

## Report of the City Solicitor to the meeting of the Governance and Audit Committee to be held on 17 April 2015

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**Subject:**

Amendments to the Constitution

**Summary statement:**

This report provides members with details of the annual review of Contracts Standing Orders sections of the Council's Constitution and makes recommendations for their amendment.

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**Overview & Scrutiny Area: Corporate**



## 1. Summary

- 1.1 This report provides members with details of the annual review of Contracts Standing Orders sections of the Council's Constitution and makes recommendations for their amendment.

## 2. Background

- 2.1. During the municipal year 2014/15, procurement officers have undertaken their annual review of Contracts Standing Orders to ensure they properly reflect appropriate governance procedures for the Council.
- 2.2. In February 2015, the Public Contracts Regulations 2015 were laid before Parliament and these included some significant changes to the previous public procurement rules.
- 2.3. This report sets out the proposals for amendments to deliver those changes and improvements. The Committee is asked to consider the proposed amendments to the Constitution for recommendation to Council for formal approval and seeks delegated authority to the City Solicitor to implement the proposed amendments.

## 3. Amendments to the Contracts Standing Orders sections of the Constitution

- 3.1 There are a number of changes to Contracts Standing Orders which are shown as tracked changes in Appendix 1. Minor wording, numbering and formatting changes are not shown. Below is a list of the main changes:
- The glossary of main terms will be updated to reflect new terminology
  - Increasing the lower threshold from £20,000 to £25,000. The new threshold is consistent with the contract value whereby tenders that are advertised must be placed on the Government's Contract Finders portal.
  - Amend the wording to clarify when existing framework contracts such as those available from the Yorkshire Purchasing Organisation or Crown Commercial Service should be used.
  - Information on the "light touch" procurement regulations that can be used for social, health and educational services (Schedule 3 services). These services were previously referred to as "Part B" services and were exempt from much of the procurement regulations. The procurement processes listed can be used but the Council has discretion as long as the process is sufficient to ensure compliance with the principles of transparency and equal treatment of suppliers.
  - Information on the transparency requirements with regard to publishing procurement opportunities and details of contract award on Contracts Finder including the minimum data requirements.

- Amend the guidance on considerations in pre-contracting stage including early engagement with the market and presumption on the use of lots to break down large contracts.
- Information on the prohibition on using a pre-qualification questionnaire (PQQ) for tenders below the EU threshold and the greater emphasis on self-declaration by suppliers as well as the option to penalise for past performance. This will ease the burden on suppliers particularly SMEs.
- Removal of the option to use an “Approved List” below the EU threshold as this would not comply with the regulations.
- Guidance on use of most economically advantageous tender (MEAT) as the only award criterion which includes consideration of social and environmental factors. Additional guidance is needed on the requirement to investigate abnormally low tenders.
- Additional information on the procurement processes available particularly the competitive procedure with negotiation and the innovation partnership and reference to the requirement to make all documents available in an electronic format immediately on publication.
- Revise the wording to the clause on contract conditions to incorporate requirements that suppliers are paid within 30 days throughout the supply chain and the associated reporting arrangements. Also, there are some mandated clauses in the regulations around the right to terminate

#### **4. Financial and Resource Appraisal**

- 4.1 The resources required to amend the Constitution can be met from existing provision.

#### **5. Legal Appraisal**

- 5.1 Article 17 of the Constitution requires the Monitoring Officer to take steps to make himself/herself aware of the strengths and weaknesses of the Constitution and make recommendations for improvement.
- 5.2 The review and development of the Constitution is undertaken in compliance with the provisions of the Local Government Act 2000, regulations and guidance made and issued under the Act.

#### **6. Other implications**

- 6.1 There are no equal rights, sustainability, community safety, Human Rights Act or trade union implications of this report.

#### **7. Not for publication documents**

- 7.1 None

#### **8. Recommendations**

Part 3F

Contracts Standing Orders

Page 3

- 8.1 That the Governance and Audit Committee consider the proposed amendments to Contracts Standing Orders listed in Appendix 1 attached to this report and consider which, if any, should be recommended to Council for adoption and implementation.
- 8.2 That the City Solicitor reports any recommendations to Council and ensures the agreed amendments are implemented.
- 8.3 That the City Solicitor be granted delegated authority to make consequential amendments to the Constitution as a result of the recommendations approved by Full Council.

## **12. Appendices**

Appendix 1 - Draft amendments to Contracts Standing Orders (tracked)

**Appendix 1**



**CONTRACTS STANDING ORDERS (CSOs)**

**2015 / 2016**

## **PART 3G Contracts Standing Orders 2015/16**

### **Definitions**

- 'Aggregation' is the combining together of the total contract value from separate contracts where they meet a single requirement for works, goods or services or where a series of contracts within a twelve month period are for the same type of goods or services.
- 'Appropriate Officer' is the Chief Executive, Strategic Directors, Director, City Solicitor or any other officer designated by resolution of the Executive.
- 'Best Value for Money' is the optimum combination of whole life costs, quality and benefits, including economic, environmental and social value to meet the customer's requirement.
- 'Bradford District' is the geographical area administered by the Council.
- 'Contract' means a formal agreement between the Council and any Contractor made by issue of a letter of acceptance or official order for:
  - the supply of works, goods or services including consultants
  - a call-off from a framework agreement
  - an arrangement where no payment is made but there is financial value to the Contractor e.g. a catering concession

It does not include employment and property contracts or grant agreements.

- 'Contracts Finder' is a portal for information on contracts over £25,000 with the government and its agencies <https://online.contractsfinder.businesslink.gov.uk/>
- 'Contract Value' is the total monetary value over its full duration, including any extension options (not the annual value).
- 'Contract and Grant Register' a record of all grants and contracts except one-off purchases under £5,000.
- 'Contractor' an individual or organisation that contracts with the Council to provide works, goods or services.
- 'Controlled Entities' a subsidiary company of the Council where the Council exercises control similar to that over its own departments, the subsidiary carries out at least 80% of its activity for the Council and there is no direct participation of private capital.
- 'Corporate Contract' is an agreement procured in consultation and for the benefit of more than one Council department.
- 'Council' means the local authority or City of Bradford Metropolitan District Council.

- 'EU Procurement Rules' are the Directions and Regulations implemented by the UK to set out the law on public procurement.
- 'EU Thresholds' the financial threshold at which the EU Procurement rules are applicable.
  - As of 1<sup>st</sup> January 2014 these are: Works (maintenance and construction) €5,186,000 (£4,322,012) and Services and Supplies €207,000 (£172,514).
  - Social, Health and some other services will have a threshold of €750,000 (£625,050) and a new light touch regime has been introduced.
- 'Exception to Competition Log' a record of all contracts awarded without competition as a result of the contract meeting one of the requirements listed in CSO 11.1.
- 'Framework Agreement' an agreement which allows the Council to call-off from a Contractor to provide services, goods or works at agreed standards and prices. If the Council calls off services, goods or works from the Contractor then a binding contract comes into place..
- 'Grant' for the purposes of these contract standing orders means a formal agreement giving financial assistance to an individual or organisation to assist in meeting its general purpose or objectives but where the specific supply of goods, works or services is not required in return. There may be award criteria, performance targets and conditions on how the money is spent and Officers should monitor these in accordance with the terms of the grant agreement.
- 'Light touch regime' applies to social, health and some other services as listed in Schedule 3 of the Public Contracts Regulations where a higher threshold applies below which the Council has more freedom on the procurement procedures to apply providing they are sufficient to comply with the principles of transparency and equal treatment of suppliers.
- 'Local Supplier' is any supplier that provides works, goods or services from a location within the Bradford District or where a substantial number of any employees working directly on the contract are resident in the Bradford District.
- 'Officer' means employee(s) of the Council.
- 'Public Service Mutual' an organisation which has left the Council parent body but continues to deliver public services. Mutuels are organisations in which employee control plays a significant role in their operation.
- 'Quotation' a formal written offer to execute works, purchase supplies, or provide services at a stated price of a value less than £100k.
- 'Sheltered workshop' an organisation that employees a proportion of disadvantaged or disabled workers which allows the supplier to be eligible to bid for certain types of contracts which can be specifically reserved to organisations meeting the criteria.
- 'SIRO' Senior Information Risk Owner is the person with overall accountability and responsibility for information governance. Currently the Director of Finance.

**Deleted:** as a result of changes to EU Directives which are likely to become enacted into UK Law in 2014.

- 'Tender' a written offer to supply or purchase goods, execute works or provide services at a stated price of a value more than £100k.
- 'TUPE' means the Transfer of Undertakings (Protection of Employment) Regulations 2006.
- 'Whole Life-Cycle Costs' is an estimate of the total costs of works, goods or services over their life. It is a combination of the purchase price, implementation and operating costs, procurement and contract management costs, disposal costs less any residual value.
- 'YORtender' is the procurement portal for the Yorkshire and Humber region. [www.yortender.co.uk](http://www.yortender.co.uk)

## 1 Introduction

- 1.1 The purpose of Contract Standing Orders is to set clear rules by which the Council spends money on works, goods and services. The rules apply to any contract or grant that results in payment being made by the Council.
- 1.2 Public procurement must be undertaken in accordance with principles enshrined in EU and national legislation. The Council must always act to promote competition and to ensure that each procurement is conducted as an open, transparent and fair competition. The Council must avoid practices which may restrict or distort competition.
- 1.3 All amounts quoted in these Standing Orders are exclusive of recoverable VAT.
- 1.4 Any dispute or difference as to the interpretation of these Standing Orders shall be resolved by the City Solicitor.
- 1.5 The Assistant Director Commissioning & Procurement shall undertake a formal review of Contract Standing Orders on an annual basis which will be reported to the Corporate Governance and Audit Committee.

## 2. Compliance

- 2.1 Every contract made by or on behalf of the Council for works, goods and services and all Council employees engaged to act in any capacity to manage or supervise a contract must comply with;-
  - EU Procurement rules where applicable
  - All relevant statutory provisions including [the Public Contracts Regulations 2015](#), competition law and Public Services Acts (e.g. Social Value, [Care Act 2014](#))
  - The Council's Constitution including these Standing Orders, the Council's Financial Regulations and the Council's Procurement policies
  - The Council's strategic objectives and policies
- 2.2 All Council employees and organisations engaged on the Council's behalf shall ensure that all procurement activity is undertaken with regard to high standards of



probity and in a manner which avoids any conflicts of interest. Any conflicts of interest that do arise shall be dealt with in accordance with the Council's 'Code of Practice in relation to Conflicts of interest and Registration of interests' available from the Human Resources intranet pages.

- 2.3 In applying these Standing Orders, all officers shall have regard to the duty of Best Value under the Local Government Act 1999.
- 2.4 Within limits specified by him/her, an Appropriate Officer may allow other officers to authorise orders and contracts in their own names on behalf of the Council. Any orders or contracts made shall remain the responsibility of the Appropriate Officer. Appropriate Officers must maintain an up to date record of authorised officers.
- 2.5 All orders for works, goods or services must be placed using the Council's approved systems in advance of the invoice being received and coded to the appropriate account codes.
- 2.6 With regard to new major projects all officers must comply with the approved Project Management Framework documents.
- 2.7 No exemptions to these Standing Orders can be made unless:
  - 2.7.1 Authorised by the Executive after considering a report by the Appropriate Officer; or
  - 2.7.2 The Appropriate Officer obtains the agreement of the Director of Finance and the City Solicitor. The Appropriate Officer must retain written reasons of the decision.
- 2.8 Exemptions authorised under Standing Order 2.7.2 will be reported to Governance and Audit Committee on a quarterly basis.
- 2.9 All Appropriate Officers are responsible for ensuring compliance by their staff and to report all breaches to the Assistant Director of Commissioning and Procurement.
- 2.10 Failure to comply with these Contract Standing Orders and the Commissioning Framework may result in disciplinary action against the officers concerned.

### 3 Social, Economic, Environmental and Ethical Considerations

- 3.1 In formulating proposals for a services contract, the Appropriate Officer must consider the Public Services (Social Value) Act implications and whether and to what extent any ethical, social or environmental aspects of procurement should be taken into account. These would include: the Council's Fair Trade Policy, sustainability, equality and diversity, living wage, means of production and community benefit (including maximising employment, training and training opportunities within the District).
- 3.2 Where appropriate and always subject to EU law and Public Contract Regulations, the Appropriate 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

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sector organisations such as social enterprises to bid. This includes dividing the contract into lots.

#### 4 Pre-Contract Requirements for all Contracts

4.1 The procurement of works, goods or services should be done through existing approved arrangements where they exist. These include:

- In-house provision
- Corporate contracts or framework agreements

4.2 Where the Council has an in-house provision, external suppliers can only be used when the Strategic Director providing such in-house provision confirms that they are unable to meet the requirements on that occasion due to insufficient resources, skills or capacity or they cannot clearly demonstrate best value for money.

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4.3 All tender processes will be proportionate to the total value of the contract, the nature of the works, goods or services and the Council will produce clear accessible documentation which must be available in electronic format.

The following arrangements should be considered and used where it can be evidenced that they provide best value for money:

- Contracts or framework agreements established by central purchasing bodies (Crown Commercial Services, YPO, Pro 5 etc.)
- Collaborative or shared service arrangements with another public body
- Alternative delivery vehicles such as Controlled Entities (Teckal) or Public Service Mutuals
- Sheltered workshops
- Other approved e-procurement solutions (e.g. purchasing cards)

Deleted: regional consortia

4.4 Before inviting tenders or quotations, the Appropriate Officer must:

4.4.1 for contracts with a total estimated contract value in excess of £2m, report details to the relevant Overview and Scrutiny Committee using the agreed pre-contract reporting process determined by the Assistant Director of Commissioning & Procurement

4.4.2 ensure that there isn't another arrangement that can be used as per 4.1 and 4.3

4.4.3 have carried out, where appropriate pre-procurement engagement with the market (including talking to suppliers and stakeholders) to understand the availability, strengths and weaknesses of markets and to develop the specification, and the best value for money contractual approach. Pre-engagement with the market must be done in such a way that ensures the subsequent procurement process remains open, fair and transparent with no supplier gaining an unfair advantage which would distort competition.

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4.4.4 divide the contract into separate lots or indicate in the procurement document the main reasons why this would not provide value for money

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4.4.5 be satisfied that a written and clear specification has been prepared which will form the basis of the contract.

- 4.4.6 where there is a significant supply risk and for all contracts valued over £100,000 produce and maintain a documented risk log
  - 4.4.7 consider at the outset any equality and diversity implications that may require an equality impact assessment to be undertaken
  - 4.4.8 consider at the outset any TUPE implications
  - 4.4.9 consider at the outset any data protection, information security or data processing implications that may require additional schedules or terms and conditions and need the SIRO to be notified
  - 4.4.10 consider at the outset any implications from the Social Value Act
  - 4.4.11 consider at the outset whether an e-Auction is appropriate and could deliver best value for money
  - 4.4.11 prepare and document an estimate of the whole life-cycle costs including where appropriate any on-going costs and/or disposal costs and ensure that this is within budgetary provision for both capital and revenue
  - 4.4.12 ensure that all evaluation criteria including sub-criteria have been determined in advance, put in order of relative importance or weighting and published in the tender documentation. This includes any selection criteria used to evaluate the supplier and award criteria used to evaluate the tender or quote. Deleted: 4.4.12
  - 4.4.13 ensure that electronic versions of all the procurement documentation is available through an internet portal immediately on publication of any advert
- 4.5 Before entering into any contract, the Appropriate Officer must
- 4.5.1 be sure that they have the necessary authority to enter into the contract and that these Standing Orders, the Council's Financial Regulations and procurement advice have been complied with, and that the proposed contract represents best value for money
  - 4.5.2 be satisfied about the technical capability of such proposed contractor; and
  - 4.5.3 where there is a significant supply risk and all contracts which exceed £100,000, consult with the Director of Finance and the Assistant Director of Commissioning and Procurement to agree appropriate checks on the financial and resource capacity of the contractor to perform the contract and to agree what, if any, security should be provided for performing the contract.
- 4.6 Appropriate Officers are responsible for arrangements to ensure the proper control and use of Council ordering and contracting procedures, in accordance with guidance issued by the Director of Finance and City Solicitor.

4.7 All quotations and tenders must be undertaken using the Council's standard template documentation unless prior approval has been obtained from the Assistant Director of Commissioning and Procurement

**5 Selective Tendering From Approved Lists**

5.1 Selective tendering from an approved list would not comply with the new regulations when inviting bids for a total contract value over £25,000.

5.2 It is recommended that either a framework is used or one of the procedures in 9.1.

**6 Contracts under £25,000**

6.1 For contracts valued at below £25,000, the Appropriate Officer concerned should proceed in a manner most expedient to the efficient management of the service.

6.2 The Appropriate Officer must be able to demonstrate best value for money inviting local suppliers where the supply base is available. All quotations must be in writing. It is recommended that invitations to quote over £5,000 are placed on YORtender.

6.3 Officers shall retain a written record of actions taken and the reasons.

**7 Contracts between £25,000 and £100,000**

7.1 The Appropriate Officer must seek at least 4 written quotations or advertise an invitation to tender for a proposed contract of an estimated contract value of over £25,000 and up to £100,000 inviting a minimum of two local suppliers where the supply base is available. All invitations to quote for contracts shall be placed on the YORtender and all invitations to tender shall be placed on both YORtender and Contracts Finder. A record must be kept of the reasons for accepting a quotation or tender.

7.2 If 4 quotations or tenders cannot be obtained owing to insufficient suitable suppliers prepared to quote or provide tenders, then that officer must keep a record of this.

7.3 No pre-qualification questionnaire is permitted during the procurement stage under the EU threshold but suitable assessment questions which are relevant and proportionate may be asked. Only the winning bidder(s) will be required to submit various certificates and documents as evidence of their financial standing and technical or professional ability in addition to specific requirements relating to insurance, health and safety, equality, environmental management etc.

7.4 The Public Contracts Regulations contain both mandatory and discretionary grounds for exclusion of a supplier from the tender process which now includes previous poor performance. The time limits are five and three years respectively but if a supplier provides evidence to demonstrate its current reliability this must be evaluated in light of the seriousness of the misconduct and relevance of the exclusion criteria.

**8 Contracts over £100,000**

**Deleted:** The Assistant Director of Commissioning and Procurement must ensure a list of approved suppliers is kept. Admission to the list is on the basis of a rational, justifiable evaluation of information relating to the technical and financial abilities and other relevant matters of each supplier.

**Deleted:** Following periodic reviews of the technical and financial abilities of supplier, the Assistant Director of Commissioning and Procurement can vary the type and value of work for which each supplier is approved, suspend from the list, make additions to the list, or make deletions from the list.

5.3 . Where the relevant "in-house" supplier is able to tender then 4.1 and 4.2 are applicable.

5.4 . Considering the number of identified YORtender suppliers, the Appropriate Officer will decide if:

all suppliers are to be invited to submit a bid, or

all suppliers be subject to an equal system of evaluation to select the most appropriate suppliers to submit a bid

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**Deleted:** 7.1 . Where there is a relevant Approved List of suppliers this must be used as the source of providing the names of suppliers from whom quotations or tenders are sought. The Appropriate Officer must determine a consistent selection process which includes an invitation to any in-house provider and where the supply base is available a minimum of two local suppliers. The Appropriate Officer may use one of the procedures in 7.2 above or 8.3.

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- 8.1 Where the contract value is likely to exceed the EU threshold, taking account of the rules of aggregation, it must be tendered in accordance with the relevant EU procurement rules. The exception to this rule is through an existing framework agreement that has been established via the relevant EU process.
- 8.2 Before commencing any procurement process (including a process which involves a proposed service transfer or the development of a strategic partnership) for the procurement of works, goods or services with an estimated contract value in excess of £100,000, the Appropriate Officer must consult the Assistant Director of Commissioning and Procurement.
- 8.3 For contract values of £100,000 or more, contractors must be appointed by the Executive or an Appropriate Officer by one of the [procedures under Standing Order 9](#)

- 8.4 All tenders shall be advertised and available for download on the YORtender system [and](#) Contracts Finder. Standard template documentation must be used.
- 8.5 All tenders above the relevant EU threshold must be advertised in the OJEU journal.

**9 Procurement Procedures**

- 9.1 [The open procedure under which all those interested may respond to the advertisement by submitting a tender. This is often the most expedient system and enables all of the suppliers in the market that wish to engage in the process to submit a tender. There is no pre-qualification questionnaire \(PQQ\) or short-listing stage prior to invitation to tender \(ITT\).](#)
- 9.2 [The restricted procedure under which a selection is made of those who respond to the advertisement and only they are invited to submit a tender. This procedure can only be used for tenders above the EU threshold.](#)
- 9.3 [The competitive dialogue procedure under which a selection is made of those who respond to the advertisement and the Council enters into dialogue with potential bidders to develop one or more suitable solutions on which the chosen bidders submit a tender. This can be used where the contract is complex and cannot be purchased “off the shelf”](#)
- 9.4 [The competitive procedure with negotiation under which a selection is made of those who respond to the advertisement and only they are invited to submit a tender. The Council may then open negotiations to seek improved offers. This applies to more strategic, complex or high value projects and must be done in consultation with the Assistant Director Commissioning and Procurement as there are limited circumstances under which this process can be used.](#)
- 9.5 [The innovation partnership procedure under which a selection is made of those who respond to the advertisement and the Council uses a negotiated approach to invite suppliers to submit innovative ideas to meet a need where there is no suitable existing “product” on the market. The partnership can be awarded to a more than one supplier.](#)

**Deleted:** <#>Selective tendering from approved suppliers under Standing Order 5¶¶  
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 <#>The Open procedure under Standing Order 9 ¶¶  
 ¶¶  
 <#>The Restricted procedure under Standing Order 10.¶¶  
 ¶¶  
 <#>The competitive procedure with negotiation for more strategic, complex or high value projects in consultation with the Assistant Director Commissioning and Procurement. There are limited circumstances under which this process can be used.¶¶

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## 10 Exceptions to Requirements of Competition

- 10.1 Subject to the statutory requirements and provided that the market for a proposed contract has been investigated and it can be demonstrated that departure from these Rules is justifiable, Standing Orders 6, 7, 8, 9 and 10 will not apply to:
- 10.1.1 the purchase of proprietary or patented goods or materials or services which, in the opinion of the Appropriate Officer, are obtainable only from one supplier, and where no reasonably satisfactory alternative is available;
  - 10.1.2 the execution of works or the supply of goods or services are controlled by a statutory body
  - 10.1.3 the execution of works or supply of goods or services are of a specialised nature which, in the opinion of the Appropriate Officer, are carried out by only one supplier, and where no reasonably satisfactory alternative is available;
  - 10.1.4 the execution of works or supply of goods or services for which the Appropriate Officer can demonstrate that no genuine competition can be obtained;
  - 10.1.5 the purchase of a named product required to be compatible with an existing installation as approved by the Appropriate Officer;
  - 10.1.6 procurements made through or on behalf of any consortium, local authority, statutory or similar body provided that tenders or quotations are invited and contracts placed in accordance with national or EU legislation;
  - 10.1.7 obtaining work or supplies from the Industrial Services Group or other in-house service provider;
  - 10.1.8 special education, health or social care contracts, if in the opinion of the Appropriate Officer and following consultation with the Assistant Director of Commissioning and Procurement, it is considered in the Council's interests and to meet its obligations under relevant legislation;
  - 10.1.9 the execution of works or the supply of goods and services that are required so urgently as not to permit compliance with the requirements of competition.
  - 10.1.10 carrying out, with the approval of the Director of Finance, security works where the publication of documents or details in the tendering process could prejudice the security of the works to be done.
- 10.2 The Appropriate Officer must retain written reasons justifying the decision to use Standing Order 10.1 and be able to demonstrate that best value for money has been obtained.

Deleted: 10. Restricted Procedure ¶

¶ 10.1. There is a pre-selection process using a PQQ after which successful short-listed suppliers are then invited to submit a tender.¶

¶ 10.2. A minimum of 5 suppliers will be shortlisted to submit tenders (where 5 suitable suppliers express an interest).¶

- 10.3 Any contract awarded using an exception to competition shall be notified to the Assistant Director Commissioning & Procurement and recorded in the "Exceptions to Competition Log".

## **11 Submitting and Opening Tenders and Quotations**

- 11.1 Every invitation to tender or request for a quotation must state that a tender or quotation will only be considered if it is received by the specified closing date and time by the Council's approved-on-line electronic tender process or at the specified place in a sealed envelope with the word "TENDER" or "QUOTATION" (as appropriate) and the title of the contract written on it. The Appropriate Officer must keep the envelopes received in secure custody.
- 11.2 All tenders or quotations for each contract must be opened together by two officers appointed by the Appropriate Officer at a prescribed time or if received by electronic means as prescribed by the Director of Finance and City Solicitor.
- 11.3 The Appropriate Officer must keep a record of all tenders and quotations.
- 11.4 The Appropriate Officer must disqualify a tender or quotation which fails to comply with the requirements of this Standing Order and must return the tender or quotation to the tenderer or quotation provider stating the reason for the disqualification.
- 11.5 The specified location for the receipt of tenders over £100,000 is Room 113, City Hall. All such tenders or quotations will be opened in the presence of an officer from the staff of the City Solicitor and recorded. For tenders under £100,000 the Appropriate Officer must designate the specified place for the receipt of tenders.

## **12 Errors in Tenders and Quotations**

- 12.1 Prior to acceptance of any tender or quotation received, any arithmetic error or other minor discrepancy made in good faith can be corrected by the City Solicitor after consultation with the Appropriate Officer in one of the following two ways:
- 12.1.1 The tenderer shall be given details of the error(s) found during the examination of the tender and shall also be given the opportunity of confirming without amendment or withdrawing the tender; or
- 12.1.2 Amending the tender to correct genuine arithmetic error(s) provided that in this case, apart from these genuine arithmetic errors, no other adjustment, revision or qualification is permitted.
- 12.2 A written record must be kept of all such amendments

## **13 Post Tender and Quotation Negotiations**

- 13.1 In the interests of ensuring an open, fair and transparent process, negotiation following receipt of tenders is only permissible in limited circumstances.



- 13.2 No negotiation must be undertaken following receipt of tenders where the tender was subject to EU procurement rules except where the “competitive procedure with negotiation” has been used.
- 13.3 The Appropriate Officer may, after consulting with the Assistant Director of Commissioning and Procurement, and where it is intended to obtain better value for money, authorise negotiations with one or more tenderers or quotation providers where s/he considers that none of the tenders or quotations are acceptable and it is in the Council’s interests to do so.
- 13.4 Negotiation on behalf of the Council should be conducted by two or more Appropriate Officers and a written record kept of the negotiation.

#### **14 Accepting Tenders and Quotations**

- 14.1 Prior to accepting a tender or quotation the Appropriate Officer must evaluate all tenders and quotations received in accordance with the evaluation criteria issued with the tender documentation.
- 14.2 The Appropriate Officer can only accept the most economically advantageous tender or quotation using whole-life costs and must record the reasons for acceptance.
- 14.3 [The Appropriate Officer must investigate any tender considered to be abnormally low and disregard any bid based on approaches in breach of environmental or social law.](#)
- 14.4 All suppliers who submit a tender or quotation should be notified in writing of their success or failure in a timely manner using the standard documents and offered feedback.
- 14.5 For all tenders covered by the EU procurement rules, the minimum statutory standstill period is required between notification of the award decision and final contract award.
- 14.6 All contracts over £5,000 must be awarded on the YORtender system [and all contracts over £25,000 must also be awarded on Contracts Finder.](#)

#### **15 Contract Extensions or Variations**

- 15.1 The Appropriate Officer, after consultation with Assistant Director Commissioning & Procurement and the City Solicitor, can extend a contract by any value subject to the extension being permitted within the scope and terms of the original contract and before the expiry date.
- 15.2 An options appraisal must be undertaken to determine if it represents best value for money to extend the contract and approval shall be sought in a timely manner
- 15.3 The Appropriate Officer must make every effort to negotiate improved terms with regard to the cost and quality of the goods or services.



- 15.4 No extension shall be made until funding has been secured in accordance with the Council's Financial Regulations or any other similar requirement.
- 15.5 All contract variations must be carried out within the scope of the original contract and must not materially affect or change the contract.
- 15.6 A new procurement will be required if the proposed variation has a material change where one or more of the following are met;
- 15.6.1 the variation introduces new conditions which had they been part of the original procurement, procedure would have allowed other candidates to be selected to bid or the contract to be awarded to another tenderer
- 15.6.2 the variation changes the economic balance in favour of the contractor
- 15.6.3 the variation extends the scope of the contract considerably
- 15.7 The Appropriate Officer must ensure that the total value of the contract following any proposed extension or variation is still within the financial threshold of the original procurement procedure and below 50% of the initial contract value, except where the need for a variation could not be foreseen, otherwise a new procurement procedure will be required as per these contract standing orders

## **16 Written Contracts**

- 16.1 The Appropriate Officer must ensure every contract is in writing.
- 16.2 Every contract with a contract value of £100,000 or more must be executed under seal as a Deed with the common seal of the Council by the City Solicitor where;
- the Council wishes to enforce the Contract for more than 6 years after its end (e.g. for land or construction works); or
  - it is required by parties to the Contract; or
  - the price paid or received under the Contract is a nominal price and does not reflect the value of the goods/services; or
  - the City Solicitor deems it necessary taking into account the nature of the contract
- 16.3 The checklist of reasons form (held by Procurement) why the Contract has not been awarded under seal must be completed
- 16.4 Otherwise; any contract with a total value over £2 million must be signed by the Appropriate Officer and any contract with a total value less than £2million must be signed by a Senior Officer (3<sup>rd</sup> tier or above) except where the total value is less than £100,000 in which case a Senior Officer (4<sup>th</sup> tier or above) can sign within the limits specified by the Appropriate officer as per contract standing order 2.4.
- 16.5 All contracts with the exception of one-off purchases below £5,000 shall be recorded on the Contract and Grant Register.

## 17 Professional Services and Consultants

- 17.1 An Appropriate Officer may only appoint external consultants providing professional or consulting services if such services are not available within the Council or if Council officers providing them do not have the resources to meet the needs of the Appropriate Officer.
- 17.2 An Appropriate Officer must consult with the Strategic Director providing such services before making an external appointment.
- 17.3 External consultants and technical officers engaged to supervise contracts must follow these Standing Orders and Financial Regulations as applicable and their contracts for services must state this requirement.

## 18 Contract Conditions

- 18.1 The Council's Standard terms and conditions should be entered into wherever possible for all contracts. If this is not possible a supplier will be asked to submit their terms which must be formally approved by the City Solicitor prior to entering into the contract.
- 18.2 The above rule shall not apply to:
- UK government standard documentation or government sponsored schemes such as Academies and amendments may be made for best value for money or project specific reasons.
  - Construction and/or engineering contracts where bespoke conditions based on accepted industry practice are used e.g. JCT, NEC3 or ICE
- 18.3 All written contracts shall contain:
- details of the work, goods or services to be provided
  - full details of the prices to be paid, frequency and any discounts
  - the period or times over which the contract is to be performed
  - [suitable provisions that state that valid undisputed invoices will be paid by the Council within 30 days and a condition requiring contractors to include similar provisions in their contracts, and so on down the supply chain](#)
  - [a termination clause relating to circumstances where there has been a breach of EU law on public procurement particularly where this results from a change in the awarded contract](#)

## 19 Leases and Other Credit Agreements

- 19.1 The Appropriate Officer must ensure that prior to entering into any lease or credit arrangement which has a capital cost, the cost must first be approved for inclusion

in the Capital Investment Plan in accordance with Financial Regulations relating to capital expenditure.

## **20 Grants**

- 20.1 The Appropriate Officer must follow the Council's principles, processes and template documents as appropriate for awarding grants prior to entering into any grant arrangements
- 20.2 Before awarding any grant with an estimated value in excess of £100,000, the Appropriate Officer must consult the Assistant Director of Commissioning and Procurement.
- 20.3 All grant agreements shall be recorded in the Contract and Grant Register.

## **21 Payment for Work on Account**

- 21.1 The Director of Finance will make payments on account only on certificates (or other forms approved by the Director of Finance) which have been issued by the Appropriate Officer, or the Architect/Engineer/ Supervising Officer appointed to deal with a particular contract.
- 21.2 As a general principal payment for goods, works and services are not to be made in advance of delivery other than in a low contract value and low risk situation.

## **22 Claims**

- 22.1 The Appropriate Officer must inform the City Solicitor of all claims by or against suppliers which are the subject of [formal dispute resolution or litigation](#) between the Council and the supplier.

## **23 Contracts Where Members Have an Interest**

- 23.1 Where no competitive tendering process has been undertaken, no supplier or organisation in which a member has an interest, may be chosen or appointed unless the member's interest has been disclosed in accordance with the Members' Code of Conduct.