

## 7: CONTRACT PROCEDURE RULES

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### CONTRACT STANDING ORDERS (CSO)

#### 1. Introduction

The purpose of Contract Standing Orders is to set clear rules for the procurement of goods, works and services for the Council. This will ensure a system of openness, integrity and accountability with probity and transparency of the process involved in procurement. In turn this will lead to better value for money and give confidence that the Council is fulfilling its fiduciary responsibilities.

Any dispute or difference as to the interpretation of Contract Standing Orders shall be resolved by the Council Solicitor.

#### 2. Compliance with Standing Orders

2.1 Every contract whether made by or on behalf of the Council must comply with these Standing Orders and the Council's Financial Standing Orders and no exception from any of the following provision of these Standing Orders shall be made unless authorised by the appropriate Service Lead or Principal Officer acting under delegated powers or the Council's Policy and Resources Committee.

2.2 Where a Service Lead or Principal Officer intends to authorise an exception under Contract Standing Order he/she shall, prior to doing so, arrange for a report to be prepared and submit it for consideration by the Council Solicitor and the Chief Financial Officer. The appropriate Service Lead or Principal Officer shall not authorise an exception without having obtained comments and a recommendation from the Council Solicitor and the Chief Financial Officer. If the appropriate Service Lead or Principal Officer decides, having considered the comments and recommendation made, to authorise an exception, then that Service Lead or Principal Officer shall record the reasons for so doing and forward a copy of the decision and reasons to the Council Solicitor. If the recommendation of the Council Solicitor or the Chief Financial Officer is that an exception should not be made and the Service Lead or Principal Officer still wishes to proceed then that Service Lead or Principal Officer shall refer the matter to the Council's Policy and Resources Committee for a decision.

2.3 The Council Solicitor shall maintain a register of all such exceptions.

2.4 National or European Union legislation overrides these Standing Orders.

### **3. Conduct of Officers and Members**

3.1 Members must conform to the Ryedale District Council Members Code of Conduct.

3.2 Any officer, member or agent of the Council, whilst acting on the Council's behalf in relation to any contractual matter directly or indirectly concerning the Council, shall conduct themselves in such a manner that the independence and integrity of the Council's procedures are at all times maintained and are seen to be maintained. Failure to observe such standards of conduct will be regarded by the Council with the utmost gravity.

### **4. Estimates**

4.1 Before entering into a contract for the execution of any work or the provision of any services estimated to exceed an amount to be determined from time to time by the Council an estimate in writing of the probable expense of executing the work in a suitable manner and of the annual expense of maintaining the work shall be obtained.

4.2 On completion of a contract to which this contract standing order applies the Chief Financial Officer or other person shall report the final cost of such work in any case where the total cost exceeds by more than 10% the approved contract sum in the case of contracts of the value or an amount to be determined from time to time by the Council or less and by more than 5% in any other case.

### **5. Pre Contract Requirements**

5.1 Before entering into a contract with any firm, the appropriate Service Lead or Principal Officer must:-

5.1.1 be satisfied that a Specification which will form the basis of the contract/arrangement, has been prepared; and

5.1.2 have prepared and documented an estimate of the cost of the contract/arrangement, including where appropriate any maintenance costs;

5.1.3 be satisfied about the technical capability of such firm; and

5.1.4 ensure that all evaluation criteria have been determined in advance; and

5.1.5 ensure that these Standing Orders have been complied with, and that the proposed contract represents value for money

## 6. **E-Commerce**

Nothing in the Contract Procedure Rules shall prevent:-

- a) invitations to quote or tender being issued by use of the internet. A Service Lead may publish invitation to tender notices on appropriate internet web sites in substitution or in addition to publication in newspapers or trade journals.
- b) receipt of quotations or tenders by use of the internet provided the Service Lead and Chief Financial Officer have agreed that suitable privacy and security mechanisms are in place for the receipt and opening of such submissions and where an electronic tendering system is available which meets the satisfaction of the Monitoring Officer and Chief Financial Officer and is auditable.

Tenders may be submitted by electronic means provided that:

- a) evidence that the transmission was successfully completed is obtained and recorded;
- b) each tender submitted electronically is deposited in a secure mailbox before the return date, and;
- c) electronic tenders are kept in a separate secure folder until the deadline is passed for receipt of tenders.

## 7. **Selective Tendering Procedure - Approved list of Tenderers**

7.1 This Standing Order applies if the Council Solicitor has decided that a list will be kept of the firms to be invited to tender/ quote for contracts.

7.2 Any such list must:-

- 7.2.1 contain the names of all firms who wish to be included in it, who comply with the criteria set for inclusion, and are approved by the Council Solicitor;
  - 7.2.2 indicate whether each firm is approved for all or only some of the specified values or categories;
  - 7.2.3 be kept, maintained and administered by the Council Solicitor.
- 7.3 At least four weeks before a list is first compiled, notices inviting applications for inclusion on it must be published in one or more local newspapers circulating in the district, and in one or more publications circulating amongst firms who undertake contracts of the specified values or categories.
- 7.4 The list must be amended as required (including deletions due to any circumstances affecting any firm's ability to perform certain contracts), and must be reviewed from time to time in accordance with the procedures set out in Standing Order 7.3
- 7.5 Amendments to any list will be recorded by the Council Solicitor.
- 7.6 Invitations to tender must be limited to firms whose names are on the list produced under this Standing Order, and must be sent to at least four of those firms selected, or, if there are fewer than four such firms, to all firms. If less than four firms are invited to tender, then the appropriate Service Lead or Principal Officer must keep a record of the reasons for this.
- 7.7 The approved list shall be amended as required from time to time as part of a process of continual review. Overall review of the lists shall take place at intervals of not more than three years.

## **8. Restricted Tendering Procedure**

- 8.1 This Standing Order applies to contracts with an estimated value of a sum to be determined from time to time by the Council, and where no list has been approved under Standing Order 7, or if the Council Solicitor considers that Standing Order 7 is inappropriate.

8.2 Public Notice must be given in one or more local newspapers circulating in the district, and, if the estimated value of the contract exceeds an amount to be determined from time to time by the Council, in one or more newspapers or journals circulating among firms who undertake such contracts. The notice must set out details of the proposed contract, and invite firms interested to apply within such period as may be specified, (being not less than ten days), for permission to tender. All responses to advertisements must include the completion of an application form. Clear instructions shall be given in the advertisement regarding the arrangements for the delivery and receipt of applications with particular reference to a deadline for receipt. The rules for the receipt of applications will be the same as that for tenders as set out in Standing Order 20.

8.3 After the expiry of the period specified in the public notice, invitations to tender stating details of the proposed contract and the last date for receipt of tenders must be sent to at least four of the firms who applied for permission to tender selected by the appropriate Service Lead or Principal Officer or, if fewer than four firms have applied and are considered suitable, to all such firms. If less than four firms are invited to tender, the appropriate Service Lead or Principal Officer must keep a record of the reasons for this.

## 9. **Open Tendering**

9.1 This Standing Order applies to contracts with an estimated value of an amount to be determined from time to time to by the Council or more, if no appropriate Approved List exists or if the Council Solicitor considers that Standing Order 6 and 7 are inappropriate.

9.2 At least 10 days' public notice shall be given in one or more local newspapers and also, wherever the value or amount of the contract exceeds an amount to be determined from time to time by the Council or wherever the Council intends to bind for the contract in one or more newspapers or journals circulating amongst such persons or bodies as undertake such contracts. The notice shall express the nature and purpose of the contract, state where further details may be obtained, invite tenders for its execution and state the last date and time when tenders will be received.

## 10. **Negotiated Tendering Procedure**

- 10.1 This Standing Order applies to contracts with an estimated value of an amount to be determined from time to time by the Council or more, if the Council Solicitor considers that Standing Orders 6, 7, and 8 are inappropriate.
- 10.2 The appropriate Service Lead or Principal Officer acting under delegated powers may invite or authorise the invitation of tenders from firms by way of a negotiated procedure. Prior to using a negotiated procedure under this Contract Standing Order, the appropriate Service Lead or Principal Officer shall arrange for a report to be prepared and submit it for consideration to the Council Solicitor and the Chief Financial Officer. The Service Lead or Principal Officer concerned shall not proceed without having obtained the comments and a recommendation from the Council Solicitor and the Chief Financial Officer. If the Service Lead or Principal Officer concerned decides, having considered the comments and recommendations made, to proceed, then that Service Lead or Principal Officer shall record the reasons for so doing and forward a copy of the decision and reasons to the Council Solicitor. If the recommendation of the Council Solicitor or the Chief Financial Officer is that the Service Lead or Principal Officer should not proceed as proposed, and the Service Lead or Principal Officer concerned still wishes to proceed then that Service Lead or Principal Officer shall refer the matter to the Council's Policy and Resources Committee for a decision. The negotiated procedure can only be used where the appropriate Service Lead or Principal Officer can show that:
- 10.2.1 one of the procedures set out in Standing Order 7, 8 or 9 has been used and resulted in unacceptable or irregular tenders or no tenders or no appropriate tenders; or
  - 10.2.2 exceptionally where the nature of the procurement or risks involved does not permit prior overall pricing; or
  - 10.2.3 the nature of the procurement is such that a precise specification cannot be drawn up; or
  - 10.2.4 a design contest is appropriate to the scheme;
  - 10.2.5 when the procurement forms part of a project or service that is being delivered under the Council's General Principles for Commissioning.

10.3 the appropriate Service Lead or Principal Officer must register the proposed use of this Standing Order with the Council Solicitor in accordance with procedures determined from time to time by him/her.

## 11. **Single Tendering**

11.1 Where the Service Lead or Principal Officer duly authorised in that behalf, have decided in the best interests of the Council that a tender be invited from a contractor selected by them, the Council may enter into a contract with the contractor

11.2 Prior to using the single tender procedure under this Contract Standing Order, the appropriate Service Lead or Principal Officer shall arrange for a report to be prepared and submit it for consideration to the Council Solicitor and the Chief Financial Officer. The Service Lead or Principal Officer concerned shall not proceed without having obtained the comments and a recommendation from the Council Solicitor and the Chief Financial Officer. If the Service Lead or Principal Officer concerned decides, having considered the comments and recommendations made, to proceed, then that Service Lead or Principal Officer shall record the reasons for so doing and forward a copy of the decision and reasons to the Council Solicitor. If the recommendation of the Council Solicitor or the Chief Financial Officer is that the Service Lead or Principal Officer should not proceed as proposed, and the Service Lead or Principal Officer concerned still wishes to proceed then that Service Lead or Principal Officer shall refer the matter to the Council's Policy and Resources Committee for a decision.

## 12. **Serial Tendering**

12.1 This Standing Order shall apply where the Service Lead or Principal Officer duly authorised in that behalf, have decided that tenders for a contract where that contract forms part of a serial programme, are to be obtained by negotiation with a Contractor.

12.2 The basis of the negotiation shall be the rates and prices contained in an initial contract awarded competitively following an invitation to tender in accordance with Standing Orders 7, 8, 9, 10 or 11 and shall be documented accordingly.

12.3 The Principal Officer shall provide copies of the above documentation to the Council Solicitor who shall keep the documentation with the Initial contract documents.

### **13. Framework Contracts**

- 13.1 The purchase of goods or materials and the procurement of works or supply of services, where a Framework Arrangement or Contract is let through or on behalf of a public body, consortium, association or similar body provided that tenders or quotations are invited and contracts placed in accordance with procedures which are equivalent to these Contract Procedure Rules and also comply with any national or EU legislation, is permitted. A Framework Contract to which more than one contractor is party must provide for competition between the contractors in respect of any Call Off above £50,000.

### **14. Competition Requirements for Contracts below a Specified Value**

- 14.1 The appropriate Service Lead or Principal Officer must invite at least 3 written quotations for a proposed contract within a value range to be determined from time to time by the Council. If 3 quotations cannot be obtained due to lack of suitable firms prepared to quote, or where the appropriate Service Lead or Principal Officer feels that this is inappropriate in the interests of the efficient management of the service, then that Service Lead or Principal Officer must keep a record of the reasons for this.
- 14.2 For contracts valued below an amount to be determined from time to time by the Council, the Service Lead or Principal Officer concerned should proceed in a manner most expedient to the efficient management of the service, having kept a record of the reason for so doing.
- 14.3 Where there is an Approved List of Tenderers in existence then that Approved List must be used as the source of providing the names of contractors from whom quotations are sought.
- 14.4 Records to be kept under this Standing Order shall be in a format to be determined by the Chief Financial Officer.

### **15. Exception for Proprietary Articles etc**

- 15.1 Nothing in these contract standing orders shall require tenders to be invited.



- 15.1.1 in relation to the supply of goods and materials and any necessary ancillary work in relation thereto if effective competition is prevented by government control or
- 15.1.2 if the goods or materials to be purchased:
  - 15.1.2.1 are proprietary articles or are sold only at a fixed price and no reasonably satisfactory alternative is available;
  - 15.1.2.2 are manufactured by one manufacturer only;
- 15.2 The prices of the goods or materials are wholly controlled by trade organisations or government order and no reasonably satisfactory alternative is available.
- 15.3 Obtained by a consortium of which the Council is a member.
- 15.4 Parts for existing machinery or plant.
- 15.5 Required as a matter of urgency so as not to permit compliance with the requirements of competition.
- 15.6 The execution of work where the work to be executed is required as a matter of urgency.
- 15.7 The execution of work either:
  - 15.7.1 By professional persons in which the personal skill of those persons is of primary importance.
  - 15.7.2 Where the work is of a specialist nature in which the skill of the contractor is of primary importance.
- 15.8 Prior to using an exception under this Contract Standing Order, the appropriate Service Lead or Principal Officer shall arrange for a report to be prepared and submit it for consideration to the Council Solicitor and the Chief Financial Officer. The Service Lead or Principal Officer concerned shall not authorise the exception without having obtained the comments and a recommendation from the Council Solicitor and the Chief

Financial Officer. If the Service Lead or Principal Officer concerned decides, having considered the comments and recommendations made, to authorise the exception, then that Service Lead or Principal Officer shall record the reasons for so doing and forward a copy of the decision and reasons to the Council Solicitor. If the recommendation of the Council Solicitor and the Chief Financial Officer is that the Service Lead or Principal Officer should not authorise the exception as proposed, and the Service Lead or Principal Officer concerned still wishes to do so then that Service Lead or Principal Officer shall refer the matter to the Council's Policy and Resources Committee for a decision.

**16. Tender in Excess of Estimate**

16.1 Where the tender or quotation exceeds the estimate obtained in accordance with the contract standing order 4 by an amount not exceeding 5% then provided that the increase does not require either:

16.1.1 a supplementary estimate in which case the matter shall first be reported to the Policy and Resources Committee or

16.1.2 a transfer of vote under financial standing order 5 in which case the matter shall first be reported to the appropriate Committee.

16.2 Such tender may nevertheless be accepted provided that any such action under this paragraph shall be reported to the Policy and Resources Committee.

**17. Acceptance of Lowest Tender or Highest**

17.1 All Tenders may be accepted by the appropriate Service Lead, provided that:

(a) It is within the approved budget;

(b) The Service Lead notifies award of the contract to:

(i) the Chief Financial Officer and relevant Committee Chairman; or

(ii) in the case of a tender which falls above EU Procurement Levels the relevant Policy Committee.

- (c) Where the contract value exceeds EU Procurement Levels the contract is not awarded until the required time period has elapsed.
- (d) The identity of any Tenderer other than the Tenderer submitting the tender accepted shall not be disclosed to any other Tenderer.

**18. Acceptance of Other than Lowest or Highest Tender**

18.1 A tender except a tender by sample other than the lowest tender if payment is to be made by the Council or other than the highest tender if payment is to be received by the Council shall not be accepted unless:

18.1.1 The appropriate Service Lead or Principal Officer arrange for a report to be prepared and submit it for consideration to the Council Solicitor and the Chief Financial Officer. The Service Lead or Principal Officer concerned shall not authorise the acceptance of such a tender without having obtained the comments and a recommendation from the Council Solicitor and the Chief Financial Officer. If the Service Lead or Principal Officer concerned decides, having considered the comments and recommendations made, to authorise acceptance, then that Service Lead or Principal Officer shall record the reasons for so doing and forward a copy of the decision and reasons to the Council Solicitor. If the recommendation of the Council Solicitor and the Chief Financial Officer is that the Service Lead or Principal Officer should not authorise acceptance as proposed, and the Service Lead or Principal Officer concerned still wishes to do so then that Service Lead or Principal Officer shall refer the matter to the Council's Policy and Resources Committee for a decision.

18.2 Where a tender by sample other than the highest or lowest as the case may be is accepted or recommended for acceptance the Policy and Resources Committee accepting or recommending the same shall record the fact in its minutes.

**19. Subcontracts and Nominated Suppliers**

19.1 Where a subcontractor or supplier is to be nominated to a main contractor then:

19.1.1 Where the estimate amount of the subcontract or the estimated value of goods or materials to be supplied by the nominated supplier exceeds an amount to be

determined from time to time by the Council then unless the Chief Officer concerned is of the opinion in respect of any particular nomination that it is not reasonably practicable to obtain competitive tenders no fewer than four tenders shall be invited by the Chief Officer concerned for the nomination in accordance with the methods described in contract standing orders 6-10 and shall be dealt with in accordance with the arrangements prescribed in contract standing orders 20 and 21 provided that the Chief Officer concerned may invite a tender from such subcontractor or supplier as may be available when he is satisfied that it is not reasonably practicable to follow any of the above methods;

19.1.2 the terms of the invitations shall require an undertaking by the tenderer that if he is selected he will be willing to enter into a contract with the main contractor on terms which indemnify the main contractor against his own obligations under the main contract in relation to the work or goods or materials included in the subcontract;

19.1.3 such tenders not exceeding an amount to be determined from time to time by the Council shall be obtained by the Chief Officer concerned;

19.1.4 the Chief Officer concerned is authorised to nominate to the main contractor the subcontractor or supplier whose tender obtained in accordance with either of the preceding subparagraphs is in his opinion the most satisfactory provided that where the tender is not the lowest received the circumstances shall be reported to the appropriate Committee.

## **20. The Engagement of Consultants**

20.1 It shall be a condition of the engagement of the services of any architect, engineer, surveyor or other consultant who is to be responsible for the supervision of a contract that in relation to that contract he shall

20.1.1 comply with the requirements of these contract standing orders subject to the modification that the procedure to be followed in inviting and opening tenders shall be approved in advance by the Council Solicitor

20.1.2 at any time during the carrying out of the contract produce to the Council Solicitor or other appropriate Service Lead or Principal Officer on request the

record maintained by him in accordance with the requirements of the appropriate Service Lead or Principal Officer.

20.1.3 on completion of a contract transmit such record to the appropriate Service Lead or Principal Officer.

20.1.4 within seven days of the date on which he shall first become aware that the estimated cost of the works is likely to be exceeded by an amount of more than 10% in the case of contracts of the value or an amount to be determined from time to time by the Council or less and more than 5% in any other case notify the appropriate Service Lead or Principal Officer.

20.2 Not except in the case of:

20.2.1 special proprietary articles or processes or work not open to public tender or

20.2.2 goods supplied or work carried out through any consortium of local authorities of which the Council is a member

20.2.3 specify any single one person firm or company as subcontractor for carrying out the work or supplying goods and this subparagraph shall apply as a standing instruction to all officers of the Council.

## 21. **Post Tender Negotiations**

21.1 This Standing Order relates to negotiations after the receipt of a quotation or tender submitted in accordance with these Standing Orders.

21.2 Negotiations can only be commenced after the Chief Financial Officer and the Council Solicitor, have given the relevant Service Lead or Principal Officer written approval of the procedure(s) to be adopted to negotiate. A contract can be entered into only when the Chief Financial Officer and the Council Solicitor have given written approval to the outcome of the negotiations.

## 22. **Receipt and Custody of Tenders**

22.1 Where tenders are invited every notice of invitation shall state that no tender will be considered except in a plain sealed envelope of a distinctive colour supplied by the Council and securely sealed which shall bear the words "Ryedale District Council Tender for - "followed by the subject to which the tender relates and the closing date and be addressed to the Chief Executive but shall not bear any name or mark indicating the identity of the sender.

22.2 Such envelopes shall as soon as they are received by the Chief Executive be endorsed with the date and time of receipt and remain in the custody of the Chief Executive or other office designated by him until the time appointed for their opening.

### 23. **Opening Tenders**

23.1 Tenders invited under these contract standing orders shall be opened at one time and only in the presence of:

23.1.1 the Chairman of the appropriate Committee or in his absence such other Member of the Council as may have been designated by him; and

23.1.2 the Chief Executive or the Council Solicitor or an officer designated by either of them and the Chief Executive shall maintain a register of all such tenders received and the Member in whose presence the tenders are opened shall initial the register provided that the presence of the Chairman or other Member shall not be required where the estimated cost of the work or of the goods or materials to be supplied does not exceed an amount or value to be determined from time to time by the Council.

### 24. **Late Tenders**

No tender shall be considered unless received in compliance with the terms of and by the time stipulated in the advertisement or other invitation.

### 25. **Alterations to Tenders**

If any person firm or company who having submitted to the Council a tender shall subsequent to the opening of tenders make application to amend such tender other than may be provided for in the tender documents then such application shall disqualify

that tender from further consideration by the council provided that arithmetical errors may be corrected except in cases where such tender has been accepted and the alteration would increase the amount thereof in the case of payment by the Council or would decrease the amount thereof in the case of payment to the Council.

**26. Standard Form**

26.1 The Council's standard form of tender as settled by the Council Solicitor shall be used for the purpose of inviting tenders.

26.2 It should be clearly stated in all documents of tender that the Council reserves the right not to accept any of the tenders or to accept a tender other than the lowest in the case where payment is made by the Council or of the highest in the case where payment is made to the Council.

26.3 A printed copy of these contract standing orders shall be enclosed with each form of tender issued and given to any architect engineer surveyor or other consultant not being an officer of the Council who is to be responsible for the supervision of a contract.

**27. Formalities**

27.1 The following provisions shall apply to the formalities of the making of contracts:

27.1.1 no Member of the Council shall make orally or in writing any contract on behalf of the Council;

27.1.2 no officer other than the Council Solicitor, a Service Lead or Principal Officer or any senior officer of a department authorised by the Service Lead or Principal Officer concerned for this purpose shall make orally or in writing any contract on behalf of the Council;

27.1.3 the Council Solicitor, a Service Lead or Principal Officer or any such officer authorised under paragraph 24.2 above concerned shall not make orally or in writing and the Council Solicitor shall not make orally any contract on behalf of the Council other than a contract for:

27.1.3.1 the supply of goods or materials for the execution of work of a value not exceeding an amount to be determined from time to time by the Council

27.1.3.2 services to be performed or provided by a person other than an employee of the Council for consideration of or which will not exceed an amount or value to be determined from time to time by the Council

27.1.3.3 the sale of goods or materials of a value not exceeding an amount or value determined by the Council and any oral contract shall be confirmed by written order.

27.1.4 where a contract for the sale or supply of goods or materials or the execution of any works or the provision or performance of otherwise than by an employee of the Council services will exceed an amount or value to be determined from time to time by the Council and a formal written contract is not required under paragraph 27.1.5 hereof the accepted tender or quotation and other relevant documents together with a letter of acceptance under the hand of the Council Solicitor may constitute the contract for the purpose of this contract standing order provided that a formal written contract may be prepared in any such case if in the opinion of the Council Solicitor it is desirable notwithstanding that it is not required in subparagraph 25.1.5 below;

27.1.5 a formal written contract under the hand of the Council Solicitor shall be required where:

27.1.5.1 Goods or materials of a value exceeding an amount to be determined from time to time by the Council are to be supplied other than at one time

27.1.5.2 Work is to be executed the value of which will exceed an amount to be determined from time to time by the Council

27.1.5.3 Services are to be performed or provided by any person other than an employee of the Council the consideration for which will exceed an amount or value to be determined from time to time by the Council



27.1.5.4 Goods or materials of a value exceeding an amount to be determined from time to time by the Council are to be sold by the Council;

27.1.6 all written contracts exceeding an amount or value to be determined from time to time by the Council in value or amount shall on being signed be entered in a register kept for that purpose;

27.1.7 no contracts for the sale or purchase of land or any interest in land or for the granting or taking of any lease or tenancy or for the granting of any licence in respect of the use of land shall be made by any officer other than the Council Solicitor and any such contract shall be in writing provided that this subparagraph shall not apply to tenancies of residential accommodation pursuant to the Housing Acts or to other tenancies of residential accommodation in respect of which rent cards are issued.

**28. Particulars to be included in Contracts**

28.1 Every contract made under paragraph 25 of these contract standing orders shall:

28.1.1 specify:

28.1.1.1 the work materials matters or things to be furnished had or done;

28.1.1.2 the price to be paid with a statement of discounts or other deductions;  
and

28.1.1.3 the time in which the contract is to be performed;

28.1.2 provide for liquidated damages to be determined in respect of each contract by the Council Solicitor in consultation with the Chief Executive or Chief Financial Officer to be paid by the contractor in case the terms of the contract are not duly performed;

28.1.3 provide that should the contractor fail to deliver the goods or materials or any portion thereof or perform any services within the times specified in the contract the Council without prejudice to any other remedy for breach of contract shall be at liberty to determine the contract either wholly or to be extent of such

default and to purchase other goods or materials or services as the case may be of the same or similar description to make good such default or in the event of the contract being wholly determined the goods or materials remaining to be delivered;

28.1.4 the clause required by the paragraph 25.3 above shall further secure that the amount by which the cost of so purchasing other goods materials or services exceeds the amount which would have been payable to the contractor in respect of the goods or materials as the case may be replaced by such purchase if they had been delivered in accordance with the contract shall be recoverable from the contractor.

29. **Bonds**

In the case of contracts for the Execution of any work where the amount or value is estimated to exceed an amount to be determined from time to time by the Council the Leadership Team where they consider it desirable may require and take a bond or other sufficient security for the due performance of the contract the amount of such bond or security to be determined by the Leadership Team.

30. **Assignment and Statutes Etc**

30.1 The appropriate Service Lead or Principal Officer must ensure that the Contract contains provisions relating to:-

30.1.1 in the performance of the contract, the Contractor must not discriminate on the grounds of race contrary to statutory requirements;

30.1.2 the Contractor must provide any information reasonably requested relating to the performance of the contract to ensure that the Council meets its statutory obligations under Section 71 of the Race Relations Act 1976;

30.1.3 in the performance of the contract, the Contractor must comply with the requirements of the Health and Safety at Work etc Act 1974 and of any other relevant Acts, Regulations, Orders or Rules of Law pertaining to health and safety;

- 30.1.4 the contractor must not sub-contract the works or any part of the works, without the prior written consent of the appropriate Service Lead or Principal Officer without prejudice, and subject to any other condition of the contract, no sub-letting by the contractor will relieve the contractor of its liability to the Council for the proper performance of the contract;
- 30.1.5 the contractor is responsible to the Council for the proper performance and observance by all sub-contractors of all the contractor's obligations under the contract as if references in the contract to "the Contractor" were references to the sub-contractors. Failure or neglect by a sub-contractor is deemed to be failure or neglect by the contractor;
- 30.1.6 the contractor is prohibited from transferring or assigning directly or indirectly to any person or persons whatsoever any part of its contract, without the prior written consent of the appropriate Service Lead or Principal Officer (following consultation with the Council Solicitor and the Chief Financial Officer);
- 30.1.7 all goods, materials, services or work must comply with any appropriate European Union Specification or Code of Practice or British Standard Specification or British Standard Code of Practice or European Union equivalents in force at the date of tender/quotation.

### **31. Corrupt Gifts**

In every written contract a clause shall be inserted to secure that the Council shall be entitled to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation if the contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to obtaining the execution of the contract of any other contract with the Council or for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Council or if the like acts shall have been done by any person employed by him or acting on his behalf whether with or without the knowledge of the contractor or any person employed by him or acting on his behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or shall have given any fee or reward the receipt of which is an offence under subsection 2 of section 117 of the Local Government Act 1972.

## **32. Joint Purchasing Arrangements**

- 32.1 Nothing in the contract standing orders relating to contracts shall require tenders to be invited and dealt with pursuant to those contract standing orders if tenders shall have been invited on behalf of any consortium collaborations or similar body (“the consortium”) of which the Council is a member in accordance with any method adopted by the consortium.
- 32.2 Where tenders are invited as aforesaid by an officer of the Council the delivery opening and acceptance of tenders shall comply with the provisions of contract standing orders and financial regulations except insofar as those provisions are inconsistent with the consortium’s method by which tenders obtained on its behalf are dealt with.
- 32.3 Where the tenders obtained on behalf of the consortium relate to the components for buildings proposed to be erected by more than one committee or the Council or there is any doubt as to which committee has the power or accepting or agreeing to the acceptance of a tender or of making the contract to which the tenders relate the Policy and Resources Committee shall be deemed to be the committee having such power.

## **33. Contractors from other Member States of EEC**

Nothing in these standing orders shall operate or be construed as operating so as to prevent or hinder on grounds of nationality the participation in any contract offered or awarded by the Council of contractors from other Member States of the European Economic Community whether as main contractors or subcontractors.

## **34. Contracts to which EU Procurement Rules apply**

### **34.1 Thresholds**

Advice should be sought from the Chief Financial Officer in respect of any procurement with an estimated value greater than EU Procurement thresholds upon whether EU Procurement Rules apply. The threshold values are reviewed on a regular basis, normally every two years. Any changes made to the threshold values made by the EU are deemed to apply within these Contract Procedure rules. Table 1 identifies when EU Procurement Rules are likely to apply (valid from January 2012):

**Table 1: EU Procurement Thresholds - Valid from January 2012**

	All Procedures	Prior-information Notice
Supplies	£ 173,934	£652,253
Services	£ 173,934	£652,253
Works	£4,348,350	£4,348,350

Procurement exercises with an estimated contract value within 10% of Threshold levels where EU Procurement Rules apply should also be advertised in the OJEU to avoid OJEU advertising requirements being unintentionally breached.

#### 34.2 **Standards**

If the European Committee for Standardisation (CEN) has issued a relevant standard, all the goods and materials used or supplied, and all the work done under the contract, must be in line with that standard.

#### 34.3 **The Euro**

A provision should be included in any contractual documentation requiring the contractor to convert prices to sterling from Euro and to submit invoices for payment accordingly once notice is given to the contractor.

#### 34.4 **Number of Tenderers**

If the contract is expected to exceed EU limits, a minimum of five contractors or suppliers must be invited to tender except where the adopted procedure provides otherwise. (In cases where fewer than five contractors or suppliers apply and are shortlisted, all contractors or suppliers must be invited to tender.)

If during the course of a competitive tendering exercise, an officer becomes aware that the value of bids received exceeds the EU Thresholds, but bid invitations have not been extended through the OJEU notice procedure as it was anticipated that the threshold would not be exceeded, advice must be sought from the Chief Financial Officer upon how to proceed.

Where the Council has an aggregated requirement for specified goods or services with an estimated annual value at or greater than the figures provided in Table 1, a Prior Indicative Notice (PIN) must be placed in the Supplement to the Official Journal of the European Community (OJEU) once annually.

### 34.5 **Buyer's Profile**

The Council shall publish and maintain a buyer's profile via the internet incorporating the following information:

- (a) a brief description of future and current tenders within the year 1 April to 31 March
- (b) the date the advert was dispatched to OJEU
- (c) the OJEU reference number
- (d) the closing date for notification of interest in relation to expressions of interest
- (e) the tender dispatch date
- (f) the closing date for tenders
- (g) the award date
- (h) the identity of the successful tenderer
- (i) the award notice reference number
- (j) the date of the award notice

### 34.6 **EU Procedures:**

All contracts with a value in excess of EU limits shall be let in accordance with a procurement method which is acceptable within EU law. The acceptable methods are the Restricted, Open and Negotiated Procedures and Competitive Dialogue.

Where the Restricted Procedure, Open Procedure or Competitive dialogue are used the Council is required to place a Contract Notice in the Official Journal of the European Community and the timescale for expressions of interest in response to such notices is prescribed.

Advertisement is subject to the following constraints:

- (a) advice must be sought upon the applicable timescales;
- (b) the accelerated procedure may only be used with the consent of the Chief Financial Officer.

Table 2 sets out the ordinary timescales. The applicable timescales may be reduced further as indicated in Tables 3 and 4 where electronic systems are used to publish the contract notices and provided unrestricted electronic access to documentation:

Table 2: Advertisement in OJEU without use of electronic media

<b>Minimum no. of calendar days after sending the Contract Notice to OJEU</b>	EU Open Procedure	EU Restricted Procedure	EU Accelerated Procedure	EU Negotiated Procedure
(i) to the closing date for receipt of registrations of interest from contract notice	-	37 days	15 days	37 days (if poss.)
(ii) to the closing date for receipt of tenders	52 days	40 days	10 days	21 days
as (ii) above, but where a PIN is published between 52 and 365 days prior to the Contract Notice	36 days	26 days	N/A	21 days (i.e., same as above)
Minimum no. of days to allow following decision on contract award before formalising contract	10 days	10 days	10 days	10 days
Max. no. of days after contract award in which to send Contract Award Notice	48 days	48 days	48 days	48 days

Table 3: Notice of contract compiled and submitted electronically:

<b>Minimum no. of calendar days after sending the Contract Notice to OJEU</b>	EU Open Procedure	EU Restricted Procedure	EU Accelerated Procedure	EU Negotiated Procedure
(i) to the closing date for receipt of registrations of interest from electronic contract notice	-	30 days	10 days	30 days (if poss.)
(ii) to the closing date for receipt of tenders	45 days	35 days	10 days	14 days
as (ii) above, but where a PIN is published between 52 and 365 days prior to the Contract Notice	29 days	19 days	N/A	14 days (i.e., same as above)
Minimum no. of days to allow following decision on contract award before formalising contract	10 days	10 days	10 days	10 days
Max. no. of days after contract award in which to send Contract Award Notice	48 days	48 days	48 days	48 days

Table 4: Notice of contract compiled and submitted electronically and unrestricted electronic access to all contract documentation provided at tender receipt stage

<b>Minimum no. of calendar days after sending the Contract Notice to OJEU</b>	EU Open Procedure	EU Restricted Procedure	EU Accelerated Procedure	EU Negotiated Procedure
(i) to the closing date for receipt of registrations of interest from electronic contract notice	-	30 days	10 days	30 days
(ii) to the closing date for receipt of tenders	40 days	14 days	10 days	21 days
as (ii) above, but where a PIN is published between 52 and 365 days prior to the Contract Notice	29 days	5 days	N/A	21 days (i.e., same as above)
Minimum no. of days to allow following decision on contract award before formalising contract	10 days	10 days	10 days	10 days
Max. no. of days after contract award in which to send Contract Award Notice	48 days	48 days	48 days	48 days