register

9.5 Where the services of a Recruiter are required and the estimated value of the proposed contract is at or above EU Threshold the Authorised Officer shall be required to comply with the Regulations and shall ensure that details of the Contract are published on the Register of Key Decisions and entered on the Contracts Register

9.6 When calculating the overall estimated value of a proposed contract with a Recruiter:

9.6.1 The fee's payable to the Recruiter shall be estimated:

9.6.2 The salary of the Worker is to be included in the estimation, but only if the Authority pays this sum to the Recruiter, and not to the Worker directly. In these circumstances, the overall estimated value of the contract must include both the Workers and the Recruiter's fees:

9.6.3 If it is intended that the Worker(s) are to become employees of the Authority or if the Authority pays the salary of the Worker directly to the Worker, (rather than via the Recruiter), then the estimated value of the proposed contract shall be based on the Recruiters fees only

10 Minimum Requirements and Standards

10.1 ~~Pre-qual~~ Suitability Questions may be used provided that such questions are:

10.1.1 Relevant to the subject matter of the procurement:

10.1.2 Proportionate:

10.1.3 Used only to assess whether minimum standards can be met:

10.1.4 Comply with all relevant Cabinet Office Guidance issued from time relating to how to establish and assess whether potential providers meet requirements or minimum standards relating to suitability, capability, legal status and financial standing.

10.2 In relation to Below Threshold Procurement Exercises, where an Authorised Officer wishes to conduct a procurement in a way which represents a reportable deviation from Cabinet Office Guidance the written approval of the Monitoring Officer must first be obtained and the legal department shall be obliged to send to the Cabinet Office a report explaining the deviation.

10.3 Where it is intended to rely on an existing OJEU compliant framework agreement, Authorised Officers shall be entitled to assume that the selection criteria and vetting requirements have been satisfied by the prospective tenderers identified in the framework agreement.

10.4 Any procurement subject to the Regulations shall comply with the appropriate requirements of the Regulations.

11 Electronic Tenders/Quotations

11.1 Where the Authority seeks tenders, it shall advertise the same on the Portal, as appropriate.

11.2 The advertisement shall be accompanied by either:

11.2.1 The Procurement Documents unless agreed to the contrary by the legal department; or

11.2.2 A request for expressions of interest.

11.3 Where the Procurement Documents accompany the advertisement, tenderers will be expected to submit electronic tenders unless the Procurement Documents expressly otherwise provide.

11.4 Where expressions of interest are requested, the Procurement Documents will be transmitted by the Authority to Suppliers by use of electronic means unless agreed to the contrary by the legal department. An email requesting receipt of the quotation/tender shall accompany the documents supplied. The written receipt shall be retained on the tender file:

11.5 Quotations (but not tenders) for proposed contracts having an estimated value of £25,000 or less may be submitted by Suppliers to the Authorised Officer using electronic means

11.6 Electronic versions of quotations or Tenders may be submitted electronically via the Portal if the Procurement Documents so specify.

11.7 Paper tenders may be provided if the Procurement Documents so specify

11.8 Where the Authority propose seeking tenders/quotations using e-procurement/central government catalogues, the rules governing the sealed bids/tender and any consequent terms and conditions shall first be approved by

the Monitoring Officer and the Procurement Officer and if approved shall be adopted in place of the relevant requirements of these Contract Standing Orders for that particular tender exercise.

11.9 Oral communications with tenderers shall be avoided wherever possible but where required shall be documented in writing to a sufficient extent and by appropriate means, such as written or audio records or summaries of the main elements of the communication and retained on the tender file

11.10 The Monitoring Officer shall be entitled to (1) direct the Authorised Officer to take such other steps as she/he shall consider reasonable in all the circumstances to ensure transparency, auditability and compliance with the principles of the Treaty of Rome and (2) recommend waivers from any part of these Standing Orders in the interests of efficacy:

11.11 Any resulting Contract shall be published in accordance with the Publication Procedure.

12 Award Criteria & Estimating the Overall Contract Value

12.1 For all intended procurements, regardless of value, the Authorised Officer shall calculate the overall estimated contract value of any intended procurement in accordance with the Regulations on the basis of the most economically advantageous tender ("MEAT").

12.2 The most economically advantageous tender will be evaluated on the basis of either "price" or "cost" or the "best price/quality ratio".

12.3 Where cost is the basis of evaluation a "cost-effectiveness approach" must be used. Life-cycle costing is one example of a cost effectiveness approach.

12.4 The best price-quality ratio shall be assessed using criteria linked to the subject matter of the contract.

12.5 The overall estimated value must reflect all maintenance, servicing and/or other identified continuing costs associated with the intended procurement.

12.6 Unless otherwise provided by the Regulations, the overall estimated value of an intended procurement shall be calculated having regard to the following factors:

12.6.1 Actual expenditure in the previous twelve months for similar Services:

12.6.2 Whether the Authority has a continuing or recurrent requirement for the same or similar Services. Where this is the case, the Authorised Officer must consider procuring for a 48 month period and must, in any event, base the overall estimated contract value on a period of 48 months:

12.6.3 The estimated value of any options or renewals proposed within the intended procurement, for example, an option to extend the contract term:

12.6.4 The estimated value of all elements of the Service to be received by the Authority, for example, supply and servicing or maintenance obligations.

12.7 Orders for goods, services or works shall not and may not be split in an attempt to avoid the necessity to comply with these Contract Standing Orders or the Regulations.

12.8 The Authority should make the best use of its purchasing power by aggregating purchases wherever possible.

13 Appropriate Procurement Exercise

13.1 The following factors shall enable the Authorised Officer, following written consultation with either the legal department of the Authority or the Procurement Officer, to determine the Procurement Exercise to be adopted:

- 13.1.1 The Overall Estimated Value of the Contract; and/or
- 13.1.2 In procurements where the overall estimated value is Below Threshold, whether the particular circumstances of the proposed procurement warrant either a greater degree of advertising to ensure (1) overall Best Value for Money and/or (2) equal treatment in Member States.
- 13.2 In the event of a difference of opinion between the Authorised Officer and the legal department or the Procurement Officer as to the most appropriate Procurement Exercise to adopt, the Monitoring Officer shall determine the matter.
- 13.3 The categories of Procurement Exercises that an Authorised Officer may elect to adopt, following consultation with either the legal department or the Procurement Officer are as follows:
- 13.3.1 Procurements having a value of below £1,000 – obtain 1 quote or use a Framework Agreement
- 13.3.2 Low Value Procurements - £1,000 to £5,000 – seek 2 quotes or use a Framework Agreement:
- 13.3.3 Intermediate Value Procurement - £5,001 to £24,999– seek a minimum of three quotes, tender or use a Framework Agreement:
- 13.3.4 High Value Procurement - £25,000 or over but less than relevant EU Thresholds – tender or use a Framework Agreement:
- 13.3.5 Above EU Threshold Procurement Exercises – Procure in accordance with the Regulations – tender or use a Framework Agreement.
- 13.4 Any intended Procurement Exercise that involves or may involve the transfer of staff shall be subject to the prior approval of the Executive.

14 Preparations for Intermediate, High and Above EU Threshold Procurement Exercises

14.1 Prior to the commencement of a Procurement Exercise the Authorised Officer shall:

14.1.1 Complete and return to the Procurement Officer a procurement questionnaire:

14.1.2 Prepare all Procurement Documents including without limitation, a draft output specification and method statement/s and/or a draft business plan, as appropriate following consultation with the Procurement Officer and the legal department:

14.1.3 Prepare a draft procurement timetable in consultation with the Procurement Officer and the legal department:

14.1.4 Prepare both the selection criteria with weightings and the evaluation criteria with weightings, as appropriate to the relevant Procurement Exercise.

14.1.5 Ensure compliance with CSO 7

14.1.6 Consider whether the requirement can be subdivided into lots and if this is not considered appropriate agree the reasons for why this should be with the Procurement Officer or the legal department. The reasons for not procuring into Lots shall be recorded on the tender file and will need to be reported in accordance with the 2015 Regulations

14.2 For the avoidance of doubt, it is expected that High Value Procurement Exercises shall be undertaken in accordance with a tendering procedure. However, with the prior written approval of the Monitoring Officer, in appropriate circumstances, permission to seek quotes for a requirement having an estimated value of between £25,000 and £30,000 may be granted provided that

(i) the Procurement Documents are approved by the legal department and (ii) Cabinet Office Guidance does not preclude the use of quotations (iii) the Monitoring Officer has no objection to the use of quotations in the best interests of the Authority

15 Evaluation Panel

15.1 For all Procurement Exercises that are to be undertaken by means of a tendering exercise or the use of a Framework Agreement and having a value of £25,000 or more an evaluation panel must comprise a minimum of three officers to include the Authorised Officer in any event. The Authorised Officer shall invite the Portfolio Holder and attendance by a representative from Procurement, and/or the legal and/or finance departments may also be requested.

15.2 Where the Authority is procuring on behalf of itself and other public bodies, for example another local authority, representatives of other public bodies may form part of the evaluation panel.

15.3 In exceptional circumstances, other persons external to the Authority may additionally be included on the Evaluation Panel with the prior agreement of the Monitoring Officer

15.4 The Evaluation Panel shall in all cases undertake tender evaluation but an Evaluation Panel may also require a Consultant to undertake a preliminary scoring exercise on its behalf or recommend a preferred supplier or a shortlist of possible suppliers provided that the Consultant shall provide the Evaluation Panel with a detailed evaluation report. The decision as to preferred supplier shall in any event be determined by the scoring undertaken by the Evaluation Panel.

15.5 The requirements for the award of a Contract are as set out in CSO 32

16 Evaluation Criteria and Tender Evaluation

- 16.1 The Authorised Officer on behalf of the Evaluation Panel shall be responsible, in consultation with the Procurement Officer and the legal department, for agreeing the Procurement Documents
- 16.2 Where the use of a selection questionnaire is permitted in accordance with the Regulations the selection criteria and weightings must be made known to all prospective tenderers at the time the selection questionnaire is issued:
- 16.3 Where the EU Thresholds apply, the evaluation criteria and weightings shall be pre-determined and listed in the relevant OJEU Notice or Procurement Documents as appropriate. The criteria shall be strictly observed at all times throughout the contract evaluation procedure by all officers and other persons involved in the tender evaluation.
- 16.4 Where a contract is at or above the EU Threshold and includes the provision of services the proposed invitation to tender must consider whether the proposed contract will advance the economic, social and environmental well-being of the Authority's area. The Authorised Officer must record on the tender file their consideration of this issue.
- 16.5 All Contracts shall be awarded on the basis of the offer which represents the most economically advantageous tender to the Authority and comply with the requirements of CSO 32.

17 Advertising

- 17.1 Where a Procurement Exercise is to be undertaken in accordance with a Framework Agreement the advertising requirements this CSO 17 shall not apply
- 17.2 For Procurement Exercises having (i) an estimated value of below £1,000 and (ii) for Low Value Procurement Exercises having an estimated value of between £1,000 and £5,000 – There are no advertising requirements.

17.3 Intermediate Value Procurement Exercises - £5,001 to £24,999 – the requirement shall be advertised on the Portal and may, with the written agreement of the Monitoring Officer or the Procurement Officer, be additionally advertised using such means as may be considered appropriate to that particular Procurement Exercise

17.4 High Value Procurement Exercises shall be advertised in accordance with the Regulations and on the Portal and may, with the written agreement of the Monitoring Officer or the Procurement Officer, be additionally advertised using such means as may be considered appropriate to that particular Procurement Exercise.

17.5 The information to be published on the Portal shall include at least the following:—

- (a) The time by which any interested economic operator must respond if it wishes to be considered;
- (b) How and to whom such an economic operator is to respond; and
- (c) Any other requirements for participating in the Procurement Exercise.

17.6 The Authority shall ensure that the information remains published on the Portal for a sufficient period of time for interested economic operators to become aware of it. The time to be allowed shall be reasonable and proportionate in all the circumstances.

17.7 The Authority may not advertise the opportunity in other ways before it has been published on the Portal and the Authority shall ensure that any relevant Procurement Documents are available free of charge on a website to which a link is provided within the information published on the Portal.

17.8 All other Procurement Exercises undertaken in accordance with the Regulations shall be advertised in accordance with the Regulations.

18 Low Value Procurement Exercise

18.1 Under £1,000 – A minimum of one written quotation is required unless a Framework Agreement is being used. Where possible payments should be made using the Authority's designated purchasing cards. If a purchasing card cannot be used, a purchase order shall be raised specifying the goods, services or works to be provided and set out the price and terms of payment.

18.2 £1,000 - £5,000 - A minimum of Two written quotations shall be sought unless a Framework Agreement is being used. A purchase order shall be raised specifying the goods, services or works to be provided and set out the price and terms of payment.

18.3 The Authorised Officer shall determine whether the proposed expenditure is of a recurring nature. If it is and the overall estimated value of expenditure over a four year period would exceed £5,000, the requirements of the Intermediate Value Procurement Exercise must be complied with.

18.4 The Authorised Officer shall accept the quote that offers overall Best Value for Money.

19. Intermediate Value Procurement Exercise – three quotes or tenders to be sought

19.1 The Authorised Officer shall determine whether the proposed expenditure is of a recurring nature. If it is and the overall estimated value over a four year period would exceed £25,000, the requirements of the High Value Procurement Exercise must be complied with unless a Framework Agreement is being used.

19.2 For procurements valued in excess of £5,000 but at or below £24,999 at least three (3) written quotations/tenders shall be invited before an official purchase order is issued to the supplier specifying the goods, services or works to be provided.

19.3 The Authorised Officer shall ensure that details of the Contract are entered in the Contracts Register

19.4 In order to demonstrate that a clear audit trail has been followed, an official Purchase Requisition to approve and commit the expenditure must initially have been completed and then signed by the relevant Chief Officer or Authorised Officer with delegated authority prior to any purchase order being raised.

19.5 If the proposed procurement involves the potential transfer of staff, the prior approval of the Executive shall be required.

20 High Value Procurement – A minimum of Four Tenders to be sought unless a Framework Agreement is used [£25,000 to EU Thresholds]

20.1 Prior to the commencement of the procurement procedure the Authorised Officer shall develop a procurement brief in conjunction with advice from the legal department and/or the Procurement Officer.

20.2 For procurements valued at or above the £25,000 but less than the relevant EU threshold and where a Framework Agreement is not being used, tenders shall be invited from no fewer than four (4) Suppliers, unless the Authorised Officer has determined after consultation with the legal department or the Procurement Officer that the procurement should be undertaken with a greater degree of advertising or in accordance with alternative provisions of the Regulations.

20.3 Regardless of which tendering method is adopted, provided that the relevant number of tenderers were invited to tender, the tender may continue provided that (1) a minimum of one tender is returned and (2) the Authorised Officer is able to demonstrate that Best Value for Money is being achieved.

20.4 If the Authorised Officer has determined after consultation with a member of the legal department and the Procurement Officer that the procurement should be undertaken in accordance with alternative provisions of the Regulations the

alternative relevant requirements of the Regulations shall be complied with.

20.5 The following minimum tender periods shall apply:

20.5.1 A minimum period of twenty-one days shall elapse between the date on which tenders are invited and the closing date for receipt of tenders:

20.5.2 If, however, a decision is taken to procure using a Framework Agreement, the procedure set out in the Framework Agreement shall apply.

20.6 The Team Leader - Democratic Services must be promptly notified of any Invitations to Tender being issued by the Authorised Officer and the proposed tender return date.

21 Contracts Subject to the Regulations

21.1 Where an estimated value of a Contract before VAT equals or exceeds the current EU Threshold, the Authority's requirement shall either:

21.1.1 Be procured in accordance with the Regulations and advertised as a public tender in the Official Journal of the European Community; or

21.1.2 Be undertaken in accordance with the requirements of a Regulation compliant mini competition pursuant to a Framework Agreement that has been approved by the legal and the procurement departments.

21.2 The EU procurement threshold values are revised every two years for the period 1st January to 31st December. Up-to-date figures can be obtained from the legal or procurement departments.

21.3 All Contracts likely to be governed by the Regulations must be notified to the legal or procurement departments at the earliest opportunity. These

departments will work together with the Authorised Officer to ensure compliance with the Regulations.

- 21.4 The Treaty and the Regulations require non-discrimination, equal treatment, proportionality and transparency for all prospective tenderers in all Member States. Procurements subject to the Regulations may not therefore treat one section of prospective tenderers any more or any less favourably than any other prospective tenderer.
- 21.5 The appropriate procurement route will be selected by the Authorised Officer following consultation with the legal and procurement departments.
- 21.6 The timescales for expressions of interest and returns of tenders may be further reduced by complying with specific OJEU requirements relating to use of prior information notices, electronic access and submission of documents. The advice of the legal and procurement departments must be sought.
- 21.7 In formulating proposals for a services contract, the Authorised Officer must consider the Public Services (Social Value) Act implications and whether and to what extent any ethical procurement issues, sustainability, equality and diversity and community benefit (including maximising employment, training and training opportunities within the District) can be secured and add value.
- 21.8 Where appropriate and always subject to EU law, the Authorised Officer should ensure tenders or quotes are framed in such a way to encourage local suppliers, small and medium sized companies (SME's) and third sector organisations such as social enterprises to bid.
- 21.9 The Authorised Officer in consultation with the Procurement Officer and the legal department shall determine whether the requirement should be subdivided into lots

22 Framework Agreements

22.1 Framework agreements may only be used if approved by the Procurement Officer and the legal department as not all framework agreements can be used by the Authority

22.2 Where the Authority may use a Framework Agreement, the rules of the Framework Agreement shall be adhered to in selecting a Supplier. Legal and Procurement advice must be sought and the Authorised Officer must be satisfied that Best Value for Money can be achieved.

23 Partnering

23.1 Where a partnering arrangement is considered to be the most effective means of commissioning works, obtaining supplies or delivering a service, CSO 3.2 shall be complied with prior to the selection of a partner. Where it is proposed to either extend or join an existing partnership, the written agreement of the Monitoring Officer in conjunction with the S151 Officer should be obtained for Contracts at or below £250,000 or the Executive where the value is over £250,000

23.2 All partnering arrangements should be documented and formal agreements drawn up. The agreement should detail the responsibilities of all parties, reporting lines, and respective liabilities, both during the currency of the partnering relationship and any residual liabilities when the partnering relationship ends. Further advice should be sought from the Legal and Procurement departments and due regard shall be had to any partnership policy in place from time to time and to the need for an appropriate Data Sharing Protocol in relevant circumstances.

24 The Invitation to Tender

24.1 The Invitation to Tender is a Procurement Document and shall include details of the Authority's requirements for the particular Contract including:

- 24.1.1 A description of the services, supplies or works being procured, a specification and method statements, as appropriate:
- 24.1.2 Instructions for the submission of tenders:
- 24.1.3 The procurement timetable:
- 24.1.4 Where permitted by the Regulations, a selection questionnaire for those who wish to Tender:
- 24.1.5 The Authority's proposed terms and conditions of Contract:
- 24.1.6 Where the Regulations permit the use of a selection questionnaire, the selection criteria and weightings must accompany the selection questionnaire:
- 24.1.7 The evaluation criteria including any weighting's in order of importance:
- 24.1.8 Whether the Authority is of the view that TUPE may apply:
- 24.1.9 A Form of Tender (with pricing schedules if appropriate):
- 24.1.10 A Canvassing and Anti Collusion Declaration:
- 24.1.11 A Freedom of Information Certificate:
- 24.1.12 A Data Sharing Protocol and, where relevant a Data Sharing Agreement
- 24.1.13 Any requirements for a bond or parent company guarantee:
- 24.1.14 Where permitted by the Regulations, a requirement for sight of the previous three years accounts of the Tenderer, their Health and Safety Policy, Equalities Policy and Information Security Policy and Change

Management Policy

24.1.15 Any further information that will inform or assist tenderers in preparing tenders.

24.2 If additional information is sought by one tenderer during the Procurement Exercise then that additional information must be provided to all tenderers without disclosing the identity of the inquiring tenderer.

24.3 The Team Leader - Democratic Services should be promptly notified in advance by the Authorised Officer of the proposed tender return date.

25 Submission and Opening of Tenders & Sealed Bids

25.1 Electronic Tenders/sealed bids shall be transmitted via the Portal or if unavailable to a secure environment that is approved by the Monitoring Officer and cannot be opened until the tender deadline has passed.

25.2 Once the deadline for the receipt of electronic tenders has expired the secure system will not permit any further tenders to be submitted

25.3 A tender/ sealed bid received after the time specified arising from any default or negligence on the Authority's part may be considered as valid provided that the Monitoring Officer is satisfied that the reasons for its treatment as being a valid tender/ sealed bid are recorded in the tender register.

25.4 Tenders/ sealed bids received shall be opened at a designated time and only in the presence of a tender opening board consisting of the Team Leader - Democratic Services or a person nominated to act on his/her behalf and a representative of the South West Audit Partnership and, if considered appropriate, the Authorised Officer and/or the Procurement Officer. The relevant Portfolio Holder, or, in their absence, another Portfolio Holder, shall also be invited to attend the opening of tenders/ sealed bids. However, the failure of the Portfolio Holder to attend shall in no way invalidate the tender/

sealed bid opening process. All those persons present at the opening of the tender/ sealed bids shall record in the tender register their name, job title and the date of the tender opening. Any queries shall also be recorded therein.

25.5 A register shall be maintained by the Monitoring Officer to record the details of all tenders/ sealed bids received. Entries shall identify the Suppliers or bidders, the contract reference number, work to be carried out/goods/services to be provided or the property bid for and the tender/bid sum and the signature of those present at the tender opening

25.6 On tender opening:

25.6.1 All officers present at the tender opening shall sign the Form of Tender and the Form of Tender shall be date stamped. If a Form of Tender is not provided, the Monitoring Officer shall determine whether to admit the Tender or not and the reasons shall be recorded in both the tender file and the tender opening book

25.6.2 If the tender submitted consists of a schedule of prices, a copy of each page must also be signed by all officers present at the tender opening and attached to the tender register

25.7 Where examination of tenders/ sealed bids documents reveal errors or discrepancies which would affect the tender/ sealed bids figure(s) in an otherwise successful tender, the tenderer is to be given details of such errors and discrepancies, in writing, and afforded an opportunity of confirming or withdrawing their tender. Confirmation of the original tender/ sealed bids figure or withdrawal is to be received in writing. Any exception to this procedure may be authorised only by the Monitoring Officer in consultation with the s.151 Officer.

25.8 All tenders/ sealed bids shall remain confidential until a tender/sealed bid has been unconditionally accepted. Thereafter disclosure of any information relating to the relevant Procurement Exercise may only be released in accordance with

the Publication Procedure and the provisions of the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or any amendments thereto.

26 Negotiation and Post Tender Negotiation

26.1 Save as otherwise provided by the Regulations, negotiation and post tender negotiation are not permitted for Regulation led procurements.

26.2 Where the Regulations do permit negotiation or post tender negotiation, at least two officers, one of whom shall be a Chief Officer or an Authorised Officer delegated to act on behalf of the Chief Officer, shall be present at all times during the negotiations.

26.3 The Authority shall keep proper records of all negotiations and these shall be signed as such by the Authorised Officer.

26.4 At all times during the procurement (whether subject to the Regulations or not), the Authorised Officer shall consider and implement the Treaty Principles of non-discrimination, equal treatment, proportionality and transparency.

27 Letters of Intent and Memorandums of Understanding

27.1 Letters of intent shall only be used in exceptional circumstances and where a Supplier is required to provide Services prior to formal written acceptance by the Authority. All letters of intent must be approved and signed by the Monitoring Officer.

27.2 A Memorandum of Understanding being a legal document outlining the terms and details of an agreement between parties, including each parties requirements and responsibilities that may be given weight in a court of law should one party fail to meet the obligations of the memorandum, shall only be used in exceptional circumstances. All Memorandums of Understanding must be approved by the Monitoring Officer and signed by the Monitoring Officer or a

Chief Officer.

28 Contract Terms and Conditions

28.1 All quotations and Contracts shall be evidenced in writing.

28.2 Every Contract entered into by the Authority with a value exceeding, or estimated to exceed, £250 must be in writing.

28.3 Contracts shall be entered into on terms and conditions approved by the legal department which shall be included or referred to within each Purchase Order or Invitation to Tender. Exceptions to this rule must be previously approved in writing by the Monitoring Officer.

28.4 Every Contract entered into following a Low, Intermediate or High Value Procurement Exercise or a procurement governed by the Regulations shall, unless the legal department advise otherwise:

28.4.1 If its value exceeds £25,000 or which involves the TUPE transfer of staff, be in a form approved by the Monitoring Officer:

28.4.2 Specify the work to be done, the price to be paid and the period within which the Contract is to be performed and any other conditions and terms agreed between the parties:

28.4.3 Require compliance with anti-discrimination and equalities legislation, the Modern Slavery Act 2015, the Data Protection Act 1998, GDPR, IR35 and shall include the Authority's insurance requirements:

28.4.4 Require the Supplier to make available to the Authority or its auditors such documents or information as is necessary to conduct any audit investigation or to comply with the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 together with

confirmation that the Supplier accepts that contracts and payments over £500 will be advertised:

- 28.4.5 Ensure that any and all Suppliers and their sub-contractors or consultants comply with the Standing Orders of the Authority:
- 28.4.6 Contain a clause prohibiting the sub-contracting of contracts unless agreed in advance by the Authority:
- 28.4.7 Comply with Assignment CSO 29 below:
- 28.4.8 Comply with Cancellation of Contracts in the event of Bribery & Corruption CSO 30 below:
- 28.4.9 Comply with Bonds, Guarantees, Insurance and Liquidated Damages CSO 31 below:
- 28.4.10 Contain a provision that should the Supplier fail to deliver the Services, or any portion thereof, either within the time or times specified in the Contract or to the standards required by the Contract, the Authority, without prejudice to any other remedy for breach of Contract, shall be at liberty to determine the Contract, either wholly or to the extent of such default, and to purchase other Services of the same or similar description to make good (a) such default, or (b), in the event of the Contract being wholly determined, the Services remaining to be delivered. The clause shall further secure that the amount by which the cost of so purchasing other Services exceed the amount which would have been payable to the Supplier in respect of the goods or materials shall be recoverable from the Supplier:
- 28.4.11 Include relevant, provisions regarding a Data Sharing Protocol, Data Sharing Agreement, security policy and change management policy

28.4.12 References to the Authority's duty under the Counter-Terrorism and Security Act 2015 to have due regard to the need to prevent people from being drawn into terrorism and to require all Suppliers to provide the Authority with such information and assistance as it may reasonably require to satisfy those obligations.

28.5 No payment shall be made against any Contract over £25,000 unless the Contract has been entered onto the Contracts Register.

28.6 No payment in respect of a Contract shall be made on pro-forma's or on invoices which do not bear the Contract reference number.

28.7 Goods received note (GRN) should not be signed unless the Authorised Officer is satisfied that the Services to which the invoice relates have been received, carried out examined and approved. Payments should not be made to contractors, consultants or providers of goods in advance of delivery and approval by the Authority.

28.8 For work or the supply of goods or services covered by the Construction Industry Tax scheme, no person or Supplier shall be employed unless they hold a valid certificate under the scheme. Such a certificate will state whether or not tax is to be deducted from payments. It must be current for the whole period of the Contract and produced for inspection to the Section 151 Officer when requested. All Suppliers shall supply a VAT (Value Added Tax) Invoice.

29 Assignment

29.1 The Supplier shall not be permitted to transfer or assign, directly or indirectly, to any person or legal entity, the Contract or any part thereof without the prior written permission of the Authority.

30 Cancellation of Contracts in the event of Bribery & Corruption

30.1 There shall be inserted in every written Contract a clause empowering the Authority to cancel the Contract and to recover from the Supplier the amount of any loss resulting from such cancellation if the Supplier shall have committed any offence under the Bribery Act 2010.

31 Bonds, Guarantees, Insurance and Liquidated Damages

31.1 Every Contract:

31.1.1 May, if a Contract for the execution of Works is estimated to exceed £25,000, provide for the payment of liquidated damages by the Supplier if he fails to complete the Contract within the time specified, unless authorised extensions of time are agreed by the Authority in writing. The amount to be specified in each case shall be ascertained by the Authorised Officer, in consultation with the Section 151 Officer.

31.1.2 May, in relation to a Contract for the execution of Works, require a performance bond. In any case where the estimated value of the Contract exceeds £100,000, the legal department in conjunction with the S151 Officer must be consulted in writing.

31.1.3 For Intermediate and High Value Procurements, require a Parent Company Guarantee, as appropriate.

32 Debriefing and Awarding of Contracts and Post Contract Award Notices

32.1 For all contracts having an estimated value that exceeds £25,000 or more, the Authorised Officer shall prepare a Tender Award Report and retain a copy on the tender file and provide a copy of the same to the Procurement Officer.

32.2 No tender governed by the Regulations may be awarded until a debrief as prescribed by the Regulations has been communicated to all unsuccessful tenderers and the mandatory standstill period has been first observed and the

Regulations have been fully complied with.

32.3 For tenders undertaken in accordance with Low, Intermediate or High Level Procurement Exercises, all unsuccessful tenderers, shall be notified in writing forthwith that their tenders have been unsuccessful. All tenderers shall be promptly supplied with the reasons for the decision and the tender scores of the successful and that particular Tenderer.

32.4 The Authority shall only award a Contract where it can be demonstrated that it offers overall Best Value for Money.

32.5 For all contracts between £5,000 and £25,000 the decision as to whom a Contract shall be awarded to shall be determined by the Authorised Officer in consultation with the Chief Officer and the Procurement Officer

32.6 For contracts valued over £25,000 and under £50,000 the decision as to whom to award to shall be made by the Chief Officer following the recommendation of the Evaluation Panel

32.7 For all Contracts in excess of £50,000 and under £250,000 Chief Officers must consult with their relevant Portfolio Holder before entering into the Contract

32.8 For all procurements valued in excess of £250,000, approval of the Executive shall be required unless the Executive grant delegated authority to named individuals to accept a tender and enter into contracts that meet with the approval of the legal department.

32.9 The outcome of the contract award procedure and any variations to a contract shall be recorded in the Contracts Register.

32.10 All awards of contract having a value of £25,000 to EU Threshold and regardless of whether the opportunity was initially advertised on the Portal or not, shall be published by the Authority on the Portal and such publication shall include as a minimum at least the following information:—

- (a) the name of the contractor;
- (b) the date on which the contract was concluded/entered into;
- (c) the value of the contract;
- (d) whether the contractor is a SME or VCSE.

32.11 The requirement to publish shall not apply to contract awards made in accordance with a Framework Agreement or Dynamic Purchasing System or where the Regulations or Contract Standing Orders do not impose a requirement to advertise a requirement or award on the Portal.

32.12 Where a Contract Award Notice is required to be published on OJEU, the Authority shall firstly publish the Contract Award Notice on OJEU and shall then publish details of the award on the Portal.

32.13 Where a Contract has been tendered pursuant to the Regulations the Authority shall publish a contract award notice in OJEU no later than 30 days after the date of award of the Contract.

33 Form of Request for Signing/Sealing of Contracts and Execution of Contracts

33.1 No contract or other document evidencing contractual terms between the Authority and an external party for a sum in excess of £25,000 may be sealed unless accompanied by a Form of Request for Signing/Sealing of Contracts

33.2 Contracts up to £50,000 may be signed by a Chief Officer

33.3 Contracts over of £50,000 shall be executed by the Monitoring Officer and at the discretion of the Monitoring Officer be executed by (i) signing (ii) executing as a Deed or (iii) executed under the Common Seal of the Authority.

34 Contract Extension and Variation

- 34.1 Any Contract that is not governed by the Regulations may be extended in accordance with its terms to an overall maximum term of five (5) years without the need to re-tender unless agreed otherwise by the Procurement and legal departments.
- 34.2 Where the terms of a contract that is not governed by the Regulations does not expressly provide for an extension, the Chief Officer may extend the Contract where satisfied that (1) the extension will achieve overall Best Value for Money and is reasonable in all the circumstances (2) where the overall term of the Contract does not exceed five years and (3) the s.151 Officer and the legal department approve this course of action in writing.
- 34.3 Where any Contract is governed by the Regulations, contract extensions and variations shall be undertaken in accordance with the Regulations
- 34.4 Where the value of the contract including any proposed extensions equals or exceeds £250,000, such contract extensions must be notified to the Executive.
- 34.5 All variations must be recorded in the Contracts Register, unless the overall contract value does not exceed £25,000.
- 34.6 Contracts subject to the Regulations may only be extended in accordance with the Regulations.

35 Waivers of Contract Standing Orders

- 35.1 No waiver can be effective if designed to overcome or avoid the Regulations or any part thereof.
- 35.2 Subject to compliance with CSO 34 above, the only exceptions to the requirements contained in these Standing Orders shall be:-

35.2.1 Where a Contract that is not governed by the Regulations has been waived by formal resolution of Full Council or the Executive: or

35.2.2 Where the Contract value is at or below £250,000, by the Monitoring Officer and the Section 151 Officer.

35.3 The Monitoring Officer shall maintain a register of all waivers made under these rules (other than those granted by Full Council or the Executive) and a summary of these shall be reported to Audit & Governance Committee by the S151 Officer and Monitoring Officer at least annually.

35.4 Nothing in these Standing Orders shall require quotations/tenders to be invited if:

35.4.1 Subject to compliance with CSO 34 above, it is considered by the Authority to be in its best interests to negotiate with a Supplier currently engaged by the Authority on work of a similar nature and/or supplying goods or services, provided that the overall term of the Contract does not exceed five years. Such action shall be reported by the appropriate Chief Officer to the Executive:

35.4.2 It is for the execution of work, supplying goods and services considered by the Chief Officer concerned as being so urgently required as not to permit the invitation of tenders. Such decision to be reported to the next meeting of the Executive:

35.4.3 The goods or materials are proprietary articles (single-source availability) or are sold only at a fixed price and in both cases no reasonably satisfactory alternative is available:

35.4.4 The prices of the goods or materials are wholly controlled by trade organisations or Government order and no reasonably satisfactory alternative is available:

35.4.5 The goods or materials or other Services are obtained through a bulk buying arrangement, compliant framework contract or a consortium of which the Authority is a member, and such arrangement provides Best Value for Money for the Authority.

35.4.6 The Regulations specify that the requirement sought is not subject to the Regulations

36 Post Contract Monitoring

36.1 For the life of the contract the relevant Chief Officer responsible for the Contract shall appoint an Authorised Officer who shall monitor in respect of:

36.1.1 Performance;

36.1.2 Compliance with specification and contract;

36.1.3 Cost;

36.1.4 Any Best Value for Money requirements; and

36.1.5 User satisfaction and risk management.

36.2 It shall be the responsibility of the Authorised Officer to ensure that all policies of insurance are maintained during the duration of any contract procured in accordance with the Intermediate and High Value Procurement Exercises or a procurement subject to the Regulations.

37 Statistical Returns and Document Retention

37.1 The Authority shall make such statistical returns as may be required by reason of the Regulations

37.2 The Authority shall in accordance with the Regulations prepare and retain on the Tender File for a minimum period of three years a written report in relation to each contract and framework agreement awarded and every dynamic purchasing system established

37.3 For contracts with a value greater than €1m (€10m for works), a full copy of the contract must be sent to the Cabinet Office

38 Review and Amendment of Contract Standing Orders

38.1 These contract standing orders shall be reviewed and updated annually.
Amendments to contract standing orders shall be agreed and adopted by Full Council.