

Report to: **Governance Committee**

Date: **20 September 2010**

Title of report: **Amendments to Contract Standing Orders**

By: **Director of Governance and Community Services**

Purpose of report: **To make amendments updating Contract Standing Orders**

RECOMMENDATION: that the County Council be recommended to approve the amendments to Contract Standing Orders set out in Appendix 1

1. Financial Appraisal

1.1 There are no anticipated financial implications arising from the proposed amendments.

2. Background Information

2.1 The amendments proposed are relatively minor, and pick up on issues that have arisen since the last update, these are shown as tracked changes on the copy of the Contract Standing Orders ('CSOs') set out in Appendix 1. The proposed changes include:

2.2 CSO 2.3.8- To allow a small number of placements of children, who are vulnerable or have complex needs in independent residential homes, without following the requirements of contract standing orders, except those as to award of the contract e.g. signing the contract. The Chief Officer will still be under an obligation to secure best value for these high cost placements, however appropriate places can be hard to find. It is often necessary to make a placement in an emergency situation within short timescales, when it would not be feasible to operate a tendering process.

2.3 CSO 9.8.1- Currently the County Council provide details of its contracts with a value of more than £50,000 on line. The coalition Government are calling on local authorities to publish details of all spending over £500 in full and online by the start of 2011, and this may include a requirement for details of contracts over this amount. When fuller details are known the Director of Corporate Resources will be able to direct what information will be required to be published in the electronic register of contracts.

2.4 CSO13.4- This new contract standing order provides for the use of electronic signatures, provided there are sufficient security arrangements.

2.5 CSO13.5- Procurement in accordance with EU procurement regulations is becoming increasingly complex. With the introduction of the new remedies regime as from 20th December 2009, tenderers who are not happy that the County Council have followed the requirements under the regulations are given strengthened rights to challenge the award of contracts by the County Council. The intention is to introduce a check by Legal Services of the processes followed, prior to the County Council awarding a contract or concluding a framework agreement, to try and ensure so far as practicable compliance with the regulations.

3. Conclusion and Recommendation

3.1 The Governance Committee is recommended to recommend to County Council the amendments updating the Contract Standing Orders.

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Director of Governance and Community Services

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Local Member: All

BACKGROUND DOCUMENTS

None

(8) Contracts Procedure Rules (Contract Standing Orders)

Scope

These rules, more commonly referred to as the Council's Contract Standing Orders, set out procedures which must be followed to ensure probity in the letting of contracts by the County Council. Contract Standing Orders are attached.

Contract Standing Orders

Introduction

The Council's Contract Standing Orders (CSOs) set out the rules by which the Council spends money on the goods, services and works it needs to deliver its agreed services to the people of East Sussex.

The CSOs:

- have been written to reflect best value, to empower staff to develop ideas, and deliver improved and innovative services

- only refer to corporate issues and prescribe the minimum corporate rules necessary for good governance in the letting of contracts by the County Council

- apply equally to all ESCC staff and to any consultants acting on the Council's behalf

- are supported by a series of best practice documents, referred to at the end of each Contract Standing Order, as appropriate

- provide the necessary delegated authority to Lead Cabinet Members and Chief Officers to make decisions on behalf of the Council.

How to find what you need in the CSOs

The CSOs are arranged in a logical sequence of sections, following a procurement route. A summary of what is in each section comes first, followed by a list of the CSOs in that section.

Section 1: Interpretation, Compliance and Public Notice

This section contains a list of definitions and interpretations of words, titles and names used within the CSOs document to help you understand the terminology at the outset. The CSOs in this section cover compliance with the CSOs and relevant legislation, the requirements for placing public notices (advertisements) and possible exemptions from having to do so:

CSO 1 – Definitions and Interpretations

CSO 2 – Compliance with Contract Standing Orders and legislation

CSO 3 – Public Notices and Shortlisting Persons invited to bid

Section 2: Working within select lists

This section contains the rules for working within select lists. These are lists of approved contractors who carry out building and construction works. They also cover providers of various care services. The section also indicates that framework agreements can be considered as an alternative to select lists:

CSO 4 – Select Lists

Section 3: Requirement to obtain tenders

This section sets out clearly the various financial thresholds above and below which competitive quotations or tenders are normally required, whether it leads to a formal contract or a contract formed by placing a purchase order. It sets different thresholds for works in recognition of the need for more flexibility in that area:

CSO 5 – Contracts more than £1,000 and not exceeding £5,000
(£15,000 for Works)

CSO 6 – Contracts exceeding £5,000 **(£15,000 Works)** and not exceeding £50,000 **(£100,000 Works)**

CSO 7 – Contracts exceeding £50,000 **(£100,000 Works)**

Section 4: Tendering Process

This section describes the choice of four tendering procedures available: an open procedure, a restricted procedure, a negotiated procedure and a competitive dialogue procedure, and advises how to make that choice. It also sets out the procedure for delivery, opening and recording of tenders, and the choice of two methods for evaluation of tenders:

CSO 8 – Choice of Tendering Procedure

CSO 9 – Delivery, opening & recording of tenders

CSO 10 – Evaluation of quotations and tenders

Section 5: Requirements for contracts

This section covers acceptance of tenders, financial control of contracts and contract award. It also clarifies the position regarding use of mandatory contract conditions to reduce risk, post-tender negotiation when using the open or restricted procedure (see CSO 4), and the use of nominated sub-contractors:

CSO 11 – Acceptance of Tenders

CSO 12 – Control of contracts

CSO 13 – Contract Award

CSO 14 – Risk Management/Mandatory Contract Conditions

CSO 15 – Post-tender Negotiation

CSO 16 – Nominated Sub-contractors

NB: Two existing Standing Orders are deleted:

SO 68 – In-house providers;

SO 77 Sale of Property – this will be incorporated in Section 8 Standards of Conduct handbook "Purchase and Disposal of Land/Building Code".

Section 1: Interpretation, compliance & public notice

This section contains a list of definitions and expressions used within Contract Standing Orders ("CSOs") to help you understand the terminology at the outset. The CSOs in this section cover compliance with the CSOs themselves and relevant legislation, the requirements for placing public notices (advertisements) and possible exemptions from having to do so.

1. CSO 1 (SO 78) Definitions and Interpretations

Definitions

1.1 "**best value**" means the duty of the Council to make arrangements to secure continuous improvement in the way in which its functions are exercised, having a regard to a combination of economy, efficiency and effectiveness.

1.2 "**contract**" means a binding agreement made between two or more parties for the supply of goods or materials, or for the execution of any works or the provision of any services which is intended to be enforceable at law.

1.3 "**consortium**" means two or more local authorities or public bodies acting jointly for the purpose of the purchase of goods, services or works.

1.4 "**dynamic purchasing system**" means a completely electronic process for making commonly used purchases, the characteristics of which, as generally available on the market, meet the requirements of the contracting authority, which is limited in duration and open throughout its validity to any economic operator which satisfies the selection criteria and has submitted an indicative tender that complies with the specification.

1.5 "**electronic auction**" means a repetitive process involving an electronic device for the presentation of new prices, revised downwards, and/or of new values concerning certain elements of tenders, which occurs after an initial evaluation of the tenders, enabling them to be ranked using automated evaluation methods.

1.6 "**EU procurement regulations**" means regulations in relation to public procurement made pursuant to the European Communities Act 1972, from time to time.

1.7 "**framework agreement**" means an agreement for a defined range of goods, services or works, the terms of which are agreed through an initial competitive tendering exercise, and under which the contractor undertakes to enter into contracts for requirements called off as and when required.

1.8 "**joint commissioning**" means where the Council jointly with one or more local authorities or public bodies enters into a contract.

1.9 "**lowest cost**" in relation to a tender means the lowest price if payment is to be made by the Council and the highest price if payment is to be made to the Council and, in either case, refers to a tender which conforms to the Council's tendering requirements.

1.10 "**most economically advantageous tender**" means the most economically advantageous tender to the Council determined by criteria which may include quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost effectiveness, after sales, technical assistance, delivery date and delivery period and period of completion.

1.11 "**novation**" means the substitution of a new contract for one already existing.

1.12 "**person**" The expression "person" or "persons" shall include a firm, partnership, company or public authority.

1.13 "**quotation**" means a formal offer to supply or purchase goods, or materials, execute works or provide services including consultancy at a stated price based on terms and conditions agreed with the supplier.

1.14 "**select list**" (sometimes also known as an approved list) means a list of suitable prospective contractors approved for the purposes of the supply of goods or services or the execution of works in accordance with the provisions of Contract Standing Order 4.

1.15 "**tender**" means a formal offer to supply or purchase goods, or materials, execute works or provide services including consultancy, at a stated price based on the Council's terms and conditions.

1.16 "**works**" means a contract involving building or civil engineering activities whether in the form of a specific service or in the form of a series of services leading to the completion of a work that has an economic or technical function.

Interpretation

1.17 "**unavailability of Lead Cabinet Member**"- where there is a reference to a Lead Cabinet Member and the relevant Lead Cabinet Member is not available, another Lead Cabinet Member may act.

1.18 "**the cost of a contract**" – for the purpose of calculating the thresholds under these Standing Orders, the cost of a contract is the estimated total value payable by the Council to the contractor over the term of the contract, including allowable extensions. In the case of indefinite contract periods, the term of the contract is assumed to be 4 years.

1.19 **interpretation** – any dispute or difference as to the interpretation of Contract Standing Orders shall be determined by the Assistant Director, Legal and Democratic Services.

2. CSO 2 (SO 67) Compliance with Contract Standing Orders

Compliance

2.1 Subject to Standing Order 2.2 below, Chief Officers **must** comply with these Contract Standing Orders every time they intend to enter into a contract on behalf of the Council. Chief Officers **must** also have regard to any related Codes of Practice including Procurement Codes as set out in supporting documents to these Contract Standing Orders.

Consortiums, framework agreements, joint commissioning and other government arrangements

2.2 Chief Officers, after consultation with the relevant Lead Cabinet Member, may, on behalf of the Council, enter into or participate in:

2.2.1 a national, regional, or local consortium;

2.2.2 a Government, Government agency, or local authority, framework agreement;

2.2.3 a joint commissioning arrangement with a local authority, or health agency;

2.2.4 a Government, Government agency, or local authority, dynamic purchasing system or electronic auction;

subject in all cases covered by Standing Order 2.2.1–2.2.4, to the Director of Corporate Resources, and the Assistant Director, Legal and Democratic Services, being satisfied that:

(a) the arrangements are properly set up or constituted;

(b) any necessary legal provisions and risk assessments have been complied with, and;

(c) the terms and conditions of such an arrangement are those most economically advantageous to the Council.

Exemptions

2.3 There shall be exempted from the provisions of these standing orders, but not from the requirement to seek best value:

2.3.1 any contract of employment;

2.3.2 any contract relating to the engagement of counsel or other legal specialists;

2.3.3 any contract relating to the transfer, acquisition or disposal of land;

2.3.4 any contract let by a consortium of which the County Council is a member;

2.3.5 any contract of insurance below the EU procurement regulations threshold;

2.3.6 any contract for the supply of goods, the provision of services, or the execution of works where the total estimated value is less than £1000;

2.3.7 any placement of a child or young person with special educational needs in an independent special school; and

2.3.8 any placement of a child or young person, who is vulnerable or has complex needs, in an independent residential home.

2.3A The requirements of Contract Standing Order 13(Contract Award) shall apply to Contract Standing Orders 2.3.3 to 2.3.8.

Waiver of Contract Standing Orders

2.4.1 Proposals to waive the requirement to comply with the provisions of one or more Contract Standing Orders may be approved by the Cabinet, or the relevant Lead Cabinet Member, or a Chief Officer, after consultation with the relevant Lead Cabinet Member, following consideration of a waiver report ('the Report'). The requirements for the Report are:

(a) the Report is compiled after consultation with the Director of Corporate Resources, and the Assistant Director, Legal and Democratic Services;

(b) the Report is issued setting out the Contract Standing Order(s) being waived;

(c) the Report includes legal and financial comments and highlights as necessary, any future commitment (whether of a financial character or not) which the contract may entail; and

(d) the Report justifies the method of selection of contractor so that value for money and compliance with EU procurement Regulations and domestic law can be demonstrated.

2.4.2 A copy of the Report shall be provided to the Director of Corporate Resources ,who shall maintain a register of all waivers.

Legislation

2.5 Where there is a difference between the two, national and/or European Union legislation governing contract procedures override these Contract Standing Orders and must be complied with.

Compliance

2.6 These Contract Standing Orders **must** be adopted by any external contractors empowered to form contracts on behalf of the Council, and by any person (who is not an officer of the Council) required to supervise, or manage a contract on the Council's behalf.

Aggregation and valuation

2.7 Contracts **must** not be artificially separated either in structure or duration so as to avoid any Contract Standing Orders applying, except where this is necessary to enable small, or medium sized enterprises to compete, subject to compliance with EU procurement regulations.

Supporting documents:

Code of conduct for Employees;

Financial Regulations;

Tendering & Contracting Codes;

Consultancy Code;

ESCC Purchasing Manual.

3. CSO 3 (SO 69 & 71) Public Notice and Shortlisting Persons invited to bid

3.1 The Council **must** ensure that, where proposed contracts irrespective of their estimated cost, might be of interest to potential candidates located in the member states of the European Union, a sufficiently accessible advertisement is published. Generally, the greater interest of the contract to potential bidders from other member states, the wider should be the coverage of the advertisement. Without prejudice to the above requirement, and subject to

Standing Order 3.3, the Council requires the following approach to the placing of advertisements:

a) the Council's website;

All tenders with an estimated cost exceeding £50,000 for goods and services, and £100,000 for works **must** be advertised on the Council's website using the Council's official electronic public notice service or such other service as approved for this purpose from time to time by the Director of Corporate Resources;

b) trade newspaper or journal;

If considered appropriate, tenders may be advertised in a relevant trade newspaper or journal likely to be read by persons undertaking such contracts

c) Local press

Periodically the Director of Corporate Resources shall place an advertisement in a local newspaper, containing or referring to information in respect of contracts which the Council is intending to tender. Other Chief Officers shall supply such information, and contribute a due proportion of the cost of such advertisement as approved by the Director of Corporate Resources.

d) Official Journal of the European Union

If required under the EU Procurement regulations public notice of tender **must** appear in the Official Journal of the European Union.

3.2 Tenders **must** normally be invited from all persons who have indicated a wish to tender. If it is not proposed to invite all to tender, the list of persons to be invited to tender shall be settled by the Chief Officer responsible for the contract, in consultation with the relevant Lead Cabinet Member.

3.3 Public notice is **not** required where:

a) a properly advertised Select List is in place;

b) in the opinion of the Chief Officer responsible for the contract in consultation with the relevant Lead Cabinet Member, the Director of Corporate Resources, and the Assistant Director, Legal and Democratic Services, the goods or services to be supplied or the execution of works are of a specialist nature, and only a limited number of suitable persons who can supply are available;

c) in the opinion of the Chief Officer in consultation with the relevant Lead Cabinet Member, the Director of Corporate Resources, and the Assistant

Director, Legal and Democratic Services, there is only one person who can properly supply the goods or services or execute the works;

d) goods, services or works are obtained from a consortium or framework agreement of which the Council is a member or to which it has access, approved in accordance with Contract Standing Order 2.2; or

f) in the opinion of the Chief Officer in consultation with the relevant Lead Cabinet Member, the Director of Corporate Resources, and the Assistant Director, Legal and Democratic Services, full tendering is inappropriate because of the developmental or trial nature of the goods, services or works to be provided.

Supporting document:

*Tendering & Contracting codes;
ESCC Purchasing manual.*

Section 2: Working within select lists

This section contains the rules for working within select lists. These include among others lists of approved contractors who carry out building and construction works. The section also indicates that use of framework agreements can be considered as an alternative to select lists.

4. CSO 4 (SO 70) Select Lists

4.1 Where the Chief Officer responsible for the contract in consultation with the relevant Lead Cabinet Member decides that a select list of approved contractors shall be maintained, at least four weeks before the list is compiled or reviewed notices inviting applications for inclusion on the list **must** be published in accordance with the requirements set out in Standing Order 3.1 (a) and (b) above. In addition, each person already included on any relevant list shall be asked whether they wish to remain on it.

4.2 Each list **must** be re-advertised at least every five years. Any necessary amendments including additions and deletions may be made in between where approved by the appropriate Chief Officer. The criteria for admission to and suspension and exclusion from each list, and the selection for work from the list, shall be specified in writing by the appropriate Chief Officer.

4.3 When the Council is entering into a contract for goods or for the execution of any works or the provision of any services in an area where a select list of approved contractors is maintained, the appropriate Chief Officer **must** send a written invitation to at least three persons from the list for that class of work to submit a tender. If less than three firms are invited to tender, then the

appropriate Chief Officer **must** keep a record of the reasons for this with the project file.

4.4 The Chief Officer responsible for the contract may after consultation with the relevant Lead Cabinet Member, subscribe to and use an external vetted electronic supplier database as an alternative to the Council maintaining its own select list, subject to protocols issued from time to time by the Assistant Director, Legal and Democratic Services.

4.5 In the case of a select list of residential care homes or nursing homes registered under the Care Standards Act 2000 and regulated by the National Care Standards Commission, the Director of Adult Social Care is not required to invite tenders provided that:

- a) ordinarily the payments to be made under the contracts for the provision of such services do not exceed the maximum weekly amounts for the different client groups/type of care as agreed from time to time by the relevant Lead Cabinet Member, including individuals or groups with specialist care needs;
- b) in entering into such contracts the Director of Adult Social Care shall so far as practicable having regard to client/carer wishes, locality, availability of places/services, spreading of business between registered providers, and such other factors that he may consider expedient, endeavour to contract with the registered provider providing such services at the lowest cost;
- c) where (i) the Director of Adult Social Care is reasonably satisfied that there is only one approved supplier of such services due to the specialist care required or (ii) there is more than one provider of such specialist care and quotations have been received from at least two of them, he may authorise a contract in excess of the maximum weekly amount set in accordance with Standing Order 4.5a).

4.6 In the case of a select list of approved providers of home (domiciliary) care services, the Director of Adult Social Care is not required to invite tenders in accordance with Standing Order 4.3, provided that:

- a) the payments to be made under the contracts for the provision of such services do not ordinarily exceed the maximum weekly amounts for the different client groups for residential care as agreed from time to time by the relevant Lead Cabinet Member;
- b) except where there is only one approved provider, the Director of Adult Social Care obtains quotations from at least two of the approved providers of such services and contracts with the approved provider providing the services required at the lowest cost;

c) where the Director of Adult Social Care is reasonably satisfied that there is only one Approved Provider of such services due to the specialist care required, he may authorise a contract in excess of the maximum weekly amounts set in accordance with Standing Order 4.6 (a) above, and without having to obtain quotations.

4.7 A Chief Officer responsible for a select list, may after consultation with the relevant Lead Cabinet Member, discontinue the use of a select list where best value to the Council can be demonstrated, and replace this, using an appropriate tender procedure, with a framework agreement.

Supporting document:

Tendering & Contracting Codes.

Section 3: Requirement to obtain tenders

This section sets out clearly the various financial thresholds above and below which competitive quotations or tenders are normally required, **whether it leads to a formal contract or a contract formed by placing a purchase order**. It sets different thresholds for works in recognition of the need for more flexibility in that area:

5. CSO 5 Contracts exceeding £1000 and not exceeding £5,000 (or £15,000 in the case of contracts for works) total value:

5.1 For contracts for works, goods, or services (including consultancy) with an estimated cost exceeding £1000, and not exceeding £5,000 (£15,000 for contracts for works), the appropriate Chief Officer **must** obtain a single written quotation (or more than one where practicable) or place an order with a contractor under a framework agreement or use a consortium, where such arrangements have been put in place by the Council. Where a select list exists the quotation must be obtained from an approved contractor on the select list.

6. CSO 6 Contracts exceeding £5,000 (£15,000 for contracts for works) and not exceeding £50,000 (£100,000 for contracts for works) total value:

6.1 In the case of contracts with an estimated cost greater than £5,000 (£15,000 for contracts for works) and not exceeding £50,000 (£100,000 in the case of contracts for works) the appropriate Chief Officer **must** obtain at least 3 written quotations, or place an order with a contractor under an approved framework agreement or use a contract set up by an approved Consortium, where such arrangements have been put in place by the Council. If 3 quotations cannot be obtained due to lack of suitable persons prepared to quote, the Chief Officer **must** keep a record of the reasons for this with the project file. Where a select list exists, the quotations must be obtained from approved contractors on the select list.

6.2 In seeking quotations a Chief Officer **must** have regard to any guidance issued by the Director of Corporate Resources.

6.3 Faxed or emailed quotations are acceptable for the purposes of CSOs 5 to 6 above.

7. CSO 7 Contracts exceeding £50,000 (£100,000 in the case of a contract for works) total value:

7.1 Contracts with an estimated value exceeding £50,000 (£100,000 in the case of a contract for works) **must** be let by competitive tender, using one of the procedures set out under CSO 8 below (save for the exemptions provided under CSO 3);

7.2 Where the estimated value of the Contract is in excess of the relevant EU threshold, the procedures under the EU procurement regulations **must** be followed;

7.3 The Council thresholds set out under Contract "CSOs" 5–7 above are reviewed annually by the Director of Corporate Resources who may vary them approximately in line with inflation.

Note From 1 January 2008, the EU threshold for supplies and services is £139,893 (excluding Part B services, and R&D, and certain telecom services and subsidised services) and for works is £3,497,313 (excluding subsidised works) [goods, services and works being as defined by the EU procurement regulations].

Supporting document for CSOs 5–7:

Competitive Process Thresholds;

Tendering & Contracting Codes;

External Consultancy Code;

Purchasing Manual;

EU Procedures;

Formal quotation & tendering documents-Procurement Library.

Section 4: Procedures leading to award of Contracts

This section describes the choice of procurement procedures available. There is a choice of 4 tendering procedures- an open procedure, a restricted procedure, a negotiated procedure, and a competitive dialogue procedure

In addition, there are 3 specialist procedures that can be deployed in conjunction with one or more of the tendering procedures, as set out at 8.2.1 – 8.2.3 they are- framework agreements, dynamic purchasing systems, and electronic auctions. This section advises on how to decide which procedure(s)

to use. It also sets out the procedure for delivery, opening and recording of tenders, and the choice of two methods for evaluation of bids.

8. CSO 8 Choice of Procurement Procedure

8.1 Tendering procedures

Contracts should be awarded by competitive tender using either the open procedure, or restricted procedure, save where use of the negotiated procedure or the competitive dialogue procedure is appropriate. The choice of tendering procedures is set out below:

8.1.1 Open Procedure

This may be used where there is no easily identifiable and stable marketplace. Public notice is required in accordance with Contract Standing Order 3, unless an exemption applies. Tenders are issued to all those expressing interest. Post-tender negotiation is only allowable as under Contract Standing Order 15.

8.1.2 Restricted Procedure

This may be used where there is an established marketplace and many competing companies. Public notice is required in accordance with Contract Standing Order 3, unless an exemption applies. A pre-qualification questionnaire is normally issued to all those expressing interest. An invitation to tender is issued to only those successful after pre-qualification. A minimum of 3 persons (5 in the case of a procurement subject to the EU procurement regulations) expressing interest **must** be invited to tender or if there are less than 3 suitable persons, the Chief Officer **must** keep a record of the reasons for this with the project file. Post-tender negotiation is only allowable as under Contract Standing Order 15.

8.1.3 Negotiated Procedure

This may be used in cases where the open or restricted procedures are not considered appropriate. The procedure is most likely to be used in cases where the requirement is difficult to fully specify, the requirement does not permit prior overall pricing, or where best value is likely to be achieved. In any of those circumstances, a Chief Officer may decide to use the negotiated procedure in consultation with the Lead Cabinet member, the Director of Corporate Resources, and the Assistant Director, Legal and Democratic Services, being satisfied that the process is appropriate. Public notice is required as under Contract Standing Order 3 unless an exemption applies. A pre-qualification questionnaire is normally issued to all those expressing interest. An invitation to negotiate is only issued to those successful after pre-qualification.

8.1.4 Competitive Dialogue Procedure

This may be used in cases where the open or restricted procedures are not considered appropriate, and the Council wishes to award a particularly complex contract. The Council may be aware of their broad needs but does not know in advance what is the best technical, legal, or financial solution for satisfying their needs. Competitive dialogue is a structured process of identifying one or more solutions to meet the Council's needs. It always involves a competitive tender, and the most economic advantageous award criteria must be used. A Chief Officer may decide to use the competitive dialogue procedure in consultation with the Lead Cabinet member, the Director of Corporate Resources, and the Assistant Director, Legal and Democratic Services, being satisfied that the process is appropriate. Public notice is required as under Contract Standing Order 3. A pre-qualification questionnaire is normally issued to all those expressing interest. An Invitation to Competitive Dialogue is only issued to those successful after pre-qualification.

8.2 Specialist procedures

Chief Officers may use these procedures as enhancements to the standard tendering procedures, where appropriate

8.2.1 Framework Agreements

Framework agreements are used in the case of repetitive purchases to choose suppliers who, when the time comes, will be able to meet the Council's needs. Framework agreements may be set up in conjunction with the open procedure, restricted procedure, negotiated procedure, or competitive dialogue procedure set out above.

8.2.2 Dynamic Purchasing System

Dynamic purchasing systems are intended to address commonly used purchases. They are a kind of electronic framework agreement, which bidders can join at any point during its lifetime. The open procedure must be used to establish the system up to the award of contracts. The system must be wholly electronic. Public notice is required as under Contract Standing Order 3.

8.2.3 Electronic Auctions

Electronic auctions may be used in conjunction with the open, restricted, negotiated, or competitive dialogue procedures, or the reopening of competition within a framework, or on the opening for competition of contracts to be awarded through a dynamic purchasing system

Supporting documents:

Contracting & Tendering Codes.

9. CSO 9 (SO 72 & 73) Delivery, opening and recording of tenders

9.1 Every invitation to tender **must** state:

a) that all tenders with a pre-tender valuation of over £50,000 (£100,000 in the case of a contract for works) will be delivered in a sealed, plain envelope addressed to the Assistant Director, Legal and Democratic Services, and bearing the words "Tender for " and the title of the contract, but without any name or mark indicating the sender or received electronically in a designated format; and

b) that the Council does not bind itself to accept the most economically advantageous tender or lowest cost tender, or indeed, any tender.

9.2 (a) Paper based tenders will remain unopened in the custody of the Assistant Director, Legal and Democratic Services, until the time appointed for their opening.

(b) Electronically received tenders will remain in their unique, secure electronic state until the time appointed for their opening.

9.3 All tenders will be opened together after the end of the time for tendering by one senior officer nominated by the Assistant Director, Legal and Democratic Services, and another officer. Such officers will be independent from the department tendering the contract.

9.4 All tenders received will be recorded. For electronic tenders a secure, auditable electronic record showing the identity of the persons opening the tender, and the date of opening shall be added to the tender file.

9.5 Any tenders received after the end of the time for tendering or which contravene any provision of these Contract Standing Orders or any applicable tendering conditions or instructions will only be opened with the authority of the Assistant Director, Legal and Democratic Services, after consultation with the relevant Lead Cabinet Member.

9.6 Any electronic tendering must conform with any protocols issued from time to time by the Director of Corporate Resources and the Assistant Director, Legal and Democratic Services.

9.7 Quotations and tenders with a pre-valuation of under £50,000 (£100,000 in the case of a contract for works) may be delivered to and opened by the Chief Officer responsible for the contract, two people being present.

9.8 Contracts Registers

9.8.1 The single electronic central register of contracts over £500 entered into by the Council will be kept by the Corporate Resources Department. The register shall include for each contract, such information as is required from time to time by the Director of Corporate Resources.

9.8.2 Each Chief Officer will ensure that the central register of contracts is kept up to date with all the required information relating to the contracts for which the Chief Officer is responsible.

Supporting documents:

Tendering & Contracting Codes

10. CSO 10 Evaluation

10.1 Where written quotations are invited for contracts valued below £50,000 (or £100,000 in the case of a contract for works), if there are no clear selection criteria in the documents used to invite tenders, then the bidder submitting the lowest price **must** be awarded any resulting contract.

10.2 For contracts valued over £50,000 (£100,000 in the case of contracts for works) and for all contracts governed by EU procurement regulations, a tender evaluation procedure based on the identification of the most economically advantageous tender ("MEAT") should be used, unless the Chief Officer responsible for the contract determines that a tender evaluation based on lowest cost is more appropriate.

Supporting documents:

Tendering & Contracting Codes.

Section 5: Requirements for contracts

This section covers acceptance of tenders, financial control of contracts and award of contracts. It also clarifies the position regarding use of essential contract conditions to lessen risk, post-tender negotiation when using the open or restricted procedure (see CSO 4), and the use of nominated sub-contractors or suppliers.

11. CSO 11 (SO 74) Acceptance of Tenders

11.1 Subject to the provisions of this Contract Standing Order, the relevant Chief Officer is empowered to accept the most economically advantageous tender, or the lowest cost tender, where such a contract award criterion is being used.

11.2 The Assistant Director, Legal and Democratic Services, will maintain a record of tenders accepted and amendments agreed by Chief Officers under the powers given to them by these Contract Standing Orders.

11.3 On being provided with details of errors of arithmetic discovered in his or her tender, a tenderer will be allowed, with the approval of the Assistant Director, Legal and Democratic Services, after the date fixed for receipt of tenders, and before acceptance of tenders only:

(a) to confirm without amendments or withdraw his or her offer before any tender for that contract is accepted; or

(b) to amend his or her offer in order to correct those errors.

Supporting documents:

Tendering & Contracting Codes.

12. CSO 12 (SO 74) Control of contracts

12.1 Capital budgets

In the case of contracts to be financed from capital, authority to accept a tender is subject to any necessary Government approvals and borrowing authorisations having been received and the relevant Chief Officer being satisfied that the tender is within the department's capital programme budget. Significant variations **must** be reported to the relevant Chief Officer. In the case of building works, before accepting the tender the Chief Officer **must** take appropriate professional advice in accordance with guidelines which may be laid down from time to time, including requirements to comply with corporate property requirements.

12.2 Revenue budgets

In the case of works or services or the supply of goods or materials to be financed from revenue, all contracts and agreements **must** be covered by an approved revenue budget at the date of award. When contracts have a duration of more than one financial year, Chief Officers must ensure that the costs stemming from such arrangements can be accommodated within the estimates for the current and future years.

12.3 Financial Company Appraisals

12.3.1 Prior to the letting of a contract above £50,000 (£100,000 in the case of contracts for works), Chief Officers **must** ensure that an adequate technical and financial appraisal of the supplier has been undertaken in consultation with the Director of Corporate Resources, except where a select list is in operation.

12.3.2 For contracts identified as business critical, Chief Officers must ensure that an adequate business continuity process is in place with relevant suppliers.

12.4 Extensions to Contracts

12.4.1 Extensions to the contract period of a contract, other than those already provided for within the original public notice, and the contract, may be approved, where best value to the Council has been demonstrated by the Chief Officer responsible for the contract, in consultation with the relevant Lead Cabinet Member, the Director of Corporate Resources, and the Assistant

Director, Legal and Democratic Services. This requirement applies to all contracts above £5000 (£15,000 in the case of contracts for works).

12.4.2 A Chief Officer may approve an assignment or novation of a contract to a new contractor subject to being satisfied as to the financial standing and the technical competence of the proposed new contractor, and after consulting with the Director of Corporate Resources and the Assistant Director, Legal and Democratic Services.

12.5 Performance Monitoring

Chief Officers responsible for relevant contracts **must** ensure that for all contracts over £50,000 (£100,000 for Works), appropriate management and performance monitoring mechanisms are in place.

Supporting document:

*Financial Regulations for control of contract;
Tendering & Contracting Codes.*

13. CSO 13 (SO 75) Contract Award

13.1 Every contract shall be in writing.

13.2 Every contract for more than £50,000 (£100,000 in the case of contracts for works) in value **must** be in a form approved by the Assistant Director, Legal and Democratic Services, and will either be:

- a) sealed with the common seal of the Council; or
- b) signed on behalf of the Council by the Assistant Director, Legal and Democratic Services, and another officer authorised in writing by him or two such officers authorised in writing by the Assistant Director, Legal and Democratic Services.

13.3 For contracts under £50,000 (£100,000 in the case of contracts for works) the relevant Chief Officers sign, or delegate authority to officers within their departments to do so.

13.4 Electronic signatures may be used in accordance with the Electronic Signatures Regulations 2002 provided that the sufficiency of the security arrangements have been approved by the Director of Corporate Resources, and the Assistant Director, Legal and Democratic Services

13.5 Before awarding a contract or concluding a framework agreement, which is subject to the EU procurement regulations and above the relevant threshold,

the Chief Officer shall consult with the Assistant Director, Legal and Democratic Services.

See note at end of CSO7 for relevant thresholds under EU procurement regulations

Supporting documents:

Formal contract documentation Procurement Library.

14. CSO 14 Risk management/Mandatory Contract Conditions

14.1 Each contract over £50,000 (£100,000 in the case of contracts for works) **must** contain mandatory contract conditions as specified by the Assistant Director, Legal and Democratic Services, unless exempted from doing so by that Assistant Director.

Supporting documents:

Standard/Mandatory Contract Conditions Procurement Library.

15. CSO 15 (SO 74) Post-tender Negotiation

15.1 Following receipt of tenders, the relevant Chief Officer may wish to clarify or negotiate with the preferred bidder, that is, the one submitting the most economically advantageous tender (or where applicable the lowest cost tender if that award criterion is being used), or in the case of a single tender, the only bidder. These clarifications or negotiations are to obtain improvements in terms of price, delivery or content and are subject to the following requirements:

- a) any such clarifications or negotiations **must** not alter the original specification except where the relevant Chief Officer considers that special circumstances exist that can be substantiated and recorded; and
- b) any such clarifications or negotiations after receipt of formal tenders and before the letting of a contract **must** have the authorisation of the appropriate Chief Officer and be undertaken in accordance with arrangements approved by the Assistant Director, Legal and Democratic Services, and Director of Corporate Resources. Amendments, once agreed, **must** be put in writing by the tenderer and shall be signed by the tenderer.

15.2 The provisions set out in 15.1 above will not apply where the use of the negotiated procedure under the EU procurement regulations, or the Council's Negotiated Procedure as set out under Contract Standing Order 8.1.3 have been approved.

Supporting documents:

Tendering & Contracting Code.

16. CSO 16 (SO 76) Nominated Sub-Contractors and Suppliers

16.1 This Contract Standing Order only applies where a sub-contractor or supplier is nominated to a main contractor.

16.2 Where the estimated cost of the sub-contract or of the goods or services to be supplied by the nominated supplier are £50,000 (£100,000 in the case of a contract for Works) or more, tenders will be invited unless the appropriate Chief Officer decides that it is not reasonably practicable to do so.

16.3 The Chief Officer **must** invite at least three tenders for the nomination. The terms of the invitation shall require an undertaking by the tenderer that if selected the sub-contractor, or supplier, will be willing to indemnify the main contractor against the sub-contractor's, or supplier's, own obligations under the main contract in relation to the work or goods or services included in the sub-contract.

16.4 The Chief Officer, or a duly authorised officer, **must** nominate to the main contractor the person whose tender or quotation is successful.