



**East Devon
District Council**

Contract Standing Orders

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A BRIEF GUIDE TO CONTRACT STANDING ORDERS

These Contract Standing Orders, or Rules, are intended to promote good procurement practice, public accountability, commercial enterprise and deter corruption. Following the Rules is the best defence against allegations that a purchase has been made incorrectly or fraudulently.

They are issued in accordance with section 135 of the 1972 Local Government Act; s123 of the Local Government Act 1972; the Public Procurement Regulations 2015 and in the case of commercial enterprise the Localism Act 2011.

Officers responsible for purchasing or disposal **must comply** with these procedures. These procedures lay down **minimum requirements** for the purchase and disposal of goods and services.

Officers must;

- Follow these Rules whenever they purchase goods, services, or building works.
- Take Legal, Financial, Procurement and professional advice from the respective services.
- Declare any personal financial interest in a contract.
- Be minded that Bribery has a very wide interpretation and is a criminal offence.
- Conduct a Most Economic Advantageous Tender (“MEAT”) review and appraise the purchasing/disposal need in accordance with the legislative provisions and obtain Value for Money for the public finance.
- Consider whether there is an existing corporate contract or framework agreement that would satisfy MEAT requirements which you can make use of, before undergoing a competitive process.
- Identify a contract manager with responsibility for ensuring the contract delivers as intended.
- Ensure there is authority to enter into a contract and ensure you complete a written contract or Council order before supply or works begin.
- Keep records of dealings with suppliers.
- Assess and monitor each contract after completion to understand how well it met the purchasing need and quality of delivery requirements, including Value for Money.

Failure to comply with these Contract Standing Orders may lead to disciplinary action.

The Section 151 Officer may propose amendments from time to time to these Contract Standing Orders after consultation with Legal Services. Proposed amendments will then be submitted to the Audit and Governance Committee, with a recommendation from that Committee to Council for approval, if appropriate.

Contract Standing Orders should be read in full, however to aid quick reference key aspects have been drawn out by way of summary below.

Summary of Requirements for the Competitive Process and Contract Completion

Where the Total Value for a contract is within the values in the first column below, the competition and awarding requirements are then as specified. The Cabinet has the power to authorise exemptions from the requirement to seek quotations or invite tenders for specific projects where they are below the Public Procurement Threshold.

All ICT system developments and purchases of computer equipment or software must be approved and purchased through Strata Services Solutions Ltd

Total Value (excl. VAT)	Competition Requirements (see Rule 8.1)	Short listing (See Rule 8.1)	Method of Completion (see Rule 16.2)	Completion Authorised by (See Rule 16.2)
Up to £5,000	Quotation to be obtained in writing from a minimum of one supplier.	Authorised Officer	Electronic order or by signature	Authorised Officer / Budget Manager
£5,001 – £50,000	Quotations to be obtained in writing from a minimum of three suppliers ¹ who have responded to a written tender specification by a defined deadline. Quotations to be formally evaluated. Electronic procurement portal to be used for all quotations above £10,000.	Authorised Officer and Budget Manager	Electronic order or by signature	Budget Manager
£50,001 – £100,000			Electronic order, by signature or under seal (as advised by Legal Services)	
£100,001 – Public Procurement Threshold	Formal tenders to be obtained from a minimum of four suppliers ¹ , who have responded to a written tender specification by a defined deadline. Tenders to be formally evaluated. Electronic procurement portal to be used for all tendering at this level	Budget Manager and Service/Strategic Lead in consultation with Procurement Support	By signature or under seal (as advised by Legal Services)	Budget Manager (in consultation with Service / Strategic Lead)
Above Public Procurement Threshold	The Public Procurement (EU) tender procedures to be used, electronic procurement portal to be used for all Public Procurement (EU) tendering.	Budget Manager in consultation with Procurement Support and Legal Services	Legal Services to advise on form of contract and whether by signature or under seal	Service/ Strategic Lead
Use of collaborative contracting arrangements ²	Purchases using such arrangements are deemed to comply with these Standing Orders. ³	Budget Manager / Strategic or Service Lead in consultation with Procurement Support and Legal Services	Legal Services to advise on form of contract and whether by signature or under seal	Service/ Strategic Lead

¹ Officers to use reasonable endeavours to ensure minimum responses achieved

² e.g. Crown Commercial Services, Devon and Cornwall Procurement Partnership

³ Officers must ensure any arrangements to be used for purchases above the Public Procurement threshold, have been properly established and follow the Public Contract Regulations 2015.

SECTION 1: SCOPE OF CONTRACT STANDING ORDERS

1. BASIC PRINCIPLES

All purchasing procedures must:

- Look to find the Most Economic Advantageous Tender for public money spent in order to achieve Value for Money;
- Be consistent with the highest standards of integrity of Members and Officers, having regard to the Council's Anti Fraud, Theft and Corruption Policy, the Anti-Bribery Policy, and the Office of Fair Trading guidance on Anti-Competitive Behaviour;
- Ensure Open, Transparent and Fair procedures are followed in allocating public contracts;
- Comply with all legal and financial requirements;
- Ensure that only commercial considerations influence any contracting decision in matters pursuant to the Localism Act 2011;
- Support and comply with the Council's Plan, Priorities, and Policies.

2. RESPONSIBILITIES

2.1 **Officers**

2.1.1 Officers responsible for purchasing or disposal must comply with these Contract Standing Orders, Financial Regulations, the Employee Code of Conduct and with all UK legal requirements. Officers must ensure that any agents, consultants and contractual partners acting on their behalf also comply.

2.1.2 Officers must:

- Have regard to the Council's purchasing and contract guidance – details held on the intranet (Procurement pages);
- Ensure that the appropriate approved budgetary provision is in place;
- Ensure appropriate authority is in place prior to purchase being completed;
- Check whether a suitable corporate contract exists before seeking to let another contract; where a suitable corporate contract exists, this must be used unless there is an auditable reason not to – discuss with Procurement Support if unclear;
- Keep the records required by Rule 7;
- Take all necessary procurement, legal, financial, procurement and other professional advice as appropriate.

2.1.3 When any employee either of the authority or of a service provider may be affected by any transfer arrangement, Officers must ensure that the Transfer of Undertaking (Protection of Employment) (TUPE) Regulations 2006 are considered and obtain advice from HR and Legal Services before proceeding with inviting tenders or quotations.

2.2 **Members**

2.2.1 Members considering purchasing or disposal must comply with these Contract Standing Orders, Financial Regulations, the Member Code of Conduct and with all legal binding requirements. Members must promote and maintain high standards of conduct as a representative of the local constituency.

2.2.2 Members must;

- pursue to the best of their ability the seven Nolan principles of; Selflessness, Integrity, Objectivity, Accountability, openness, honesty and leadership.
- Register their pecuniary interests and disclose the same when appropriate
- disclose any personal interests when appropriate
- act in accordance with the Members Code of Conduct

2.3 ***If it comes to the knowledge of an elected Member or an employee of the authority that a contract in which he or she has a pecuniary interest (whether directly or indirectly) has been or is proposed to be entered into by the Council, he or she shall immediately give written notice to the Monitoring Officer.***

3. **EXEMPTIONS from seeking quotations or tenders**

3.1 The Council and its Cabinet have the power to authorise exemptions from the requirement to seek quotations or invite tenders for specific projects if the Public Procurement Threshold has not been reached.

3.2 Where an exemption is necessary because of an unforeseeable emergency or appropriate business reasons (**e.g. Life or Death, Increased Costs/Loss of Income, Limited Markets, or Reputation**) the procuring Officer, with the approval of their Service Lead or Strategic Lead, the S151 officer and the Strategic Lead (Governance and Licensing), may jointly approve the exemption and record as such on the Contract Standing Orders Exemption Form.

Where the Contract sum is £20,001 or above then the use of the exemption must be reported by the Officer, to the next meeting of the Cabinet for them to note their support for the action taken.

NOTE: If prior approval is being sought from Cabinet then a Contract Exemption Form is not required.

Terms are defined as:

Life or Death – Is there a significant chance that the life or health of officers, members or the public will be put at real risk?

Increased Costs/Loss of Income – Will the Council incur significant avoidable costs or lose significant income (significant shall be taken to mean material in the sense that it is either material to the project, the service or the Council)?

Limited Markets – Would the Council be wasting its time obtaining quotations as supply of the product or service is demonstrably restricted to one or few businesses (or an approved list if it is recommended by Central Government which evidences that the market has been tested)?

Reputation – Would the Council be criticised for failing to act promptly or for acting in a certain way?

3.3 **No exemption can be used if the Public Procurement Threshold is exceeded.**

3.4 No exemption is necessary for any purchase below the Public Procurement Threshold where;

- a local authority purchasing consortium is used e.g. Devon Procurement Services

or Eastern Shires Purchasing Organisation (ESPO), or

- any contracts entered into through collaboration with other local authorities or other public bodies, where a competitive process has been followed that complies with the Contract Standing Orders of the leading organisation

3.5 The Contract Standing Orders Exemption form is available on the Council's intranet. All exemptions, and the reasons for them, must be recorded. Exemptions shall be completed as above and a register maintained by S151 Officer.

4. RELEVANT CONTRACTS

4.1 These Contract Standing Orders apply to any arrangement made by, or on behalf of, the authority for the carrying out of works or for the supply of goods, materials or services (a 'Relevant Contract'). These include arrangements for:

- The supply or disposal of goods (see also Financial Regulations);
- The hire, rental or lease of goods or equipment;
- The delivery of services, including (but not limited to) those related to:
 - the recruitment of staff
 - financial and consultancy services

4.2 Relevant Contracts do not include:

- Contracts of employment which make an individual a direct employee of the authority; or
- Agreements regarding the acquisition, disposal, or transfer of land (for which Financial Regulations and other legal duties shall apply); or
- Section 151 Officer dealing in the money market or obtaining finance for the Council.
- Urgent legal advice or support

SECTION 2: REQUIREMENTS FOR ALL CONTRACTS

5. STEPS PRIOR TO PURCHASE

5.1 **Prior to expenditure the Officer must confirm that there is an approved budget and authority for the purchase.**

The Officer must appraise the purchase, or seek suitable advice in a manner commensurate with its complexity, value and associated risk profile, taking into account any purchasing guidance, by:

- Appraising the need for the expenditure and its priority.
 - Defining the objectives of the purchase, and the required product specification.
 - Assessing and documenting the risks associated with the purchase and how to manage them.
 - A business case must be prepared for all procurements with a potential value over the Public Procurement Threshold. Provision for resources for the management of the contract, for its entirety, must be identified in the business case.
 - Considering what procurement method is most likely to achieve the purchasing objectives, including internal or external sourcing, partnering, collaborative procurement arrangements with another local authority, government department, statutory undertaker or public service purchasing consortium.
 - Consulting users as appropriate about the proposed procurement method, contract standards and performance and user satisfaction monitoring.
 - Consider (and where appropriate draft) the terms and conditions that are to apply to the proposed contract.
 - For Service contracts above the Public Procurement Threshold, the Officer must consider the requirements of the Social Value Act 2012. Here, the Officer must consider:
 - (a) how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area, and
 - (b) how, in conducting the process of procurement, the Officer may act with a view to securing that improvement.
- www.legislation.gov.uk/ukpga/2012/3/enacted)

6. ADVERTISING AND FRAMEWORK AGREEMENTS

6.1 **Identifying and Assessing Potential Suppliers**

6.1.1 For all contracts above the Public Procurement Threshold, a Find a Tender Service advertisement must be published via the electronic procurement portal and the Public Procurement Procedure followed.

6.1.2 For contracts below the Public Procurement Threshold, Officers shall consider the most appropriate advertising strategy. Officers should consider whether proposed contracts might be of interest to potential suppliers located in other GPA member states, and take this into account in the advertising strategy for the contract. Examples of where advertisements for procurements may be placed include:

- The Council's e-tendering website: 'Supplying the South West Procurement Portal'
- Domestic websites, newspapers or journals
- Government Contracts Finder (automatically populated via the SW Procurement Portal for contracts above £100,000)
- Find a Tender Service.

6.1.3 Officers are responsible for ensuring that all suppliers for a relevant contract are suitably assessed. The assessment process shall establish that the potential suppliers have the requisite:

- Technical ability to deliver the contract
- Capacity to deliver the contract
- Economic and financial standing
- And meet all relevant qualifying criteria

in order to fulfill the requirements of the authority.

6.1.4 It is acceptable to use purchasing consortiums / collaborative arrangements or a Framework Agreement in lieu of conducting an above the public procurement threshold exercise where the Authority has been named and the Public Contracts Regulations 2015 were followed in establishing the consortium or framework. Similarly such arrangements can be used in lieu of the requirements of these Rules for below public procurement threshold contracts provided competitive arrangements were used in establishing them. It is the Officers responsibility to check whether this requirement is satisfied.

6.2 Approved Lists

Approved Lists will not be maintained by EDDC due to the administration involved and the need to ensure that competition is maximised.

Suppliers interested in doing business with the Council must register online as a prospective EDDC supplier via the Supplying the South West Procurement Portal.

A register of pre-qualified contractors and consultants maintained by or on behalf of central government or other parties (e.g. Constructionline, Exor, Quidos, Achilles) will not normally be deemed to be an Approved List for the purpose of these Contract Standing Orders.

6.3 Framework Agreements

6.3.1 The duration of a Framework Agreement must not exceed four years, as per the Public Contracts Regulations 2015.

6.3.2 Contracts may be awarded under Framework Agreements by either:

i Applying the terms laid down in the Framework Agreement without reopening competition (where such terms are sufficiently precise to cover the particular call-off),

or:

ii where the terms laid down in the Framework Agreement are not precise enough or complete for the particular call off, by holding a mini competition in accordance with the following procedure:

- Inviting the organisations within the Framework Agreement that are capable of executing the subject of the contract to submit written Tenders (via mini competition)
- Fixing a time limit of a sufficient period to enable Tenders for each specific contract

to be submitted, taking into account factors such as the complexity of the subject matter of the contract.

- Awarding each contract to the tenderer which has submitted the best Tender on the basis of the award criteria set out in the specifications of the underlying Framework Agreement.

7. RECORD KEEPING

7.1 Where the Total Value is less than £100,000 the following records must be kept:

- Invitations to quote and quotations received (where e-tendering is used, the Archive record of the e-tendering system will suffice).
- Written records of communications with the successful contractor or an electronic record if a written record of the transaction would not normally be produced.
- Any exemption obtained under Rules 3 and the reasons for it.
- If the lowest price is not accepted, the reasons why.
- The contract documentation.

7.2 Where the Total Value exceeds £100,000 the following records must be kept:

- The method for obtaining bids (see Rule 8.1).
- Any exemption obtained under Rule 3 together with the reasons for it.
- The award criteria in descending order of importance.
- Tender documents sent to and received from suppliers.
- Pre-tender market research.
- Clarification and post-tender negotiation (to include minutes of meetings).
- Legal advice.
- Any Contracting Decision and the reasons for it.
- The contract documentation.
- Post-contract evaluation and monitoring.
- Communications with suppliers and with the successful contractor throughout the period of the contract.
- Where relevant, all documentation relating to above public procurement threshold procurement not covered above (e.g. the FTS notice)

7.3 Records must be kept for six years (12 years if completed under Seal) after the end of the contract. However, written documents which relate to unsuccessful suppliers may be electronically scanned or stored by some other suitable method after 12 months from award of contract, provided there is no dispute about the award.

7.4 Legal Services must be provided with the original of all contracts completed by signature or under seal for secure storage if they do not already hold them.

SECTION 3: CONDUCTING PURCHASE AND DISPOSAL

8 COMPETITION REQUIREMENTS FOR PURCHASE, DISPOSAL AND PARTNERSHIP ARRANGEMENTS

The Officer must calculate the **Total Value** (excluding VAT) for the period of the contract. This should include the total lifetime value where possible.

The following procedures apply where there are no other procedures which take precedence. Other procedures may include agency agreements with Government. If

in doubt, Officers must seek the advice of Procurement Support or Legal Services.

8.1 Requirements for the Competitive Process

8.1.1 Where the Total Value for a contract is within the values in the first column below, the competition requirements in the second column must be followed. Short listing shall be done as per the roles specified in the third column.

Total Value (excl. VAT)	Competition Requirements	Short listing
Up to £5,000	Quotation to be obtained in writing from a minimum of one supplier.	Authorised Officer
£5,001 – £100,000	Quotations to be obtained in writing from a minimum of three suppliers ⁴ who have responded to a written tender specification by a defined deadline. Quotations to be formally evaluated. Electronic procurement portal to be used for all contracts above £10,000.	Authorised Officer and Budget Manager
£100,001 – Public Procurement Threshold	Formal tenders to be obtained from a minimum of four suppliers ⁴ , who have responded to a written tender specification by a defined deadline. Tenders to be formally evaluated. Electronic procurement portal to be used for all tendering at this level.	Budget Manager and Service/Strategic Lead in consultation with Procurement Support
Above Public Procurement Threshold	Public Procurement Procedures to be used, electronic portal to be used for all tendering.	Strategic / Service Lead in consultation with Procurement Support and Legal Services
Use of collaborative contracting arrangements See Rule 6.1.4	Purchases made via collaborative contracting arrangements (e.g. Crown Commercial Services, Devon and Cornwall Procurement Partnership) are deemed to comply with these Standing Orders. Officers must ensure any arrangements to be used for purchases above Public procurement (EU) threshold, have been properly established. <i>Procurement Support should be consulted prior to commencing any procurement process using collaborative contracts.</i> <i>The terms and conditions of contract applicable to any collaborative contract, including the requirement to undertake competition between providers, must be fully complied with.</i>	Same as requirements above

All ICT system developments and purchases of computer equipment or software must

⁴ Officers to use reasonable endeavours to ensure minimum responses achieved

be approved and purchased through Strata Services Solutions Ltd

For legislation pertinent to contracts see link to Public Contract Regulations 2015:
http://www.legislation.gov.uk/ukxi/2015/102/pdfs/ukxi_20150102_en.pdf

- 8.1.2 Where it can be demonstrated that there are insufficient suitably qualified suppliers to meet the competition requirement, all suitably qualified suppliers must be invited.
- 8.1.3 There must be no attempt to artificially disaggregate any contract requirement to avoid the or these Contract Standing Orders. However within the procurement process, officers should consider assigning the component parts of a properly advertised contract into smaller Lots, to support accessibility for SME's.
- 8.1.4 Where an above Public Procurement Threshold procedure is required, the Officer shall also consult Procurement Support as appropriate, to agree the method of conducting the purchase.

8.2 Assets for Disposal

- 8.2.1 Assets for disposal must be sent to public auction except where better overall Value for Money (including staff administrative costs) is likely to be obtained by inviting quotations and tenders. (These may be invited by advertising on the Council's internet site). In the latter event, the method of disposal of surplus or obsolete stocks / stores or assets (other than land) must be formally agreed as required by Financial Regulations and the Scheme of Delegation.

8.3 Contracts to Provide Services to External Purchasers

- 8.3.1 Legal Services must be consulted where contracts to work for organisations other than the authority are contemplated.

8.4 Collaborative and Partnership Arrangements

- 8.4.1. Collaborative and partnership arrangements are subject to UK procurement legislation and must follow these Contract Standing Orders (although see Rule 6.1.4). If in doubt, officers must seek the advice of Legal Services and / or Procurement Support. However, arrangements to share staff with other public bodies may not require a formal procurement process and Legal Services should be consulted.

8.5 The Appointment of Consultants to Provide Services

- 8.5.1 The appointment of Consultants (such as architects, engineers, surveyors and other professionals) who are directly providing services to East Devon District Council as the client shall be selected and commissions awarded in accordance with the procedures detailed within these contract standing orders and as outlined at Rule 8.1.1 and 16.
- 8.5.2 The engagement of a Consultant shall follow the agreement of a brief that adequately describes the scope of the services to be provided and shall be subject to completion of a formal letter or contract of appointment to be in a form agreed by Legal Services.
- 8.5.3 Records of Consultants appointments shall be maintained in accordance with Rule 7, and be readily accessible by Procurement and Audit.
- 8.5.4 Consultants shall be required to provide evidence of, and maintain professional indemnity insurance policy for the duration of the respective agreement unless the Strategic Lead (Finance) is prepared to accept the uninsured risk as being "Low" but

in any event indemnity must be held for the duration of the respective agreement and for a minimum term of 3 years thereafter where the Councils Legal Services team deem the risk to be "Medium" or higher.

9 PRE-TENDER MARKET RESEARCH AND CONSULTATION

9.1 The Officer responsible for the purchase may, prior to the issue of the Invitation to Tender or Quote, consult potential suppliers in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters, provided this does not prejudice any potential Supplier. The Officer must not seek or accept technical advice on the preparation of an Invitation to Tender or Quote from anyone who may have a commercial interest in them, if this may prejudice the equal treatment of all potential Suppliers or distort competition. If in any doubt, the Officer should seek advice from Legal Services.

10. STANDARDS AND AWARD CRITERIA

10.1 The Officer must ascertain what are the relevant European, British or international standards which apply to the subject matter of the contract. The Officer must include those standards which are necessary to properly describe the required quality, and invite open to equal or equivalents. This includes sustainability standards. Legal Services and Procurement Support must be consulted if it is proposed to use standards other than European standards.

10.2 The Officer must define and document award criteria that are appropriate for the purchase and relevant to the matter at hand. Award criteria should be designed to secure an outcome giving 'Value for Money' for the authority, before quotations and tenders are sought. The basic criteria shall be:

- 'Most economically advantageous', where considerations of overall value apply, or :
- 'Lowest price to specification' where payment is to be made by the authority when the award criteria is price alone and the specifications are clear, or:
- 'Highest price' if payment is to be received

If the first criterion is adopted, it must be further defined by reference to sub-criteria which may refer only to relevant considerations. These may include price, service quality, product quality, running costs, technical merit, delivery, cost effectiveness, relevant environmental considerations, implementation planning, decommissioning considerations, aesthetic and functional characteristics (including security and control features), safety (which is likely to be a pass / fail criteria), after-sales services, technical assistance and any other relevant project specific considerations.

10.3 Award criteria must not include:

- Non-commercial considerations
- Matters which discriminate against suppliers, irrespective of size, from the European Economic Area or signatories to the Government Procurement Agreement.

11 INVITATIONS TO TENDER/QUOTATIONS

11.1 All Invitations to Tender or Quote must specify the goods, service or works that are required, together with the terms and conditions of contract that will apply (Rule 16).

11.2 The Invitation to Tender or Quote must state;

- 11.2.1 that the Council is not bound to accept any Quotation or Tender, either as a whole or in part,
- 11.2.2 that Tenders / Quotes are submitted to the Council on the basis that they are compiled at the tenderer or quoter's expense,
- 11.2.3 that no Tender or Quote will be considered unless it is received by the date, time and manner stipulated in the Invitation to Tender or Quote. No Tender or Quote delivered in contravention of this clause shall be considered.
- 11.4 In addition all Invitations to Tender shall include the following:
- (a) A specification that describes the Council's requirements in sufficient detail to enable the submission of competitive and comparable offers.
 - (b) A requirement for tenderers to declare that the Tender content, price or any other figure or particulars concerning the Tender have not been disclosed by the tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose).
 - (c) A requirement for tenderers to complete fully and sign all Tender documents including a form of Tender and certificates relating to canvassing and non-collusion.
 - (d) A description of the award procedure and, unless defined in a prior advertisement, a definition of the award criteria in objective terms and ideally in descending order of importance.
 - (e) All contracts above £10,000 must be undertaken using the Council's e-tendering system. If by exception, hard copy Tenders are used, there must be notification that no Tender will be considered unless it is enclosed in a sealed envelope or container which bears the word 'Tender' followed by the subject to which it relates.
 - (f) The method by which any arithmetical errors discovered in the submitted Tenders is to be dealt with. In particular, whether the overall price prevails over the rates in the Tender or vice versa.
- 11.5 All Suppliers invited to Tender or Quote must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis, and any pre-tender questions and answers must be shared (anonymously) with all tenderers.

12. SHORTLISTING

- 12.1 Any Shortlisting must be in line with the financial and technical standards relevant to the contract and the shortlisting criteria. Special rules apply in respect of the above public procurement threshold procedure and Legal / or Procurement Services should be consulted.
- 12.2 Evaluation criteria (which may include a scoring system for larger value or complex tenders) must be transparent and any sub-criteria specified. Shortlisting records must be kept and held for the period specified in the Council's Document Retention Policy.
- 12.3 The officers responsible for shortlisting are specified in Rule 8.1.1.

13. SUBMISSION, RECEIPT AND OPENING OF TENDERS/QUOTATIONS

13.1 Suppliers must be given an adequate period in which to prepare and submit a proper Quotation or Tender, consistent with the complexity of the contract requirement. Normally at least four weeks should be allowed for submission of Tenders. The Public Contracts Regulations lays down specific time periods, please consult Procurement Support.

13.2 All Tenders and Quotations above £10,000 must be submitted electronically, through the Council's approved and secure electronic tendering system, with controlled opening and independent registration. Staff will have the relevant training to use Procurement Portal.

13.3 Where Electronic Tenders are not used:

13.3.1 The Officer must not disclose the names of potential Suppliers to any staff involved in the receipt, custody or opening of Tenders. Democratic Services shall be responsible for the safekeeping custody of Quotations / Tenders until the appointed time of opening.

Each Tender must be:

- Suitably recorded so as to subsequently verify the date and precise time it was received
- Adequately protected immediately on receipt to guard against amendment of its contents
- Recorded immediately on opening the Tender Register.

13.3.2 The Democratic Services team must ensure that all Tenders are opened at the same time when the period for their submission has ended. An Officer representing the Strategic or Service Lead in question must be present.

13.3.3 Upon opening, a summary of the main terms of each Tender (i.e. significant issues that are unique to each Tender submission and were not stated in the Invitation to Tender documents such as tender sum) must be recorded in the Tender Register. The summary must be signed by all present.

14. CLARIFICATION PROCEDURES

14.1 Clarification of an Invitation to Quote / Tender with potential or actual Suppliers or seeking clarification of a Tender should be in writing, email or if using the Supplying the South West Procurement Portal via the question function. In doing so, Officers must be mindful to maintain equal treatment of all tenderers in the clarification process. Discussions with tenderers after submission of a Tender and before the award of a contract with a view to obtaining adjustments in price, delivery or content (i.e. post Tender negotiations) is not permitted.

15. EVALUATION, AWARD OF CONTRACT, AND DEBRIEFING OF TENDERERS

15.1 Subject to the disclosures required under law, and apart from the debriefing required or permitted by these Contract Standing Orders, the confidentiality of Quotations, Tenders and the identity of Suppliers must be preserved at all times and information about one Supplier's response must not be given to another Supplier. Formal debriefing must be provided to the extent required in law, particularly in relation to

contracts above the relevant public procurement threshold. A standstill procedure must be observed prior to award of contract as stated in the Public Contracts Regulations 2015, and is discretionary for below public procurement threshold contracts.

- 15.2 Contracts must be evaluated and awarded in accordance with the published award criteria. During this process, Officers shall ensure that submitted Tender prices are compared with any pre-tender estimates and that any discrepancies are examined and satisfactorily resolved.
- 15.3 The arithmetic in compliant Tenders must be checked. If arithmetical errors are found those may need to be clarified and advice should be sought from Procurement Support in respect of how this should be done.
- 15.4 Officers may accept Quotations and Tenders received in respect of proposed contracts, provided they have been sought and evaluated fully in accordance with these Contract Standing Orders. Awarding of contracts that are expected to exceed the approved budget sum shall be referred back to Cabinet subject to consultation with the Strategic Lead (Finance).
- 15.5 Where the **Total Value** is over £100,000, the Officer must notify all Suppliers simultaneously and as soon as possible of the intention to award the contract to the successful Supplier and include the reasons why for unsuccessful bidders. The Officer must provide unsuccessful Suppliers with a period of at least ten days in which to review / or challenge the decision if they wish to before the Officer awards the contract.

If the decision is challenged by an unsuccessful Supplier then the Officer shall not award the contract without first seeking the advice of Legal Services. The Officer shall debrief in writing all those Suppliers which submitted a bid about the characteristics and relative advantages of the leading bidder. No information, other than the following, should be given without taking the advice of Legal Services:

- How the award criteria were applied.
- The prices or range of prices submitted, in either case not correlated to suppliers' names.
- The name of the successful tenderer(s)
- The scores of the successful tenderer(s), and the reasons for those scores.
- The scores of the unsuccessful tenderer being debriefed, and the reasons for those scores
- The relative advantages of the successful Tender, above the unsuccessful tenderer being debriefed

The debriefing process should only be carried out in writing.

SECTION 4: LEGAL FORMALITIES

16. CONTRACT DOCUMENTS

16.1 Relevant Contracts

16.1.1 The formal advice of Legal Services must be sought for all Relevant Contracts where any of the following apply:

- Appointment of Consultants (see Rule 8.5); or

- Where the total contract value exceeds £50,000; or
- Those involving leasing arrangements; or
- Where it is proposed to use a supplier's own terms; or
- Contracts to carry out work for other organisations; or
- Those that are complex, High Profile or High Risk in any other way.

16.1.2 The Council's order form or standard terms and conditions must be used wherever possible. Notwithstanding, all Relevant Contracts above £50,000 shall be in writing in a form approved by Legal Services. If any doubt exists, refer to the advice of Legal Services.

16.1.3 All Relevant Contracts, irrespective of value, shall clearly specify:

- What is to be supplied (i.e. the works, materials, services, matters or things to be furnished, had or done).
- The provisions for payment (i.e. the price to be paid and when).
- The time, or times, within which the contract is to be performed.
- The provisions for the Council to terminate the contract.
- Anti bribery / corruption clauses

16.1.4 In addition, every Relevant Contract above £50,000 must also state clearly as a minimum:

- That the contractor may not assign or sub-contract without prior written consent.
- Any insurance requirements.
- Health and safety requirements.
- Ombudsman requirements.
- Data protection requirements, if relevant.
- That charter standards are to be met if relevant.
- The Council's requirements concerning Equality, detailed in EDDC's Equality Policy
- Freedom of Information Act requirements.
- Anti bribery / corruption clause
- Where agents are used to let contracts, the agents must comply with the Council's Contract Standing Orders.
- A right of access to relevant documentation and records of the contractor.
- The use of penalty clauses for non or unacceptable performance e.g. quality issues, late delivery. This will be aided by the inclusion of Key Performance Indicators within the contract.

16.2 Contract Formalities

16.2.1 Agreements shall be completed as follows:

Contract Value	Method of Completion	Completion by
Up to £5,000	Electronic order or by signature	Authorised Officer / Budget Manager
Between £5,001 to £50,000	Electronic order or by signature	Budget Manager
Between £50,001 to £100,000	Electronic order, by signature or under seal (as advised by Legal Services)	Budget Manager
Above £100,001 or if any of para 16.1.1 applies	By signature or under seal (as advised by Legal	Service/Strategic Lead if by signature and by

	Services)	Authorised Signatory if under seal
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16.2.2 The Officer responsible for securing signature of the contract must ensure that the person signing for the other contracting party has authority to bind it.

16.3 Sealing

16.3.1 Where appropriate, contracts are completed by each side adding their formal seal. The fixing of the Council's seal must be witnessed by an Authorised Signatory – Legal Services can advise on this process.

16.3.2 Every Council sealing will be consecutively numbered, recorded and signed by the person witnessing the seal. The seal must not be affixed except in accordance with the Council's Constitution.

16.3.3 A contract must be sealed where:

- The Council may wish to enforce the contract more than six years after its end
- The price paid or received under the contract is a nominal price and does not reflect the value of the goods or services, or
- There is any doubt about the authority of the person signing for the other contracting party.

16.4 Records

16.4.1 All contracts that are completed by way of signature, irrespective of the contract sum, the Officer responsible for securing a signature must provide Legal Services with the original copy for secure storage. An electronic copy must be held on file.

16.4.2 All contracts completed under seal must be kept by Legal Services for secure storage. An electronic copy must be held on file.

17. BONDS AND PARENT COMPANY GUARANTEES

17.1 The Officer must consult the Strategic Lead (Finance) about whether a Parent Company Guarantee is necessary when a supplier is a subsidiary of a parent company and:

- The total value exceeds £100,000, or
- Award is based on evaluation of the parent company, if there is some concern about the stability of the supplier.

17.2 The Officer must consult the Strategic Lead (Finance) whether a Bond is needed

- Where the total value exceeds £1,000,000, or
- Where a Parent Company Guarantee is not available if there is no parent company
- Where it is proposed to make stage or other payments in advance of receiving the whole of the contract and there is concern about the stability of the Supplier i.e. following a formal risk assessment

18. PREVENTION OF CORRUPTION, AND ANTI COMPETITIVE BEHAVIOUR

18.1 Prevention of Corruption

- 18.1.1 The Officer needs to be aware of the Bribery Act 2010 which introduces general offences of offering or receiving bribes, a specific offence of bribing a foreign public official, and the new corporate offence of failing to prevent bribery. Officers should also be aware of the Council's Anti Fraud, Theft and Corruption Policy and the Anti Bribery Policy.
- 18.1.2 The Officer must comply with these above requirements and the Employee Code of Conduct and must not invite or accept any gift or reward in respect of the award or performance of any contract. It will be for the Officer to prove that anything received was not received corruptly. High standards of conduct are obligatory. Corrupt behaviour will lead to dismissal and is a crime under the Bribery Act 2010.
- 18.1.3 Anti-Bribery Clauses must be written into every written Council contract except where doing so would conflict with the contract rules associated with a national or local framework

18.2 Anti-Competitive Behaviour

- 18.2.1 In its guidance for public sector procurers, the Office of Fair Trading has highlighted practical steps to take to reduce the risks of anti-competitive behaviour, which should be followed where practical:
- (a) Use non-collusion clauses, certificates of independent bids and requests;
 - (b) Ensure sufficient credible bidders;
 - (c) Look for suspicious bidding patterns
 - (d) Keep comprehensive notes of all discussions and potential bidders and systematically scrutinise them for suspicious patterns.
- 18.2.2 If there is any doubt concerning anti-competitive behaviour during a procurement exercise, or for further guidance, the Officer should contact Procurement Support or Legal Services.

SECTION 5: CONTRACT MANAGEMENT

19. MANAGING CONTRACTS

- 19.1 Strategic or Service Leads are to name contract managers ('the Contract Manager') for all new contracts and all contracts must have a named Council Contract Manager for the entirety of the contract.
- 19.2 Contract Managers must follow the procedures set out in the Council's Contract Standing Orders.
- 19.3 All variations to contracts are to be in writing in the form of an appropriately authorised variation order.
- 19.4 Payments to contractors will only be made on certification by the designated contract manager or nominated alternative officer(s), or, where engaged by the Council, the appropriate Consultant.
- 19.5 Liquidated and ascertained damages may need to be deducted for periods of delay in line with the terms of the contract. Any instance, where in the opinion of the

Officer/Contract Manager, this does not apply, must be fully justified and authorised by the Council's Monitoring Officer and the Section 151 Officer.

- 19.6 The Officer/Contract Manager will consult with the Council's Monitoring Officer and the Section 151 Officer promptly on becoming aware of any significant dispute, claim for additional payment in connection with a contract.

20. CONTINGENCY PLANNING

- 20.1 In entering into contract agreements or reviewing existing contracts, Officers must consider risk implications and ensure that the Council's Risk Register is updated with any identified risks and that mitigating controls are recorded appropriately and complete a contract risk register for all contracts with a value over £100,000.

21. CONTRACT MONITORING, EVALUATION AND REVIEW

- 22.1 All contracts which have a value higher than the public procurement threshold limits, or **which are High Risk**, are to be subject to formal review(s) by the Contract Manager with the contractor. The review may be conducted at a frequency that is determined by the risk value and profile of the contract.
- 22.2 A contract review process must be applied to all contracts deemed to be High Risk, High Value, or High Profile. This process must be applied at key stages of major procurements.
- 22.3 During the life of the contract, the Contract Manager must monitor and take any necessary corrective action in respect of:
- Performance
 - Compliance with specification and contract
 - Cost
 - Any Value for Money requirements
 - User satisfaction and risk management
 - Key performance indicators included within the contract.
- 22.4 Further support and advice on Contract Management including online training available can be found on the Procurement page on the Council's intranet

DEFINITIONS APPENDIX

Authorised Officer	An officer with authority and responsibility for dealing with contracts within the course of their employment.
Authorised Signatory	An officer authorised by Rule 22 of Part 4 of the Constitution to attest the use of the Council's seal
Bond	An insurance policy: if the contractor does not do what it has promised under a contract with the Council, the Council can claim from the insurer the sum of money specified in the bond (often 10% of the contract value). A bond is intended to protect the Council against a level of cost arising from the contractor's failure.
Budget Manager	An officer in charge of or responsibility for overseeing the budget relating to the contract. Finance will allocate a budget manager to all budget areas and these are approved by the Service/Strategic Leads.
Consultant	Someone employed for a specific length of time to work to a defined project brief with clear outcomes to be delivered, who brings specialist skills or knowledge to the role, and where the Council has no ready access to employees with the skills, experience or capacity to undertake the work (including architects, engineers, surveyors, lawyers and other professionals).
Contracting Decision	Any of the following decisions: <ul style="list-style-type: none"> ┆ withdrawal of Invitation to Tender ┆ whom to invite to submit a Quotation or Tender ┆ short listing ┆ award of contract ┆ any decision to terminate a contract.
Contract Manager	An officer with the responsibility of overseeing and monitoring delivery of a contract who may also be an Authorised Officer
Public Contracts Regulation 2015 Procedure	The procedure required by the UK law where the Total Value exceeds the <i>Public Procurement Threshold</i> .
Public Procurement Threshold	The contract value at which the Public Contracts Regulations and Procurement directives apply, for Goods, Services and Works. Available at UK Procurement Legislation
European Economic Area	The members of the European Union, and Norway, Iceland and Liechtenstein.
Financial Regulations	The Financial Regulations outlining Officer responsibilities contained in the Constitution.
Framework Agreement	An agreement between one or more authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.
Government Procurement Agreement	The successor agreement to the General Agreement on Trade and Tariffs. The main signatories other than those in the European Economic Area are the USA, Canada,

	Japan, Israel, South Korea, Switzerland, Norway, Aruba, Hong Kong, China, Liechtenstein and Singapore.
High Profile	A high-profile purchase is one that could have an impact on functions integral to Council service delivery should it fail or go wrong.
High Risk	A high-risk purchase is one which presents the potential for substantial exposure on the Council's part should it fail or go wrong.
High Value	A high-value purchase is where the value exceeds the Public Procurement Threshold values.
Invitation to Tender (ITT)	Invitation to tender documents in the form required by these contract standing orders.
Invitation to Quote	Invitation to quote in the form required by these contract standing orders.
Non-commercial Considerations	<p>(a) The terms and conditions of employment by contractors 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').</p> <p>(b) Whether the terms on which contractor's contract with their sub-contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self-employed persons of their services only.</p> <p>(c) Any involvement of the business activities or interests of contractors with irrelevant fields of government policy.</p> <p>(d) The conduct of contractors or workers in industrial disputes between them or any involvement of the business activities of contractors 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, contractors.</p> <p>(f) Any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees.</p> <p>(g) Financial support or lack of financial support by contractors for any institution to or from which the authority gives or withholds support.</p> <p>(h) Use or non-use by contractors of technical or professional services provided by the authority under the Building Act 1984 or the Building (Scotland) Act 1959.</p> <p>Workforce matters and industrial disputes, as defined in paragraphs (a) and (d), cease to be non-commercial considerations to the extent necessary or expedient to comply with Best Value; or where there is a transfer of staff to which the Transfer of undertakings (Protection of Employment) Regulations 1981 (TUPE) may apply.</p>
Officer	The officer designated by the Service Manager to deal with the contract in question.
Parent Company Guarantee	A contract which binds the parent of a subsidiary company as follows: if the subsidiary company fails to do what it has promised under a contract with the Council,

	the Council can require the parent company to do so instead.
Procurement support	Refers to the Council's arrangements for specialist procurement assistance
Quotation	A quotation of price and any other relevant matter (without the formal issue of an Invitation to Tender).
Relevant Contract	Contracts to which these contract standing orders apply (see Rule 4).
Section 151 Officer	The Service Lead for Financial Services or such other officer as may be designated Section 151 Officer by the Council, including the appointed Deputy S.151 Officer.
Shortlisting	The process of selecting suppliers who are to be invited to quote or bid or to proceed to final evaluation.
Supplier	Any person who asks or is invited to submit a Quotation or Tender.
Tender	A supplier's proposal submitted in response to an Invitation to Tender.
Tender Register	The log kept by Democratic Services to record details of Tenders (see Rule 13.5).
Total Value	<p>The whole of the value or estimated value (in money or equivalent value) for a single purchase or disposal calculated as follows:</p> <p>(a) where the contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period</p> <p>(b) where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months</p> <p>(c) where the contract is for an uncertain duration, by multiplying the monthly payment by 48</p> <p>(d) for feasibility studies, the value of the scheme or contracts which may be awarded as a result</p> <p>(e) for Nominated Suppliers and Sub-contractors, the total value shall be the value of that part of the main contract to be fulfilled by the Nominated Supplier or Sub-contractor.</p>
Value for Money	'Value for money' does not necessarily mean the lowest possible price. It combines goods or services that fully meet your needs, with the level of quality required, delivery at the time you need it, at an appropriate price, from an effective supplier.