

**APPENDIX 2 - Amendments to and development of the Constitution**  
Report to Full Council

The following sections of the Contract Standing Orders have been amended:

Section:	Amendment/ Addition: (amendments are highlighted in orange)	
1.2	These Contract Standing Orders (CSOs) must also comply with the requirements of the <del>EU Procurement</del> <b>Public Contracts Regulations 2015 (PCR)</b> .	
1.5	The Executive Director of <del>Corporate Services Finance and Resources</del> is responsible for keeping these CSOs under review and they will be reviewed biannually as a minimum. If the <b>Public Contracts Regulations 2015 European Union (EU) Directives</b> or any other law is changed in a way that affects these CSOs then that change must be observed until the CSOs can be revised. If the CSOs appear to conflict with the <b>Public Contracts Regulations EU Procurement Regulations</b> or any other legislation, then the <b>Public Contracts EU Procurement Regulations</b> and/or the legislation takes precedence.	
1.11	The Public Services (Social Value) Act 2012 requires contracting authorities to consider at the pre-procurement stage of any service contract and service Framework Agreement (including goods and works contracts procured in combination with services) above <b>PCR EU</b> Thresholds:	
4.1.1	Purchases must be aggregated whenever possible. On no account should any requirement be split in an attempt to avoid using the proper procedure under these CSOs or <del>EU Procurement</del> <b>the Public Contracts Regulations</b> .	
4.2.1	(e) where required (in the case of an <b>EU PCR</b> threshold tender) does not fail and mandatory exclusion grounds	
7.1	High-value contracts –  £75,000 or above but below <b>EU PCR</b> threshold	
7.1	Above <b>EU PCR</b> threshold (thresholds effective from 1st January <del>2018</del> <b>20</b> ):  Works Contracts -  <b>£4,554,733,416,252</b>  Supplies Contracts -  <b>£1,849,302,300</b>  Services Contracts -  <b>£1,849,302,300</b>  Light Touch Contracts -  <b>£645,632,785,400</b>	compliance with <del>EU procurement directives</del> <b>the Public Contracts Regulations</b> . Guidance on the latest <b>EU PCR</b> thresholds can be sought from the Procurement and Contracts Team

9.	Title: 9. High value contracts – £75,000 and above, up to <del>EU</del> PCR thresholds		
10.1	Under the 'open' tender procedure where any bidder can submit a tender. This would normally be used for any <del>non-EU</del> below PCR threshold Procedure contracts.		
11.	Title: Above <del>EU</del> PCR tender threshold		
11.1	For tenders above the <del>EU</del> PCR Threshold, the following additional procedures are available:		
11.2	Use of the Competitive dialogue and Competitive Negotiation procedures should only be used where certain criteria (as prescribed by the <del>EU Procurement Public Contracts</del> Regulations) are met, including where the contract requirement is complex or cannot be purchased 'off the shelf'.		
16.1	The <del>EU Procurement Public Contracts</del> Regulations permit competition for certain contracts, mainly in the social and health sectors, to be 'reserved' to such organisations as mutual and social enterprises meeting certain limited criteria.		
17.	Title: Tendering under <del>EU Procurement the Public Contracts</del> Regulations		
17.1	Where a procurement process is being carried out for an <del>EU</del> above PCR Threshold Procedure contract the procedures set out in the <del>EU Procurement Public Contracts</del> Regulations as well as these CSOs must be followed.		
18.1	Table: Title should read <del>QJEU</del> Find a Tender Above <del>EU</del> PCR Threshold		
26.3	Contracts procured <del>under</del> through an <del>EU</del> above PCR Threshold Procedure must be awarded in accordance with the procedure set out in the <del>EU Procurement Public Contracts Regulations</del> . Guidance on this can be obtained from the Head of Law and Governance or the Procurement and Contracts Manager.		
26.6	Following completion of the tender evaluation process, all tenderers must be notified in writing of the results in accordance with the CPNs or the <del>EU Procurement Public</del> Contracts Regulations, as appropriate.		
28.2		=/ > £75,000 - £1,000,000	Executive Director of <del>Corporate Services Finance and Resources</del>
28.3	CSOs cannot be waived where the contract value is in excess of the relevant <del>PCR EU</del> threshold.		
28.9	The Council is subject to legal requirements to ensure fair competition for contracts of a value exceeding <del>EU</del> PCR thresholds and subject to obligations under <del>EU treaty</del> the UK-EU Trade and Co-Operation Agreement to ensure that all contracts are awarded having regard to the need to avoid any action that is discriminatory, improper or which distorts competition. It is therefore expected		

	that the waiver of CSOs will be limited.
Appendix 1 – Glossary	<p><del>EU Procurement</del> Public Contracts Regulations - Regulations which are given force in law in the UK through the Public Contracts Regulations 2015, as amended by the Public Procurement (Amendment etc.) (EU exit) Regulations 2020 and as amended and any successor regulations which specify in detail the procedures by which public authorities shall undertake their procurement.</p> <p><del>EU</del> PRC Threshold - The contract value at which the Public Contracts Regulations 2015, as amended by the public Procurement (Amendment etc.) (EU exit) Regulations 2020 <del>EU Regulations</del> must be applied. See Appendix 2.</p> <p>PCR - Public Contracts Regulations 2015, as amended by the Public Procurement (Amendment etc.) (EU exit) Regulations 2020.</p> <p><del>EU</del> Find a Tender (FTS) Notice - Notice (advertisement) posted in the UK e-notification service Find a Tender <a href="http://www.find-tender.service.gov.uk">www.find-tender.service.gov.uk</a> <u>Official Journal of the European Union</u> including a PIN, a Contract Notice or Award Notice.</p> <p>PIN - A F01 Prior Information Notice as published on Find a Tender. A PIN can be published before the procurement starts, when a requirement is above Public Contracts Regulations <del>EU</del> Thresholds and makes it possible to reduce the time needed to complete a competition.</p>
Appendix 2 – Variable Information	<p>Public Contracts Regulation-<del>EU</del> Thresholds</p> <p>From 1st January 204820 the relevant <del>EU</del> Thresholds are:</p> <ul style="list-style-type: none"> <li>• Works £4,554733,416252</li> <li>• Light Touch £64563,278540</li> <li>• Supplies and Services £1849,30230</li> </ul> <p>Advertising Websites - All procurements valued between £75,000 and the relevant <del>EU</del> Public Contracts Regulations Threshold must be advertised on <a href="https://sebp.due-north.com/">https://sebp.due-north.com/</a> and Contract Finder. All procurement valued above the relevant Public Contracts Regulations Threshold must also be advertised on Find a Tender. To place a contact notice, contact the Contracts and Procurement Manager.</p> <p>Details of all awarded contracts above £25,000 should be published on Contracts Finder. This includes those awarded following call offs from framework agreements and contracts that may not have been openly advertised.</p> <p>Details of all awarded contracts above the relevant Public Contracts Regulations Threshold must be published on both Find a Tender and Contracts Finder.</p>

Below is a clean copy of the amended Contract Standing Orders:

## **RULES OF PROCEDURE**

### **CONTRACT STANDING ORDERS**

#### **1. Introduction**

**1.1** Under Section 135 of the Local Government Act 1972 the Council must make standing orders with respect to contracts for the supply of goods or services or for the execution of works which provide for:

(a) securing competition; and

(b) regulating the manner in which tenders are invited.

**1.2** These Contract Standing Orders (CSOs) must also comply with the requirements of the Public Contracts Regulations 2015 (PCR).

**1.3** These CSOs form part of the Council's Constitution. Compliance by all staff is therefore mandatory and contravention is a serious matter which could lead to disciplinary action.

These CSOs set out the administrative procedure that must be followed in seeking quotations or tenders and letting contracts for the supply of services, goods and the executive of works.

#### **Purpose**

**1.4** These CSOs have three main purposes:

a) to ensure that the Council obtains best value in the way it spends money, so that in turn it may offer best value services to the public;

b) to comply with the laws that govern the spending of public money; and

c) to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all bidders.

**1.5** The Executive Director of Corporate Services is responsible for keeping these CSOs under review and they will be reviewed biannually as a minimum. If the Public Contracts Regulations 2015 or any other law is changed in a way that affects these CSOs then that change must be observed until the CSOs can be revised. If the CSOs appear to conflict with the Public Contracts Regulations or any other legislation then the Public Contracts Regulations and/or the legislation takes precedence.

## **Governance**

- 1.6** These CSOs should be read in conjunction with the Contract Procedure Notes (CPNs) to explain how the CSOs will be implemented. Guidance concerning the application of CSOs/CPNs should be sought from the Procurement and Contracts Manager.
- 1.7** These CSOs apply to all contracts for the supply of services, goods and works entered into by the Council, with some exceptions (see CSO paragraph 27).
- 1.8** Any contract let by the Council must also comply with the Financial Regulations.
- 1.9** Where any Agents or Consultants are acting on behalf of the Council in connection with the letting of a contract, the Officer must ensure that the Agent or Consultant agrees in writing to comply with these CSOs.
- 1.10** When carrying out a procurement process, the following shall be taken into account:
- (a) [The Council's Procurement and Contract Management Strategy](#)
  - (b) public sector equalities duty;
  - (c) safeguarding;
  - (d) duty of best value;
  - (e) health and safety;
  - (f) other relevant policies

## **Social Value**

- 1.11** The Public Services (Social Value) Act 2012 requires contracting authorities to consider at the pre-procurement stage of any service contract and service Framework Agreement (including goods and works contracts procured in combination with services) above PCR Thresholds:
- a) how the proposed procurement may improve the economic, social and environmental wellbeing of an area;
  - b) how the contracting authority may act with a view to securing that improvement in conducting the process of procurement; and
  - c) whether to undertake any community consultation on the above.

Appropriate records should be kept of these considerations, including the reason for any decision regarding the matter of community consultation.

## **2. Collaboration**

- 2.1** There may be demonstrable benefits of collaborative procurement with the wider public sector, as well as (where permitted) the private and voluntary sectors, and the Council should consider taking advantage of these where appropriate and including the opportunity for others to join in Contracts that it is procuring.

## **3. Pre-contract and Budget Approval**

- 3.1** Before starting a procurement process the relevant delegated authority or approval must be in place, according to whether the cost of the contract is being met from a revenue or capital budget.

### **3.2 Revenue Budget**

The Budget Holder may approve the procurement of any contract for the supply of services, goods or works that will incur any revenue expenditure contained within an approved budget in accordance with these CSOs.

### **3.3 Capital Budget**

For any contract that will incur capital expenditure from an approved budget, the Head of Service shall submit a report to, and obtain approval from, the relevant Portfolio Holder/Cabinet, as appropriate, prior to proceeding with the procurement process in accordance with these CSOs. In most cases, the Portfolio Holder will have authority to incur expenditure.

For the purpose of seeking approval to incur expenditure, the following should be considered:

- identify the need for continuation, change or improvement in service delivery or provision of the proposed goods or works;
- ensure that sufficient budget is available for provision of the services or supply of the goods or works;
- what procurement method is legally required and most likely to achieve the purchasing objectives and select the most appropriate method;
- identify required and legally permitted duration of contract;
- use a formal evidence based analysis to consider the options for delivery; and
- evaluate those options and identify a preferred option.

**3.4** In addition, where the procurement is a 'Key Decision', all appropriate steps must be taken have been taken in accordance with the Constitution.

### **Preliminary Market Consultation**

**3.5** Before commencing a procurement process, it may be beneficial to conduct market consultations in order to:

- establish the supply market and/or market interest;
- gauge whether the proposed procurement will be affordable;
- determine the most appropriate procurement process;
- assist with the development of documentation; and
- inform potential bidders of the nature of the procurement.

**3.6** In the event of a procurement process proceeding following Preliminary Market Consultation, the Bidders who anticipated will be notified of the opportunity.

## **4. Rules for all contracts**

### **4.1 Aggregation**

4.1.1 Purchases must be aggregated whenever possible. On no account should any requirement be split in an attempt to avoid using the proper procedure under these CSOs or the Public Contracts Regulations.

4.1.2 Detailed guidance on aggregation is provided in the CPNs.

### **4.2 Bidder quality**

4.2.1 For all contracts regardless of value, a bidder must be selected who:

- (a) can confirm a business contact address and telephone number;
- (b) has an acceptable level of Public Liability insurance and Employers liability insurance, (and, where appropriate, other necessary insurances);
- (c) can demonstrate a level of expertise and experience appropriate to the services, goods or works required;
- (d) is registered for tax and holds a valid certificate (where appropriate); and
- (e) where required (in the case of an PCR threshold tender) does not

fail and mandatory exclusion grounds

- 4.2.2 For contracts with an estimated value of £75,000 or above a contractor must, where required, be selected who can evidence sufficient financial stability.
- 4.2.3 Guidance on how to undertake a basic assessment of insurance requirements is provided in the CPNs.
- 4.2.4 Guidance on the information that bidders need to supply regarding tax certificates is available from the Exchequer Services Team.

#### **4.3 Contents of orders and contracts**

- 4.3.1 Every order and contract must clearly and carefully specify the services, goods or works to be supplied, the agreed programme for delivery, including certain duration of the contract, and the price and terms for payment together with all other terms and conditions that are agreed.

#### **4.4 Purchase Order**

- 4.4.1 For the purchase of services, goods or works estimated at a value of less than £75,000, the Head of Service/Business Unit Manager should normally consider using a Purchase Order only without the need for conditions of contract.
- 4.4.2 For contracts below £75,000 which have some level of complexity, it may be appropriate to use conditions of contract in addition to a Purchase Order in order to safeguard the Council's legal position. In such cases, the Head of Service/Business Unit Manager should consult the Head of Law and Governance (Shared Legal Services) in accordance with CSO 4.5

#### **4.5 Conditions of Contract**

- 4.5.1 Where a contract is estimated at a value of £75,000 or above and/or for any contract of an unusual or complex nature or be for the appointment of consultancy services, the Head of Law and Governance (Shared Legal Services) should be consulted to produce and/or approve a suitable set of conditions of contract.
- 4.5.2 Every contract must be made in writing, under English Law and, unless under seal, must be signed by a person authorised to do so under the scheme of delegation.
- 4.5.3 Every contract must also include certain clauses to protect the

Council's legal position, e.g., prevention from fraud, freedom of information, data protection, equalities, compliance with statutory obligations and to ensure that contractors are fully aware of the Council's responsibilities when acting on its behalf.

- 4.5.4 Purchase Orders must be raised for all payments (in line with Financial Regulations).

## 5. Award Criteria

**5.1** Award criteria appropriate to the procurement must be defined and included in the invitation to submit a quotation/tender documentation. It must be designed to secure an outcome giving best value for money for the Council. The basic criteria shall be:

- a) "Most economically advantageous" offer (where the Council needs to ensure that an appropriate and/or minimum level of expertise/quality is provided.

This will usually (but not exclusively) apply to High-value contracts of / exceeding £75,000, i.e. where use of a Framework Agreement or a tender exercise is required.

- b) "Lowest price" offer (where price is the key consideration).

This will usually (but not exclusively) apply to Low-value contracts below £75,000, i.e. where a single or three quotations are required and the contract is made via a Council purchase order.

- c) "Highest price" if payment is to be received by the Council.

As a general guidance where 'most economically advantageous' criteria is used the split between cost and quality should be on a 60/40% respective split. Advice should be sought from the Procurement and Contracts Manager on this issue but any deviation from this split i.e. if the cost percentage is to be lower, must be approved by the appropriate Head of Service.

## 6. Framework Agreements

**6.1** Frameworks are normally used where it would be useful to have a pool of pre-selected bidder to draw from, as the bidder quality assessment procedure has already taken place.

**6.2** A Framework Agreement is an agreement with one or more bidders that sets out the terms and conditions under which specific purchases can be made (or 'called off') throughout the term of the agreement.

- 6.3 Framework Agreements may be established by the Council, or by other public bodies or public sector buying consortia as arrangements through which the Council, along with other public bodies, may make specific purchases. The CSO's contain procedures for the establishment of such agreements.
- 6.4 The use of a Framework Agreement should be considered prior to commencing any procurement process (see CSO's 8 And 9).
- 6.5 Where available, the Head of Service/Business Unit Manager should use a Framework Agreement for High-value contracts (see CSO 9) in preference to carrying out a full tender process, as such agreements can provide cost and time saving benefits. A Framework Agreement may also be used for Low-value contracts (see CSO 3) if considered that it will produce Best Value.
- 6.6 Advice should be sought from the Procurement and Contracts Manager on whether it is appropriate to use a Framework Agreement and, if so, how it should be accessed or put in place.
- 6.7 Where a suitable Framework Agreement is available, the Head of Service/Business Unit Manager shall use it in accordance with the CPNs.

## 7. Thresholds

- 7.1 Thresholds are set for contracts with different values:

Threshold	Tender Requirement
<b>Low-value contracts –</b> (Band 1)  below £10,000	obtain single verbal or written quotation, or use suitable framework agreement
<b>Medium-value contracts –</b> (Band 2)  over Band 1 but below £75,000	obtain three written quotations, or use suitable framework agreement
<b>High-value contracts –</b>  £75,000 or above but below PCR threshold	use suitable framework or full tender (consider using in that order) with at least four tenders invited (or as provided by framework rules)

<p><b>Above PCR threshold</b> (thresholds effective from 1<sup>st</sup> January 2020):</p> <p>Works Contracts - £4,733,252</p> <p>Supplies Contracts - £189,330</p> <p>Services Contracts - £189,330</p> <p>Light Touch Contracts - £663,540</p>	<p>compliance with the Public Contracts Regulations. Guidance on the latest PCR thresholds can be sought from the Procurement and Contracts Team</p>
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**7.2** For Low-value contracts below £10,000 where lowest price is not the most appropriate Award Criteria the procedure for Medium-value contracts between £10,000 up to £75,000 should be followed.

**7.3** The CPNs contain detailed guidance on obtaining quotations.

**7.4** The estimated value of a contract shall be the total sum estimated to be payable over the full term of the contract (including any option to extend the contract beyond the initial term) by the Council to the bidder. Where the contract period is indefinite or uncertain, the estimated value shall be calculated on the basis that the contract period will be for four years.

## **8. Low and Medium – value contracts – up to £75,000**

**8.1** For contracts of valued £0 to £10,000 (Band 1), verbal or written quotations are Acceptable with a note being kept if they are verbal.

**8.2** For contracts valued at £10,000 – up to £75,000 (Band 2) a minimum of 3 written quotations only must be requested. A detailed brief/specification should be issued as required.

**8.3** Alternatively, a suitable Framework Agreement may be used (see CSO 6.3).

**8.4** Purchase Orders shall be raised for all low-value contracts in accordance with CSO 4.4.

- 8.5 Detailed guidance on obtaining quotations is provided in the CPNs.
- 8.6 Any contracts over £25,000 must be notified to the Procurement and Contracts Team, preferably via the Procurement Notification Form, for inclusion on the Contracts Finder Portal.

## **9. High value contracts – £75,000 and above, up to PCR thresholds**

- 9.1 The Procurement and Contracts Manager must be notified of the commencement of all new tender exercises and actively involved with the procurement process.
- 9.2 To ensure a successful procurement and proper on-going management of the contract, a Procurement Start-Up Document and associated risk assessment matrix should be completed.
- 9.3 Where a suitable Framework Agreement is available, it should be used in preference to tendering.
- 9.4 Where no suitable Framework Agreement is available, tenders shall be invited, using the 'open' procedure.

## **10. Open procedure**

- 10.1 Under the 'open' tender procedure where any bidder can submit a tender. This would normally be used for any below PCR threshold Procedure contracts.
- 10.2 The open procedure requires a contract notice to be placed and any bidder who expresses an interest may submit a tender. However it is permitted to include "suitability" questions in the tender documents.

## **11. Above PCR tender threshold**

- 11.1 For tenders above the PCR Threshold, the following additional procedures are available:
  - a) Restricted
  - b) Competitive Dialogue
  - c) Competitive with Negotiation
  - d) Innovation Partnership
- 11.2 Use of the Competitive dialogue and Competitive Negotiation procedures should only be used where certain criteria (as prescribed by the Public Contracts Regulations) are met, including where the contract requirement is complex or cannot be purchased 'off the shelf'.

**11.3** Before adopting any of the above procedures, approval must be obtained from the Head of Law and Governance.

## **12. Restricted procedure**

**12.1** Under the 'restricted' procedure a number of bidders are selected from those who express an interest in response to a contract (see CSO 17.1). It is similar to the open procedure, except that:

- a) The contract notice shall state that a restricted tendering procedure will be used;
- b) The notice/contract should specify that information is to be provided by interested parties for the short listing process, either by specifying the information required in the public notice/advert or by their completion and return of a standard selection questionnaire.
- c) At the end of the period specified in the public notice, an invitation to tender shall be issued to tenderers selected by means of predetermined and objective selection criteria.

**12.2** Guidance should be sought from the Procurement and Contracts Team on this process.

## **13. Competitive with Negotiation Procedure**

**13.1** Under this procedure a selection is made from those bidders who respond to a contract notice and only they are invited to submit an initial tender for the contract requirement. The Council may then open negotiations with the tenderers in order to seek improved offers.

## **14. Competitive Dialogue Procedure**

**14.1** Under this procedure a selection is made from those bidders who respond to a contract notice and the Council enters into dialogue with potential bidders, to develop one or more suitable solutions for its contract requirements and on which chosen bidders are then invited to tender.

## **15. Innovation Partnership Procedure**

**15.1** Under this procedure a selection is made from those bidders who respond to a contract notice. The Council may then use a negotiated approach to invite bidders to submit ideas to develop innovative works, supplies or services aimed at meeting a need for which there is no suitable existing 'product' available from the market. The Council would be allowed to award partnerships to more than one 'partner'.

## 16. Reserved Contracts for Mutuals

**16.1** The Public Contracts Regulations permit competition for certain contracts, mainly in the social and health sectors, to be 'reserved' to such organisations as mutual and social enterprises meeting certain limited criteria. The 'Light Touch' procedure would be used and tenders would only be allowed from organisations meeting the mutual and social enterprise criteria. Any contract awarded under this procedure would be limited to a term of 3 years and could not be limited to a term of 3 years and could not be awarded to an organization who had been awarded a previous contract for the services concerned by the Council within the previous 3 years.

**16.2** Use of this procedure would require the prior approval of the relevant Portfolio Holder and/or Cabinet.

## 17. Tendering under the Public Contracts Regulations

**17.1** Where a procurement process is being carried out for an above PCR Threshold Procedure contract the procedures set out in the Public Contracts Regulations as well as these CSOs must be followed.

## 18. Contract Notice

**18.1** The requirement for advertising opportunities is summarised in the table below:

Total Contract Value	South East Business Portal (SEBP)	Publication / Trade Journal	Find a Tender	Contracts Finder
< £75,000	Optional	Optional	Optional	Optional
=/ > £75,000	Mandatory	Optional	Optional	Mandatory
Above PCR Threshold	Mandatory	Optional	Mandatory	Mandatory

**18.2** An advert should always be placed on the South East Business Portal (<https://sebp.due-north.com/>) and Contracts Finder. Other media may be considered as appropriate.

## **19. Bidder Suitability**

- 19.1** The initial suitability of Bidders shall be assessed by way of self-declarations of preliminary evidence in accordance with the EU Procurement Regulations (Regulation 59 (1)).
- 19.2** A bidder who is considered for contract award will be required to provide certificates and supporting documents.

## **20. Tender Submissions**

- 20.1** Bidders should ordinarily be allowed not less than 4 weeks for the return of tenders. This can be amended accordingly to reflect the complexity of the procurement or where it is an above PCR Threshold procedure and the period is set by agreement with the bidders.
- 20.2** Where using a Framework Agreement, this may provide for carrying out a mini-tender exercise. In such cases, the rules of the Framework Agreement will govern the process where there is any conflict with these CSOs or and/the CPNs.

## **21. Tender evaluation**

- 21.1** For contracts which are to be evaluated using the “most economically advantageous” criteria, the evaluation is to be carried out by a minimum of two appropriate officers nominated by the relevant Head of Service/Business Unit Manager. A moderation meeting will be facilitated by a member of the Procurement and Contracts Team who will support the process and facilitate a moderation meeting to agree the scores in each area.
- 21.2 Tenders must be scored objectively by using criteria which must:**
- a) be predetermined to meet the objectives of the services, goods or works required in the order of importance;
  - b) include all sub-criteria;
  - c) be ranked/weighted by relative importance;
  - d) be capable of objective assessment;
  - e) not be biased towards a particular supplier;
  - f) be strictly observed at all times during the tender process; and
  - g) set out in the invitation to tender documentation.

- 21.3** Councillors shall not participate in the tender evaluation procedure but may in appropriate cases be invited to attend any presentations given by tenderers and to review submission documents. Any such Councillor participation shall be on the basis that Councillors shall treat all information as commercially sensitive and confidential.
- 21.4** If the “most economically advantageous” criteria is adopted (for Medium-value contracts over £10,000 but, in appropriate cases, also for Low-value contracts below £10,000), it must be further defined by reference to any sub-criteria considerations relevant to the subject matter, and these may include:
- (a) quality;
  - (b) price (including whole life cost);
  - (c) technical merit;
  - (d) aesthetic and functional characteristics;
  - (e) environmental characteristics;
  - (f) running costs;
  - (g) cost effectiveness;
  - (h) after sales service;
  - (i) technical assistance; and
  - (j) delivery date/delivery period/period of completion.
- 21.5** Non-commercial considerations must not be included in evaluation criterion.
- 21.6** Where appropriate, Award Criteria should enable consideration of whole life costs.
- 21.7** It is recommended that further guidance on Award Criteria and scoring tenders is obtained from the Procurement and Contracts Team.
- 21.8** Where this evaluation methodology is used, any resulting contract must be awarded to the tenderer who submits the most economically advantageous tender, i.e. the tender that achieves the highest score in the objective assessment

## **22. Business Continuity**

- 22.1** Critical contracts i.e. those linked to the critical activities identified in each Business Units impact assessment and any contract that could have a major impact on delivery if the bidder awarded the contract was unable to operate / provide their service for a period of time, should be identified at the beginning of the tender process. This should also include instances where there is only one company that is able to supply a service to the Council.

- 22.2** For further advice please contact the Procurement and Contracts Manager.
- 22.3** To minimise the risk of disruption in the delivery of such contracts, business continuity plans should be requested from tenderers and this should form part of the tender evaluation.

### **23. Sharing or Delegation of Services**

- 23.1** Where there is an opportunity to deliver services via a shared working or delegation of service arrangement with another public sector organisation, the requirement to seek quotations/tenders in accordance with these CSOs may not apply.
- 23.2** The advice of the Head of Law and Governance shall be obtained on any proposal to ensure that its implementation will be in accordance with appropriate legislative powers.
- 23.3** All proposals for the sharing or delegation of services shall be subject to Portfolio Holder/Cabinet approval (as appropriate).

### **24. Electronic procurement**

- 24.1** All procurements of £75,000 or over (High-value contracts), must be conducted through the Council's e-procurement system to make sure the procurement process is as efficient as possible. Any exceptions to this position must be approved in advance by the Procurement and Contracts Team. Use of the e-tendering system should be carried out with the support of the Procurement and Contracts Manager.
- 24.2** E-procurement is recommended for Band 2 contracts for an efficient, transparent process but is not mandatory.
- 24.3** In the event of a fault or failure with the e-tendering procurement system, paper tenders may be received in accordance with guidelines given by the Procurement and Contracts Team. If appropriate, the time and date for receipt of tenders may, with the approval of the Procurement and Contracts Team, be extended to allow sufficient time for paper tenders to be received.

### **25. Electronic Tenders (E-Tendering)**

- 25.1** For all tenders received via the e-tendering system the 'locked box' must be opened in the presence of two officers from the Exchequer Services Team who are not involved in managing the project. Details of the opened tenders, including title/reference number of tenders, name of tenderers and prices, must be recorded against a list of tenders invited.

**25.2** Tenders received after the latest time and date may, in exceptional circumstances, be considered at the discretion of the Head of Financial Services provided that the other tenders have not been opened.

## **26. Awarding contracts**

**26.1** The results of the tender evaluation process must be recorded.

**26.2** A contract may only be awarded and signed by an officer authorised to do so under the scheme of delegation in the Constitution, or by the Head of Law and Governance subject to them having produced and/or approved a suitable set of contract conditions (see CSO 4.5).

**26.3** Contracts procured through an above PCR Threshold Procedure must be awarded in accordance with the procedure set out in the Public Contracts Regulations. Guidance on this can be obtained from the Head of Law and Governance or the Procurement and Contracts Manager.

**26.4** Once a contract has been awarded the Procurement and Contracts Team must be notified by e-mail of the following so that the Corporate Contract Register can be updated:

- (a) Contract Title;
- (b) Supplier Name;
- (c) Contract term including details of any provisions for extension;
- (d) Contract Start Date;
- (e) Total contract value; and
- (f) Name of Contract Manager.

and within one month of the contract being signed, a copy of the signed contract (with all appendices, plans, schedules etc) must be deposited with the Procurement and Contracts manager.

**26.5** If an existing Framework Agreement is utilised the Procurement and Contracts Team must be notified of the following so that a record can be held:

- (a) Framework title and Reference Number (if applicable);
- (b) Lead buying organisations name;
- (c) Supplier Name;
- (d) Details of services / supplies purchased; and
- (e) Value of services / supplies purchased.

**26.6** Following completion of the tender evaluation process, all tenderers must be notified in writing of the results in accordance with the CPNs or the Public Contracts Regulations, as appropriate.

## **27. Managing contracts**

**27.1** For each high-value contract, i.e. £75,000 and above, the Head of Service/Business Unit Manager must designate an appropriate lead officer as primary contact and Contract Manager.

**27.2** For particularly large and/or strategically important contracts, the Head of Service/Business Unit Manager should consider the appointment of a dedicated project manager, who should be supported by other professional disciplines, prior to the award of the contract.

## **28. Exceptions to CSOs**

**28.1** The requirements of these CSOs may be waived in exceptional circumstances where it can be demonstrated that:

- a) there is an urgent requirement to secure the provision of works, services or supplies and it is not practical to seek competitive quotations or tenders;
- b) by applying the CSOs, it would not be possible to obtain genuine competition;
- c) the works, services or supplies required are of a specialist nature, such that competitive prices cannot be obtained;
- d) professional services, such as Counsel, are required urgently;
- e) by extending the term (either by exercising an option within the contract or otherwise), or varying and/or extending the scope an existing contract, it is in the best interests of the Council;
- f) by appointing a bidder to carry out further work in connection with a main project following provision by such contractor of feasibility or initial work, it would be advantageous to the successful delivery of the main project;
- g) by applying the CSOs, it would not be possible to satisfy the best interests of the Council in terms of delivering social, economic or well-being benefits; or
- h) The works, services or supplies are legally required to be provided by a specific supplier.

**28.2** Approval shall only be given by the following persons:

<b>Contract value (or additional contract value where approval is being sought pursuant to paragraphs 28.1 (e) and (f))</b>	<b>Authorised person</b>
< £75,000	Executive Director/Head of Service within whose area of responsibility the contract falls
= / > £75,000 - £1,000,000	Executive Director of Corporate Services
> £1,000,000	Cabinet

**28.3** CSOs cannot be waived where the contract value is in excess of the relevant PCR threshold.

**28.4** A waiver of CSOs may not be sought retrospectively, unless it can be demonstrated to be essential for reasons of business continuity or recovery.

**28.5** A request to waive CSOs must be made in writing (using the Exception Form) to the Procurement and Contracts Manager in the first instance, who will then seek approval from the person authorised under CSO 31.2. The request must be accompanied by full reasons as to why the waiver is required, together with evidence and supporting information to demonstrate that the issue of the waiver will not prevent best value being obtained.

**28.6** Any decision to waive CSOs must be made in writing by the person authorised under CSO 31.2 and no action shall be taken to enter into the contract until such time as a request has been submitted and properly approved.

**28.7** If any approval to waive these CSOs falls within the key decision criteria then that procedure must be also be followed.

**28.8** The Procurement and Contracts Manager shall maintain a record of all approvals to waive these CSOs.

**28.9** The Council is subject to legal requirements to ensure fair competition for contracts of a value exceeding PCR thresholds and subject to obligations under the UK-EU Trade and Co-Operation Agreement to ensure that all contracts are awarded having regard to the need to avoid any action that is discriminatory, improper or which distorts competition. It is therefore expected that the waiver of CSOs will be limited.

## **29. Disclosure**

**29.1** As part of the Council's commitment to be open and transparent with its residents, a list of all payments over £500 made to suppliers and contractors will be published on the Council website at: <https://www.basingstoke.gov.uk/righttoknow>. In addition, disclosure of expenditure details may be required under the Freedom of Information Act.

## APPENDIX 1 - Glossary of Terms

Agent	Any person or organisation acting on behalf of the Council or on behalf of another organisation.
Authority	As detailed in the Constitution
Award Criteria	The criteria stated in the Quotation/Tender by which the successful bidder is to be selected.
Business Unit Manager	The Business Unit Manager responsible for the budget from which the cost of the services, goods or works being procured will be met.
Bidder	Any person/organisation who asks for or is invited to submit a Quotation/Tender.
Constitution	The Basingstoke and Deane Borough Council Constitution which sets out how the Council operations, how decisions are made and the procedures that are followed to ensure these are efficient, transparent and accessible to local people.
Contract	A contract led by the Council.
Contracts Finder	Government provided public sector procurement portal <a href="http://www.gov.uk/contracts-finder">www.gov.uk/contracts-finder</a> .
Council	Basingstoke and Deane Borough Council.
CPNs	Contract Procedure Notes.
CSOs	Contract Standing Order.
Public Contracts Regulations	Regulations which are given force in law in the UK through the Public Contracts Regulations 2015, as amended by the Public Procurement (Amendment etc.) (EU exit) Regulations 2020 and as amended and any successor regulations which specify in detail the procedures by which public authorities shall undertake their procurement.
PRC Threshold	The contract value at which the Public Contracts Regulations 2015, as amended by the public Procurement (Amendment etc.) (EU exit) Regulations 2020 must be applied. See Appendix 2.
PCR	Public Contracts Regulations 2015, as amended by the Public Procurement (Amendment etc.) (EU exit) Regulations 2020.

Executive Director	The Council Officer primarily responsible for the Directorates which make up Basingstoke and Deane Borough Council.
Exception	Approval given by an authorised person for CSOs to be waived in exceptional circumstances.
Exception Form	The form that must be used when seeking approval of an Exception to CSOs.
Financial Regulations	The Financial Regulations outlining the Officer's responsibilities for financial matters as detailed in the Constitution.
Framework Agreement	A formal tendered arrangement which sets out terms and conditions under which specific purchases can be made from the successful Bidder in unpredicted quantities at different times during the term of the Framework Agreement.
Head of Service	The Council Officer primarily responsible for the Service Areas which made up the Directorates of Basingstoke and Deane Borough Council.
Light Touch Regime	Refers to those social and other specific services covered by Part 2, Chapter 3, Section 7 of the Public Contract Regulations 2015.
Most Economically Advantageous Tender	The most economically advantageous tender (MEAT) takes account of criteria that reflects qualitative, technical and sustainable aspects of the tender submission as well as price when reaching an award decision.
Non Commercial Considerations	<p>The following matters are non-commercial considerations:</p> <ul style="list-style-type: none"> <li>a) The terms and conditions of employment by bidders of their workers or the composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces ('workforce matters').</li> <li>b) Where the terms on which bidders contract with their subcontractors constitute, in the case of contracts with individuals, contracts for the provision by them as self-employed persons of their services only.</li> <li>c) Any involvement of the business activities or</li> </ul>

	<p>interests of bidders with irrelevant fields of Government Policy.</p> <p>d) The conduct of bidders or workers in industrial disputes between them or any involvement of the business activities of bidders in industrial disputes between other persons (“industrial disputes”).</p> <p>e) The country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, bidders.</p> <p>f) Any political, industrial or sectarian affiliations or interests of bidders or their directors, partners or employees.</p> <p>g) Financial support or lack of financial support by bidders for any institution to or from which the Council gives or withholds support.</p> <p>h) The use or non-use by bidders of technical or professional services provided by the Council under the Building Act 1984.</p> <p>i) Workforce matters and industrial disputes, as defined above cease to be non-commercial considerations to the extent necessary or expedient to demonstrate value for money or where there is a transfer of staff to which TUPE applies.</p>
Find a Tender (FTS) Notice	Notice (advertisement) posted on the UK e-notification service Find a Tender <a href="http://www.find-tender.service.gov.uk">www.find-tender.service.gov.uk</a> including a PIN, a Contract Notice or Award Notice.
PIN	A F01 Prior Information Notice as published on Find a Tender. A PIN can be published before the procurement starts, when a requirement is above Public Contracts Regulations Thresholds, and makes it possible to reduce the time needed to complete a competition.
Procurement Start-up Document	The Procurement Start-up Document that must be completed for all procurements valued at £75,000 or above.
Quotation	A quotation of price and any other relevant matter.
Service Contracts	Contracts let by public authorities for services as defined in the Treaty of Rome which is for anything

	other than civil engineering and building works and works concession contracts.
Short-listing	Where Bidders are selected to tender under the Restricted procedure.
Tender	A Bidder's proposal submitted in response to an invitation.

## **APPENDIX 2 - Variable Information**

The following information is subject to change during the currency of these CSOs and shall be updated as changes occur.

### **Public Contracts Regulation Thresholds**

From 1<sup>st</sup> January 2020 the relevant Thresholds are:

- Works £4,733,252
- Light Touch £663,540
- Supplies and Services £189,330

The thresholds are usually revised every two years.

### **Audit Recommendations**

Consider and include, as appropriate, any recommendations made by internal or external Audit, unless these are substantial, at which time any recommendations will be brought to Committee for approval.

### **Officer Job Titles**

Any and all details pertaining to Officer's job titles can be changed to reflect the current structure of the Council, as necessary.

### **Advertising websites**

All procurements valued between £75,000 and the relevant Public Contracts Regulations Threshold must be advertised on <https://sebp.due-north.com/> and Contract Finder. All procurement valued above the relevant Public Contracts Regulations Threshold must also be advertised on Find a Tender. To place a contact notice, contact the Contracts and Procurement Manager.

Details of all awarded contracts above £25,000 should be published on Contracts Finder. This includes those awarded following call offs from framework agreements and contracts that may not have been openly advertised.

Details of all awarded contracts above the relevant Public Contracts Regulations Threshold must be published on both Find a Tender and Contracts Finder.

