



CONTRACT STANDING ORDERS

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SECTION 1 INTRODUCTION AND GENERAL REQUIREMENTS

- 1.1 Contract Standing Orders are a framework of rules, which must be adhered to when purchasing goods, services or works or disposing of Council property. These Contract Standing Orders¹ have been established to ensure that the Council is compliant with UK legislation, follows best practise and achieves best value for money in its procurement activities. Contract Standing Orders do not apply to employment contracts or contracts for sale or purchase of land².
- 1.2 Contract Standing Orders promote good purchasing practice and public accountability and help protect officers from any complaints. Following the rules is the best defence against any possible allegations that a purchase or disposal has been made incorrectly or inappropriately.
- 1.3 Officers responsible for purchasing goods, services or works or disposing of Council property are bound by and have a duty to read and be familiar with Contract Standing Orders. Contract Standing Orders lay down **minimum** requirements. A more thorough procedure may be appropriate for a particular contract.
- 1.4 Officers must ensure that any necessary pre-purchasing steps have been taken. This may include conducting a best value review, drafting a business case, undertaking some market research, considering any workforce implications or reporting a *Key Decision* to Executive.
- 1.5 Unless an exemption provided for in Section 3 has been approved, it is a potential disciplinary matter to fail to comply with Contract Standing Orders.
- 1.6 Contract Standing Orders should be used in conjunction with Financial Regulations as appropriate. Contract Standing Orders will be reviewed and updated on a periodic basis (the latest version will be held on the Intranet under staff info / procurement).
- 1.7 Officers must also ensure that any agents or consultants acting on their behalf in purchasing or disposal matters also comply with the Council's Contracts Standing Orders and Financial Regulations, and with all UK and EU binding legal requirements.
- 1.8 **Contracts** means any arrangement under which the Council pays or receives money or equivalent value for:
- a) goods;
 - b) services;
 - c) works;
 - d) all types of disposals; and,
 - e) hire, rental or lease agreements.
- 1.8 All contracts must be subject to competition, as follows:

Band 1	Up to £5,000	One quote (confirmed in writing if greater than £1,000)
Band 2	£5,000.01 – £75,000	Three written quotes to a purchaser specification
Band 3	£75,000.01 – EU Threshold	Invitation to Tender to at least three candidates
Band 4	Above EU Threshold	<i>EU Procedure</i>

¹ Referred to from now on throughout this document as Contract Standing Orders

² Contact the Recruitment Officer regards employee contracts and the Estates Manager regards contracts for sale of land.

- 1.9 An officer must neither enter into separate contracts nor select a method of calculating the *Estimated Total Value* in order to circumvent the application of Contract Standing Orders or the EU Procurement Regulations.



Scott Crudgington - Assistant Chief Executive (Finance)

For Further Advice on Contract Standing Orders:

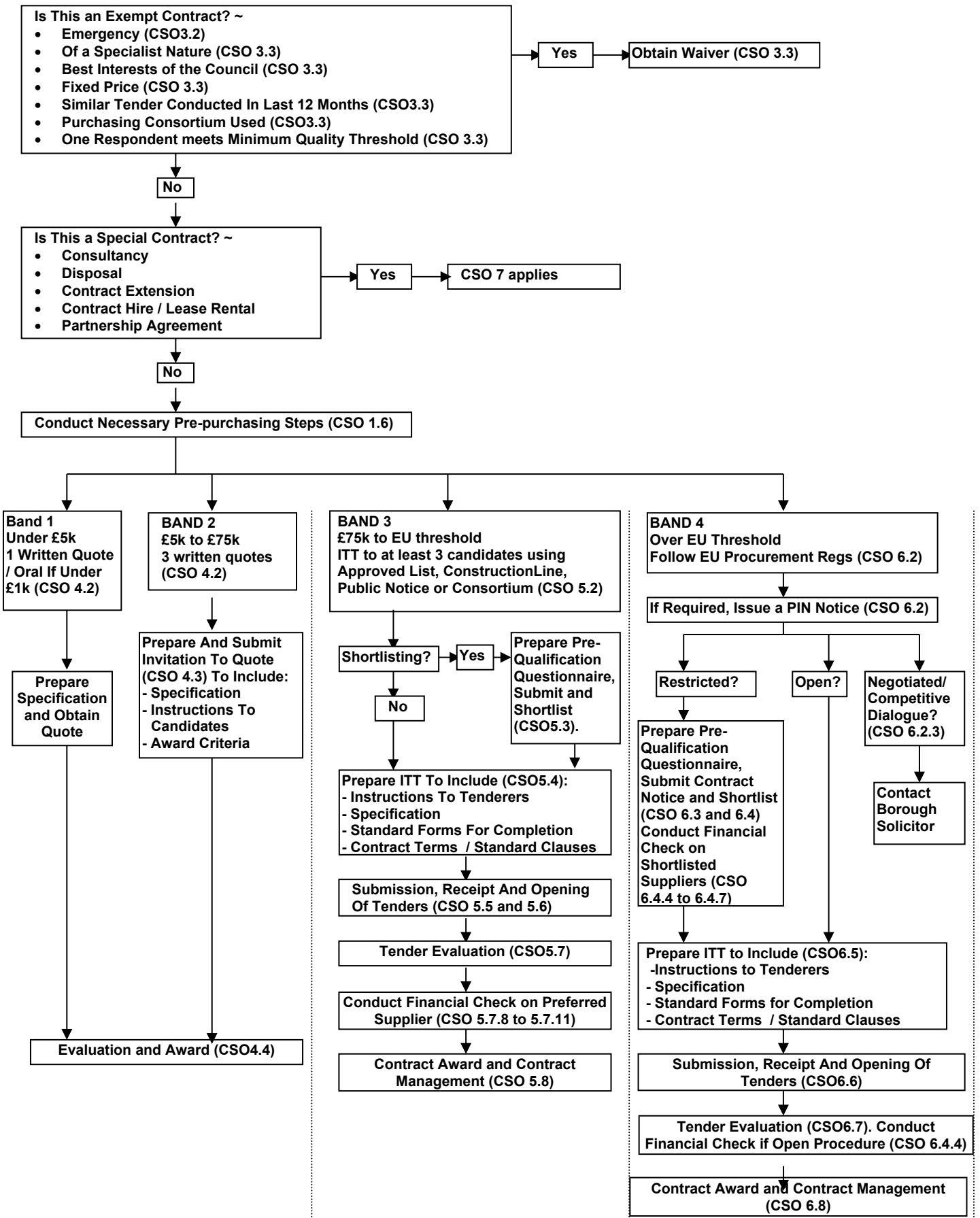
The authorised version of Contract Standing Orders and various supporting written guidance are held on the Council's Intranet site, under "Staff info /Procurement".

If you have any queries about the Contract Standing Orders or the various supporting written guidance please contact one of the following as appropriate:

- Corporate Procurement ext 2083
- Legal Services ext 2212
- Internal Audit ext 2426
- Finance ext 2185

If you are unclear about the procurement rules please seek relevant advice before taking any purchasing or disposal action.

SECTION 2 CONTRACT STANDING ORDERS – EXPLANATORY FLOWCHART



NOTE: This guide is explanatory only and is not a suitable alternative for reading Contract Standing Orders

SECTION 3 EXEMPTIONS TO CONTRACT STANDING ORDERS

- 3.1 An exemption under this Section allows an officer to partly depart from the normal contract action required in following Contract Standing Orders.
- 3.2 Contract Standing Orders shall not prevent expenditure being incurred where an emergency or disaster involving destruction of or danger to life or property occurs or is imminent. Where in the opinion of a Strategic Management Board member, in consultation if possible with the Chief Executive and the Assistant Chief Executive (Finance), the urgency of the situation will not permit delay, nothing in Financial Regulations or Contract Standing Orders shall prevent the Council from incurring the expenditure as an exemption. Where the contract value is over £75,000, action under this exemption shall be reported to the next meeting of the Executive Committee.
- 3.3 Subject to adhering to the EU Procurement Directives and any UK legislation, the following exemptions from the requirement to obtain the requisite number of quotations or tenders must be the subject of prior and written approval by either the Assistant Chief Executive (Finance), the Borough Solicitor or the Corporate Procurement Manager:
- a) For the purchase of goods, works or services which are of a specialist nature or are obtainable from only one or a limited number of *Suppliers* and there are no other satisfactory alternative options.³
 - b) Where exceptional circumstances clearly show it is in the best interests of the Council to negotiate a new contract with an existing *Supplier*.⁴
 - c) The goods or materials are sold at a fixed price or are wholly controlled by trade organisations or government order and no satisfactory alternative is available.
 - d) Tenders or quotes for similar goods, works or services have been obtained in the last 24 months.
 - e) The goods or materials are purchased via OGC (Office of Government Commerce), CBC (Central Buying Consortium), ESPO (Eastern Shires Purchasing Organisation) or other Purchasing Consortium approved by either the Borough Solicitor or Corporate Procurement Manager. Officers should, however, use mini-competition where prices have not been fixed (see CSO 5.2.11 to 5.2.13 and CSO 6.3.2).
- 3.4 Contracts for consultancy services, disposals or contract extensions are subject to different rules (see CSO Section 7)
- 3.5 Officers applying the exemption rules in 3.3 must, **as a minimum**, draft a specification and use the Council's preferred contractual documents, where appropriate (as outlined in Section 5). Unless otherwise stated, Financial Regulations will still apply and will need to be adhered to.
- 3.6 Compliance with the EU Procurement Directives and any UK legislation are considered to satisfy the Council's Contract Standing Orders and Financial Regulations. **No exemption shall be granted if the giving of that exemption would cause a breach of the EU Procurement Directives.**

³ The officer must provide evidence to prove that there are no other satisfactory alternatives, such as a recent public notice where no suitable candidates responded.

⁴ For example, where the Council have received consultancy services for a complex project and wish to employ the same consultant for additional consultancy services relating to that project, because the use of an alternative consultant would result in the loss of an important skillset or knowledge, which is not easily transferable.

SECTION 4 SPECIFIC REQUIREMENTS FOR CONTRACTS BELOW £75,000 (BAND 1 AND 2)

4.1 Overview

Band	Estimated Contract Value	Minimum No. of Quotes	Contract Signature
1	Up to £5,000	At least one oral quote (written if over £1,000)	Officers authorised to sign Purchase Orders within this value banding.
2	£5,001 to £75,000	At least three written quotations to a purchaser specification.	Officers authorised to sign contracts within this value banding ⁵

Where the preliminary *Estimated Contract Value* is within 10% of a higher category value, the appropriate provisions for the higher category of contract should be applied (unless the preliminary estimate is based on a firm quote).

4.2 Supplier Selection

- 4.2.1 Candidates invited to quote within these bands can be sourced from any means, including Constructionline, approved lists (see CSO 5.2), the Internet or based on previous satisfactory experience with the Council. There is no requirement to issue public notices for contracts or shortlist within these bands, although this may be appropriate in some instances. However, when inviting quotations in Band 2, Officers should document the reasons for selecting the suppliers (such evidence may be required should the decision be challenged at a later date).
- 4.2.2 Officers should use corporate contracts where these are provided for, details of which can be found on the Intranet under staff info/Procurement. All procurement of ICT Hardware and Software (including printers, scanners and mobile devices) should take place following approval by the E-Government and Business Systems Division, who should be involved in the procurement process from an early stage. An authorised signatory for the E-Government and Business Systems Division must countersign all ICT internal requisition forms and purchase orders.
- 4.2.3 In exceptional circumstances and for contract values under £1,000 only, an officer may be permitted to contract with a supplier or group of suppliers without first obtaining an oral quote. In this instance, the officer must first submit the request in writing to either the Assistant Chief Executive (Finance), Corporate Procurement Manager, or the Borough Solicitor and obtain his or her prior written approval before awarding the contract(s).⁶

4.3 The Invitation To Quote (Band 2 only)

- 4.3.1 Officers must provide adequate instructions to respondents, outlining what is required (specification), in what format and by when. The Invitation To Quote should also define the award criteria, whether lowest cost or most economically advantageous quote (See 5.4.2). Officers are reminded that further instructions may be necessary depending on the nature of the contract. For example, specific insurances and equality requirements may be appropriate where the purpose of the contract is to supply services directly to the public.

⁵ As per the authorised contract signatory list held by Exchequer Services.

⁶ An example of where this may be acceptable would be contracting with a supplier to top up of the Depot's bulk fuel storage facility. The charge per litre will have been pre-agreed before awarding a contract, but the number of litres to be supplied will not be known until the goods have been supplied.

- 4.3.2 The officer responsible for the purchase may consult potential *Suppliers* prior to the issue of the Invitation to Quote 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*.
- 4.3.3 Written requests for quotes and quotes themselves can be sent and received in the form of an email, facsimile or letter. Unlike tenders above £75,001, quotes in this band do not need to be sent to Committee Services or received by and opened at a specific date or time (although all documentation must be retained as per CSO 4.4.5).
- 4.3.4 Candidates must be given a minimum of 5 working days to respond to an invitation to quote, but candidates may require longer timescales if the contract is considered complex in any way.

4.4 Contract Evaluation and Award (Band 2 only)

- 4.4.1 To ensure adequate competition, there must be at least two satisfactory responses i.e. responses which meet a minimum quality standard under which the Council could award the contract. If the Council receive only one satisfactory response, the officer must obtain an additional quote or obtain an exemption under CSO 3.3.
- 4.4.2 All quotes must be evaluated based on the defined award criteria in the Invitation To Quote. Post tender negotiation may be used for certain contracts, in accordance with CSO's 5.7.5 and 5.7.6.
- 4.4.3 If the quoted contract value for the preferred supplier falls into the higher band 3 (£75,000 to the EU threshold) when processes for the lower Band 2 were followed, the officer must provide either the Assistant Chief Executive (Finance), the Borough Solicitor or the Corporate Procurement Manager with a written explanation and supporting evidence as to the basis for estimating the contract value at the lower band. The Borough Solicitor, Assistant Chief Executive (Finance) or Corporate Procurement Manager will decide whether the contract should be re-tendered following the procedures within the higher band.
- 4.4.4 Officers must not agree to contract conditions where payment is made before the goods, works or services are received, unless otherwise approved in writing by either the Corporate Procurement Manager, the Assistant Chief Executive (Finance) or the Borough Solicitor. Staged payments are acceptable but must be proportionate to the cost of the goods, works or services received.
- 4.4.5 Successful and unsuccessful *Suppliers* must be informed of the decision within 14 days of the closing date and feedback provided, if requested.
- 4.4.6 Contracts or agreements over £5,000 must be signed by a SMB Member or First Line Report to SMB Member⁷. If there is no written contract, the SMB Member or First Line Report to SMB Member must confirm in writing (either via letter or email) that the quote has been accepted, stating the cost and any other terms (such as payment terms and delivery date) to which the Council is agreeing to. In the absence of a written contract, a Purchase Order containing the above mentioned information and signed by a Head of Service or First Line Report is sufficient.
- 4.4.7 All documentation must be kept in accordance with the Document Retention Arrangements in Appendix A of the Financial Regulations:

SECTION 5 CONTRACTS BETWEEN £75,000.01 AND EU THRESHOLD

5.1 Overview

Band	Estimated Contract Value	Minimum No. of Respondents	Contract Signature	Shortlist Approval
3	£75,000 to EU Threshold (see CSO 6.1 for EU values)	At least three written responses to an Invitation to Tender. ⁸	Officers authorised to sign contracts within this value banding ⁹ , unless under seal (see CSO 5.8.6)	SMB Member or first line report to SMB Member

Where the preliminary *Estimated Contract Value* is within 10% of a higher category value, the appropriate provisions for the higher category of contract should be applied (unless the preliminary estimate is based on a firm quote).

5.2 Supplier Selection: Approved Lists, Constructionline, Public Notice & Purchasing Consortium

5.2.1 Within this contract value banding, the required number of suitable *Suppliers* for being invited to tender can be selected using the Council's own Approved Lists, Constructionline, a public notice or a purchasing consortium such as the OGC or CBC.

Approved Lists

5.2.2 Approved Lists must be drawn up after an advertisement (Public Notice) inviting applications for inclusion on the list. *Suppliers* must complete a Pre-Qualification Questionnaire and meet the required criteria before being entered on the Approved List. Approved Lists must detail what work or services an approved supplier is technically competent to provide and a financial limit in terms of the value of contracts to which they can be invited.

5.2.3 Approved lists can be either:

- a) 'closed' - only those who respond to the original public notice and meet the required criteria are on the list. No new *Suppliers* are added to the list until it is re-advertised; or
- b) 'open' - new *Suppliers* are added to the approved list if, at any time, they express an interest and meet the required criteria.

5.2.4 It is the responsibility of the relevant SMB Member or First Line Report to SMB Member to maintain the *Approved List*.

5.2.5 The list and shortlisting criteria must be re-advertised at least every four years. On re-advertisement, a copy of the advertisement must be sent to each person on the list, inviting them to reapply.

5.2.6 It must be made clear to all interested parties how work will be divided. For example, whether all on the approved list will be invited to tender for each procurement exercise.

⁸ As per CSO 5.7.2, the Council must receive at least two responses which meet the minimum quality threshold, to ensure the contract is subject to competition. It may therefore be prudent for Officers to invite more than 3 suppliers to respond to the Invitation To Tender to improve the chances of receiving 2 satisfactory responses.

⁹ As per the Authorised Signatory list held by Exchequer Services.

5.2.7 *Suppliers* can be removed from the list following on from poor performance or consecutively high quotes. *Suppliers* must be advised as such.

Constructionline

5.2.8 Lists maintained by ConstructionLine will be deemed to be an *Approved List* for the purpose of Contract Standing Orders. Given the geographical spread of companies listed by Constructionline, it is not practical to require Officers to draw companies from the list in strict rotation. Officers must have due regard to:

- *Suppliers* who have successfully tendered for SBC work recently;
- Avoiding geographical bias (ie 1 Stevenage company tendering against 4 Scottish companies)

Public Notice

5.2.9 If the chosen method is a public notice, officers may follow either of these procedures:

- a) Open procedure – all *Suppliers* expressing an interest are sent an Invitation To Tender and all responses are evaluated.
- b) Restricted procedure – all *Suppliers* expressing an interest are sent a Pre-Qualification Questionnaire to enable shortlisting. Only shortlisted *Suppliers* are then sent the Invitation To Tender.

5.2.10 The public notice would normally be placed in a trade journal and or via OJEU (Official Journal of the European Union) in order to maximize competition¹⁰. The public notice must state the scope of the requirement and the deadline for expressions of interest to be received.

Purchasing Consortium

5.2.11 Council approved purchasing consortiums are the CBC (Central Buying Consortium), ESPO (Eastern Shires Purchasing Organisation), OGC Buying Solutions (Office of Government Commerce Buying Solutions including S-CAT and G-CAT), and the Herts Procurement Forum.

5.2.12 The officer may award contracts to suppliers through any of the above approved purchasing consortiums (or any other purchasing consortium approved by either the Corporate Procurement Manager or Borough Solicitor) where fixed unit pricing has been pre-agreed under a consortium framework agreement. This can be awarded without the need to issue an Invitation To Tender, as best value has been proven. Any procedures provided by the purchasing consortium must be followed.

5.2.13 Where fixed unit prices have not been pre-agreed under a framework agreement, the officer may issue an Invitation To Tender to a minimum of 3 approved suppliers under one purchasing consortium only (OGC Buying Solutions call this mini-competition).

5.3 Shortlisting

5.3.1 Any *Shortlisting* must have regard to financial and technical standards relevant to the contract and may have regard to Award Criteria. It is important that the process for *shortlisting Suppliers* for being invited to tender is transparent and fair¹¹.

5.3.2 For contracts within this value banding, the *shortlisting* mechanism and the *Suppliers* to

¹⁰ The Corporate Procurement Manager can arrange for an OJEU advert to be placed

¹¹ A standard Pre-Qualification Questionnaire (PQQ) can be found on the Intranet under staff info/ Procurement.

be shortlisted must be approved in writing by an officer authorised to sign contracts within this value banding.

Unless the *shortlisting* process is particularly complex, unsuccessful respondents should be sent a letter explaining why they were unsuccessful within 14 days of the deadline for receipt of expressions of interest.

5.4 The Invitation To Tender

5.4.1 The **Instructions to Tenderers**¹² must, as a minimum, include the following:

- a) List the information which must be provided by the *Supplier* in their response, including any forms, tables or pricing schedules to be completed
- b) State the method of response required i.e. via email (see CSO 5.6) or posted in hard copy (see CSO 5.5). If the postal method is to be used, orange envelopes and completed labels, available from Committee Services, should be sent with the Invitation To Tender
- c) Outline a timetable for the remainder of the procurement exercise, detailing the closing date for receipt of responses, the evaluation period and when a response on contract award is expected
- d) State the method and deadline for obtaining additional information or clarification (usually 14 days before the closing date for receipt of responses) and that additional information requested will be supplied to all candidates (this should be supplied to all candidates at the same time no later than 7 days before the closing date for receipt of responses)
- e) Outline how the responses will be evaluated, listing the appropriate award criteria, which shall be selected from one of the following:
 - i) "lowest price"
 - ii) "most economically advantageous" offer i.e. where considerations other than price also apply. The award criteria may include price, service, quality of goods, running costs, previous experience, delivery date, cost effectiveness, relevant environmental considerations, employment considerations, aesthetic and functional characteristics, safety, after-sales services, technical assistance, contract terms and conditions and any other relevant matters
- f) State that late responses will not be considered unless it is proven that a courier or third party is at fault and that the Council is not bound to accept any Tender
- g) State the price validity period (usually up to a maximum of two months)
- h) Provide a statement to the effect that under the Freedom of Information Act (2000), the Council may be obliged to provide information regarding the procurement exercise or a subsequent contract award and that respondents will be advised of any requests for information and be given an opportunity to comment before disclosure of such information (information that would prejudice the interests of any party or information that is commercially sensitive and not in the public interest is exempt).

5.4.2 An adequate **specification** must be included. The specification must describe clearly the Council's requirements in sufficient detail to enable the submission of competitive offers.

¹² An outline Invitation to Tender can be found on the Intranet under staff info / procurement.

5.4.3 For contracts within this value banding, the following **Standard Forms**¹³ should either form part of the pre-qualification questionnaire or the Invitation To Tender and should be included in the final contract documentation:

- a) Form of Tender
- b) Equal Opportunities and Race Relations Certificate
- c) Certificate that the Tender is Bona Fide
- d) Parent Company Guarantee (if applicable).
- e) Performance Bond Certificate (if applicable).
- f) Insurance requirements (if applicable)
- g) Safety Declaration / Method Statement (if applicable)

5.4.4 Where appropriate to the type of contract being let, the officer should use standard industry contracts, such as JCT contracts for building work, or the **Council's own standard contracts**, such as the "SBC Supply of Goods Conditions of Contract". Where the Council does not supply a suitable standard contract for the type of contract being let, the officer would usually specify the Council's **standard clauses** plus any special contract conditions relevant to that specific contract. The officer should seek advice from the Borough Solicitor if he/she is unclear as to what terms and conditions should be included in the contract. It should be stated in the Invitation To Tender and final contract documentation that these clauses will prevail over any supplier contract clauses. SBC's standard clauses and contracts are available on the Intranet under staff info/Procurement.¹⁴

5.4.5 *Suppliers* invited to tender must be given an adequate period in which to prepare and submit a proper *Tender*, consistent with the urgency of the contract requirement. Normally at least **four weeks** should be allowed for submission of Tenders but this can be less if the Contracting Officer has ascertained, after consultation with all shortlisted *Suppliers*, that a lesser time period is practical and realistic. All tender documents (or request for quotations) for a contract shall be despatched to the *Suppliers* invited to tender on the same day.

5.4.6 The officer responsible for the purchase may consult potential *Suppliers* prior to the issue of the Invitation to Tender 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*.

5.4.7 A tender period can be extended if there are justifiable reasons and it is practical to do so. The reasons for any extension of time should be recorded and communicated in writing to all respondents at least one week prior to the closing date.

5.4.8 *Suppliers* must carry a range and level of *insurance cover* acceptable to the type of contract being let. As a minimum, contracts within this value banding should have Public and Employers Liability of 2 million pounds (or product liability of 2 million pounds if the contract is for supply of goods). If in doubt, contact the Council's Insurance Officer or Senior Legal Assistant.¹⁵

5.4.9 The advice of the Borough Solicitor must be sought as necessary, particularly for contracts which are complex.

¹³ Standard Forms can be found on the Intranet under staff info/ procurement

¹⁴ It is prudent that Officers download the standard clauses and contracts from the Intranet as and when the procurement need arises, as they are subject to change.

¹⁵ An insurance checklist can be found on the Intranet under staff info / procurement

5.5 Submission, Receipt And Opening Of Tenders

- 5.5.1 *Tenders* shall be submitted in the official large sized **orange** envelope supplied by the Council containing the words "Tender for" - followed by the subject to which it relates and the stipulated time and date by which the envelope should be returned.
- 5.5.2 Envelopes shall not bear any name or mark indicating the sender and shall be addressed and returned to Committee Services.
- 5.5.3 Receipt of each formal *Tender* must be date-stamped, initialled by the receiving officer and logged upon receipt in the "*Record of Tenders*" Book.
- 5.5.4 All *Tenders* received must be kept secure and unopened until the time and day they are due to be opened by the Tender Opening Panel. The Tender Opening Panel will consist of at least one member of Committee Services and the officer inviting the tenders (or his representative).
- 5.5.5 *Tenders* must be recorded as appropriate on the "Opening of Tenders" form. An unpriced tender form which is not supported by documents from which a price or basis of pricing, may be ascertained or deduced (e.g. covering letter, Summary of Tender, etc.) is not to be regarded as a *Tender*. The tender form should be returned to the supplier so endorsed.
- 5.5.6 Each page upon which prices or other information has been entered by the tenderer should be signed by the authorised member of Committee Services and the officer inviting the tenders (or his representative). No other written insertions must be made by officers. Each tender is then recorded on the "Opening of Tenders" form, which is signed and dated by Tender Opening Panel members.
- 5.5.7 In the event of a *Tender* being received after the closing date and time, clarification must be sought from either the Assistant Chief Executive (Finance), The Borough Solicitor or the Corporate Procurement Manager as to whether the Tender should be included with the others. A late tender will normally only be allowed if it is proven that a courier or third party is at fault. The Tender Record Book should record the decision made and reasons. Rejected late tenders should be returned by the Officer to the *Supplier* concerned with a letter explaining it was received late and cannot be considered as a result. The letter should also include relevant details of posting. The envelope the tender was received in and a copy of the letter should be retained for a period of three months as evidence in case of a subsequent challenge by the *Supplier* concerned.

5.6 Electronic Tenders

- 5.6.1 Where tenders are submitted electronically, respondents **must** be instructed to submit their tender to a secure Council e-mail account under the control of Constitutional Services (an alternative secure email account may be permitted, such as BIP Solutions, subject to the prior written approval of either the Assistant Chief Executive (Finance), Borough Solicitor, Corporate Procurement Manager or Audit Partnership Manager).
- 5.6.2 Respondents must be provided with a contact point in case they experience any problems in sending their tender by email to the Council. Respondents must also be advised that failure to advise the Council of the problem **before** the deadline for return of tenders will mean they have lost their opportunity to tender. Where a sending problem is received in time, consideration should be given to extending the deadline for submission and all tenderers should be advised accordingly of any extension of time.

- 5.6.3 No officers directly involved in the contract should have access to the e-mail account. The downloading should take place in the presence of the Constitutional Services Officer and a representative from the relevant department immediately after the date and time for the final receipt of tenders has expired.
- 5.6.4 Unless there is evidence that the tender was sent before the closing time, an electronic *Tender* received after the completion of the downloading cannot be included in the evaluation process. *Tenders* received should be recorded in the normal way (i.e. in the "Opening of Tenders" form).

5.7 Tender Evaluation

- 5.7.1 The following should be checked by the Officer:
- a) The *Tenders* are actually from the *Suppliers* invited to tender;
 - b) That the price of the *Tenders* as set out on the Opening of Tenders is correct;
 - c) That there are no errors or omissions in the completion of the documents;
 - d) Where a check of the prices quoted suggest collusion among tenderers or 'ring' pricing, the case should be referred to the Audit Partnership Manager.
- 5.7.2 To ensure adequate competition, there must be at least two satisfactory responses to the Invitation to Tender i.e. two responses which meet the minimum quality threshold. If there is only one satisfactory response, the officer must either re-tender the contract, advising respondents as such, or obtain an exemption under CSO 3.3.
- 5.7.3 Where necessary, clarifying some aspect of a *Tender* response in writing or by way of a meeting is permitted. If a meeting is held then relevant notes should be made of the results of the meeting and matters should be confirmed in writing for contractual purposes.
- 5.7.4 The officer must use the award criteria and measurement system¹⁶ as set out in the Invitation to Tender. The measurement system may include the following 3 elements:
- a) A point scoring system for individual quality / best value considerations.
 - b) Weightings applied to quality / best value issues in accordance with their importance to the completion of the contract.
 - c) A "Quality Threshold" which sets the minimum standard expected. *Tenders* which fall below this shall be excluded from consideration.
- 5.7.5 **Within (and below) this contract value banding only, *Post-Tender Negotiations* may be used**, providing the officer justifies the need for post tender negotiation in writing to either the Assistant Chief Executive (Finance), the Borough Solicitor or the Corporate Procurement Manager and that the request is authorised by either the Assistant Chief Executive (Finance), the Borough Solicitor or the Corporate Procurement Manager in writing. Post-Tender Negotiations will only be authorised when lawful and will normally only be approved in the following instances:
- a) Procurement exercises involving the purchase of application software.
 - b) The procurement of goods, works or services in respect of which the Council has no or inadequate experience.
 - c) For any supply of any goods or services where the leading bid is above budget,

¹⁶ A sample criteria and measurement template can be found on the Intranet under staff info/procurement.

price reduction measures are necessary and the *Tender* cannot be clarified readily to produce a reduced price.

- 5.7.6 Negotiations must be conducted by a team of at least two suitable officers with the involvement of Legal, as required. Changes should be confirmed in writing for contractual purposes. Where *Post Tender Negotiation* results in a significant change to the specification (or contract terms) the contract must not be awarded but re-tendered.
- 5.7.7 Officers must not agree to contract conditions where payment is made before the goods, works or services are received, unless otherwise approved in writing by either the Corporate Procurement Manager, the Assistant Chief Executive (Finance) or the Borough Solicitor. Staged payments are acceptable but must be proportionate to the cost of the goods, works or services received.
- 5.7.8 If the tendered contract value for the preferred *Supplier* falls into the higher band 4 (above the EU threshold) when processes for the lower Band 3 were followed, the officer must provide either the Assistant Chief Executive (Finance), the Borough Solicitor or the Corporate Procurement Manager with a written explanation and supporting evidence as to the basis for estimating the contract value at that lower band. The Borough Solicitor, Assistant Chief Executive (Finance) or Corporate Procurement Manager will decide whether the contract should be re-tendered following the procedures within the higher band.

Checks on Financial Status

- 5.7.8 For contracts of within this value banding, the officer must, as a minimum, provide two years annual accounts for the preferred *Supplier* before contract award. To avoid time delays, it is however recommended that financial checks are conducted on all shortlisted *Suppliers*. Annual accounts are to be provided to internal audit, who will conduct an online check before passing to Accountancy to make a recommendation.
- 5.7.9 Financial checks for contracts **under** £250,000 are not necessary where the *Supplier* is listed on Constructionline and where a check reveals a *Supplier* has a suitable financial notation for the contract concerned and there are no adverse comments regarding financial status.
- 5.7.10 If the financial check reveals an unsatisfactory appraisal, yet the officer still wishes to use the *Supplier*, he/she must submit a written request to the Assistant Chief Executive (Finance) for his approval. Any conditional approval given by the Assistant Chief Executive (Finance) must be strictly complied with.
- 5.7.11 At the discretion of Internal Audit, financial checks may not be necessary for specific *Suppliers*. For example, when a financial check has been conducted in the last financial year or the contracting body is a local authority.

5.8 Contract Award and Contract Management

- 5.8.1 All *Suppliers* who have expressed an interest in a proposed contract should be notified in writing whether they have or have not been successful either in making the next stage or winning the contract. Where the contract is awarded on the most economically advantageous ground, tenderers should be notified of their score against each award criteria, the score the winning tenderer obtained and the name of the winning tenderer.
- 5.8.2 All contracts in this value band will be in the form of a letter of acceptance signed by a Strategic Management Board member and countersigned by an authorised signatory for the supplier (together with any relevant contractual documentation as per bullet (h) under

CSO 5.8.4), unless:

- a) another contractual document constitutes the **entire** agreement and has a section for contract signature by both parties, in which case, this document must be signed by the Strategic Management Board member, or
- b) the contract is required to be sealed under CSO 5.8.6.

5.8.3 Letters of Intent shall only be used in exceptional circumstances and with the approval of the Borough Solicitor who should be satisfied that they are adequately worded.

5.8.4 The following must be included in the acceptance letter:

- a) Any contract reference
- b) Description of the work, service or goods
- c) The contract price (exclusive of VAT)
- d) That the acceptance letter must be acknowledged and returned to the Council
- e) Either the commencement date of the contract or how the *Supplier* is to be notified of the commencement date
- f) The contract period and/or completion date
- g) The name of officer in charge of the contract and his or her telephone number.
- h) Detail the Contract documents (e.g. tender, correspondence, specification, drawings, project brief/proposal, terms and conditions and forms for completion as relevant to the contract concerned). A copy of these documents should be enclosed with the acceptance letter for the *Supplier's* retention.

5.8.5 If acceptance of a tender is for any reason delayed beyond the appropriate tender validity period, the *Supplier* must be asked to confirm his tender in writing before the acceptance is issued. This letter of confirmation must be included as part of the contract. If the recommended tenderer submits a revised price, the Borough Solicitor must be consulted for advice on how to proceed.

5.8.6 A contract must be sealed¹⁷ in the following cases:

- a) For all formal construction/works contracts over £75,000
- b) Where an extended limitations period is required (the normal limitation period is 6 years after the end of the contract).

5.8.7 Details of contracts within this value banding must be recorded in the Contract Register held by Internal Audit. An electronic copy of the acceptance letter and contractual documents must also be provided to Internal Audit for the central contracts database. Contracts, for the purpose of this exercise, will range from a simple letter confirming pricing and using standard *Supplier* terms and conditions to a large contractual document drafted by Legal. Contracts will also cover one off purchases and schedules of rates.

5.8.8 All interim valuations and final accounts in respect of staged payment contracts must also be submitted for checking by Internal Audit and recorded in the Contract Register before they are sent for payment to Finance.

5.8.9 All documentation and records of communications pertaining to the tender must be kept in accordance with the Document Retention Arrangements in Appendix A of the Financial Regulations.

¹⁷ Contact the Borough Solicitor or Senior Legal Assistant to arrange.

SECTION 6 CONTRACTS ABOVE THE EU THRESHOLD (BAND 4)

6.1 Overview

Band	Category	Estimated Contract Value / EU Thresholds ¹⁸	Minimum Number of Candidates Shortlisted		Shortlist Approval	Contract Signature
			Procedure	No		
4	Service Contracts	Above £153,000	Open Restricted Negotiated Competitive Dialogue	N/A 5 3 3	SMB Member or first line report to SMB Member	Under Seal
4	Supplies Contracts	Above £153,000	Open Restricted Negotiated Competitive Dialogue	N/A 5 3 3	SMB Member or first line report to SMB Member	Under Seal
4	Works Contracts	Above £3,800,000	Open Restricted Negotiated Competitive Dialogue	N/A 5 3 3	SMB Member or first line report to SMB Member	Under Seal

(See also Appendix B for EU Procurement timescales)

6.2 EU Procurement Regulations

6.2.1 The detailed complex advertising, tendering and reporting processes imposed by the EU Procurement Regulations are not fully covered in Contract Standing Orders. Separate advice and instructions may be issued from time to time by the Corporate Procurement Manager and Borough Solicitor relating to the EU Procurement Regulations. Such advice and instructions will be deemed to be incorporated into Contract Standing Orders and can be found on the Intranet under Staff Information/Procurement. In the event of any conflict between Contract Standing Orders and the EU procurement Directives, the EU procurement Directives will prevail.

6.2.2 Works contracts generally fall under the scope of construction projects, such as new build, or major renovations involving the bringing together of different services and supplies. If in doubt, either consult either the Corporate Procurement Manager or Borough Solicitor or apply the Services or Supplies thresholds. Some services, such as Legal and personnel placement services are exempt from EU Procurement Regulations¹⁹.

6.2.3 'Open, restricted, negotiated and competitive dialogue procedures' are the procurement procedures applied via the EU Procurement Directive, whereby:

- a) in the case of **open procedures**, any interested *Supplier* may submit a tender;
- b) In the case of **restricted procedures**, any *Supplier* may request to participate and only candidates invited by the Council after shortlisting may submit a tender;

¹⁸ EU threshold values were current as at 1st September 2005, but are subject to change. If in doubt, please check the latest EU threshold values on the intranet under staff info/ procurement.

¹⁹ The list of Works, Services and Supplies categories (including exempt service categories) can be found on the Intranet under Staff Info / Procurement.

- c) In the case of the **negotiated procedures**, the Council consults with the *Supplier* of its choice and negotiates the terms of the contract with one or more of these.
- d) In the case of the **competitive dialogue procedure**²⁰, the Council conducts a dialogue with the candidates admitted to that procedure, with the aim of developing one or more suitable alternatives capable of meeting its requirements, and on the basis of which the candidates chosen are invited to tender.

6.2.4 The advice of the Corporate Procurement Manager and/or the Borough Solicitor must be sought where the contracting officer is unclear about an aspect of the EU procurement regulations or is intending to use the negotiated or competitive dialogue procedure.

6.2.5 The officer must confirm as appropriate that Prior Information Notices, Contract Notices and Contract Award Notices, where required for the *EU Procedure*, have been placed in the Official Journal of the European Union using *BIP Project*. The Corporate Procurement Manager can assist with this.

6.2.6 A *PIN Notice* (Prior Information Notice) can be issued via OJEU anytime between 12 months and 52 days prior to the issuing of a Contract Notice. The issuing of a PIN will shorten the minimum timescales for tender response (see Appendix B). Anticipated tender exercises over the forthcoming year should be published as PIN notices as soon as possible after the beginning of the budgetary year. A PIN notice **must** be issued for supplies and services contracts over £485,000 and for Works contracts over £3,800,000.

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6.3 Supplier Selection

6.3.1 Under the EU Procurement Directive, the officer must submit a Contract Notice to the Official Journal of the European Union (OJEU). Public notices may also be placed in trade journals and approved *Suppliers* can be advised of the tender exercise, so long as this is done after the placement of the OJEU advertisement. All responses must be via OJEU.

6.3.2 The use of ESPO, CBC, OGC or other purchasing consortium can be used when the contract value is above the *EU Threshold*, so long as the purchasing consortium have awarded the framework agreement in accordance with the *EU Procedures* and on behalf of the Council. Where it is proposed to use a purchasing consortium for a procurement above the EU threshold, approval must first be sought from either the Borough Solicitor, Assistant Chief Executive (Finance) or the Corporate Procurement Manager. Procedures provided by the Purchasing Consortium must be followed.

6.4 Shortlisting

6.4.1 *Shortlisting* will be applicable if the Council is using the restricted procedure, as outlined in the EU Procurement Directive.

6.4.2 Any *Shortlisting* must have regard to financial and technical standards relevant to the contract and may have regard to *Award Criteria*. It is important that the process for shortlisting *Suppliers* for being invited to tender is transparent and fair.

6.4.3 All *Suppliers* who have expressed an interest in a proposed contract should be notified in writing whether they have or have not been successful in making the next stage within 14 days of the deadline for receipt of expressions of interest. Feedback should either be provided in the letter or a contact number provided for requests for feedback.

²⁰ The Competitive Dialogue Procedure cannot be used until 1st January 2006, in line with the UK's implementation of the 2004 EU Consolidated Procurement Directive.

Checks on Financial Status

- 6.4.4 For contracts within this value banding, the officer must provide Internal Audit with the last two years annual accounts for each short-listed *Supplier*. If the open procedure is used, then all respondents who meet the minimum quality threshold should be checked. Internal audit will conduct an online check before passing to Accountancy to make a recommendation.
- 6.4.5 Financial checks for contracts under £250,000 are not necessary where the *Supplier* is listed on Constructionline and where a check reveals a *Supplier* has a suitable financial notation for the contract concerned and there are no adverse comments regarding financial status.
- 6.4.6 If the financial check reveals an unsatisfactory appraisal, yet the officer still wishes to use the *Supplier*, he/she must submit a written request to the Assistant Chief Executive (Finance) for his approval. Any conditional approval given by the Assistant Chief Executive (Finance) must be strictly complied with.
- 6.4.7 At the discretion of Internal Audit, financial checks may not be necessary for specific *Suppliers*. For example, when a financial check has been conducted in the last financial year or the contracting body is a local authority.

6.5 The Invitation to Tender

- 6.5.1 The **Instructions to Tenderers**²² must, as a minimum, include the following:
- a) List the information which must be provided by the *Supplier* in their response, including any forms, tables or pricing schedules to be completed
 - b) State the method of response required i.e. via email or posted in hard copy. If the postal method is to be used, orange envelopes and completed labels, available from Committee Services, should be sent with the Invitation To Tender
 - c) Outline a timetable for the remainder of the procurement exercise, detailing the closing date for receipt of responses, the evaluation period and when a response on contract award is expected
 - d) State the method and deadline for obtaining additional information or clarification (usually 14 days before the closing date for receipt of responses) and that additional information requested will be supplied to all respondents (this should be supplied to all candidates at the same time no later than 7 days before the closing date for receipt of responses)
 - e) Outline how the responses will be evaluated, listing award criteria and weightings. The appropriate award criteria shall be selected from one of the following:
 - i) "lowest price"
 - ii) "most economically advantageous" offer i.e. where considerations other than price also apply. These may include price, service, quality of goods, running costs, previous experience, delivery date, cost effectiveness, relevant environmental considerations, employment considerations, aesthetic and functional characteristics, safety, after-sales services, technical assistance, contract terms and conditions and any other relevant matters
 - f) State that late responses will not be considered and that the Council is not bound

²² An outline Invitation To Tender can be found on the Intranet under staff info/ procurement.

to accept any Tender

- g) State the price validity period (usually up to a maximum of two months)
- h) Provide a statement to the effect that under the Freedom of Information Act (2000), the Council may be obliged to provide information regarding the procurement exercise or a subsequent contract award and that respondents will be advised of any requests for information and given an opportunity to comment before disclosure of such information (information that would prejudice the interest of any party or information that is commercially sensitive and not in the public interest is exempt).

6.5.2 An adequate **specification** must be included. The specification must describe clearly the Council's requirements in sufficient detail to enable the submission of competitive offers.

6.5.3 For all contracts within this value band, the following **standard forms** must either form part of the pre-qualification questionnaire or the Invitation To Tender and should be included in the final contract documentation²³:

- a) Form of Tender
- b) Equal Opportunities and Race Relations Certificate
- c) Certificate that the Tender is Bona Fide
- d) Parent Company Guarantee (if applicable)
- e) Performance Bond Certificate (if applicable)
- f) Insurance requirements (if applicable)
- g) Safety Declaration / Method Statement (if applicable)

6.5.4 The officer should seek advice from the Borough Solicitor if he/she is unclear as to what terms and conditions should be included in the contract. Where appropriate to the type of contract being let, the officer should use standard industry contracts, such as JCT contracts for building work, or the **Council's own standard contracts**, such as the "SBC Supply of Goods Conditions of Contract". Where the Council does not supply a suitable standard contract for the type of contract being let, the officer would usually specify the Council's **standard clauses** plus any special contract conditions relevant to that specific contract. It should be stated in the Invitation To Tender and final contract documentation that these clauses will prevail over any clauses in the supplier's contract. SBC's standard clauses and contracts are available on the Intranet under staff info / Procurement.²⁴

6.5.5 A tender period can be extended if there are justifiable reasons and it is practical to do so. The reasons for any extension of time should be recorded and communicated in writing to all respondents at least one week prior to the closing date.

6.5.6 *Suppliers* must carry a range and level of *insurance cover* acceptable to the type of contract being let. As a minimum, contracts within this value banding should have Public and Employers Liability of 5 million pounds (or product liability of 5 million pounds if the contract is for supply of goods). If in doubt, contact the Council's Insurance Officer or Senior Legal Assistant.²⁵

6.5.7 The advice of the Borough Solicitor must be sought as necessary, particularly for contracts which are complex.

²³ Standard forms can be found on the Internet under staff info/procurement

²⁴ It is prudent that Officers download the standard clauses and contracts from the Intranet as and when the procurement need arises, as they are subject to change.

²⁵ An insurance checklist can be found on the intranet under staff info / procurement

- 6.5.8 The EU Procedure lays down specific time periods for submission of Tenders, which must be followed (see guidance in the Intranet under Staff / Procurement and Appendix B).²⁶
- 6.5.9 If the procurement is via OGC, ESPO, CBC or other Purchasing Consortium and the framework agreement has been let in accordance with EU legislation and covers the Council, then normally at least four weeks should be allowed for the submission of Tenders. This can be less if the Contracting Officer has ascertained, after consultation with all shortlisted *Suppliers*, that a lesser time period is practical and realistic.
- 6.5.10 It may be necessary during the tender period for the Council to clarify some aspects of its tender documents. This may be done in writing or by way of a meeting. Parity of tendering must be preserved so it is important that all tenderers are issued with same information.

6.6 Submission, Receipt And Opening Of Tenders

For contracts within this value banding, CSO5.5 or CSO 5.6 must be followed.

6.7 Tender Evaluation

- 6.7.1 The following should be checked by the Officer:
- a) The *Tenders* are actually from the firms invited to tender;
 - b) Check that the price of the tenders as set out on the Opening of Tenders is correct;
 - c) That there are no errors or omissions in the completion of the documents.
 - d) Where a check of the prices quoted suggest collusion among tenderers or 'ring' pricing, the case should be referred to the Audit Partnership Manager;
- 6.7.2 Where necessary, clarifying some aspect of a *Tender* response in writing or by way of a meeting is permitted. If a meeting is held then relevant notes should be made of the results of the meeting and as necessary significant matters should be confirmed in writing for contractual purposes.
- 6.7.3 If following the 'open procedure', a financial check should be conducted on all respondents who meet the minimum quality threshold, as laid out in CSO 6.4.4 to 6.4.7.
- 6.7.4 ***Post Tender Negotiation must not be conducted in an EU Procedure.***
- 6.7.5 Following the negotiated procedure contained within the EU Regulations is not the same as *Post Tender Negotiation*. The negotiated procedure can only be used in exceptional cases and prior written approval ***must*** first be sought from either the Borough Solicitor or Corporate Procurement Manager to use the negotiated procedure.
- 6.7.6 The officer must use the award criteria and measurement system as set out in the Invitation to Tender²⁷. The measurement system should usually include the following three elements:
- a) A point scoring system for individual quality / best value considerations.
 - b) Weightings applied to quality / best value issues in accordance with their importance to the completion of the contract.

²⁶ The 2004 EU Consolidated Procurement Directive will come into effect on 1st January 2006 and will allow for shortened minimum timescales for submission of expressions of interest and tender responses when electronic communications are made.

²⁷ A sample criteria and measurement template can be found on the Intranet under staff info/procurement.

- c) A "Quality Threshold" which sets the minimum standard expected. *Tenders* which fall below this shall be excluded from consideration.

6.7.7 All candidates must be notified in writing whether they have or have not been successful either in making the next stage or winning the contract. Where the contract is awarded on the most economically advantageous ground, tenderers must be notified of their score obtained against each award criteria, the score the winning tenderer obtained and the name of the winning tenderer. **The contract with the successful supplier must not commence until 10 calendar days after letters have been sent**, allowing unsuccessful suppliers time to dispute any decision made.

6.7.8 Officers must not agree to contract conditions where payment is made before the goods, works or services are received, unless otherwise approved in writing by either the Corporate Procurement Manager, the Assistant Chief Executive (Finance) or the Borough Solicitor. Staged payments are acceptable but must be proportionate to the cost of goods, works or services received.

6.8 Contract Award and Contract Management

6.8.1 All contracts over the EU threshold must be made under the common seal of the Council (under Deed of Execution if the *Supplier* does not have a seal).²⁸

6.8.2 All contractual documents must be accompanied by an acceptance letter and concluded formally under seal before the supply, services or works commence, unless, in exceptional circumstances, the successful *Supplier* is issued with a legally sound letter of intent, which has been approved by the Borough Solicitor.

6.8.3 The following must be included in the acceptance letter:

- a) Any contract reference
- b) Description of the work, service or goods
- c) The contract price in figures and words (exclusive of VAT)
- d) Either the commencement date of the contract or how the *Supplier* is to be notified of the commencement date.
- e) The contract period and/or completion date
- f) The name of officer in charge of the contract and his or her telephone number.
- g) Detail the Contract documents (e.g. tender, correspondence, specification, drawings, project brief/proposal, terms and conditions and completed forms as relevant to the contract concerned). A copy of these documents should be enclosed with the acceptance letter for the *Supplier's* retention.

6.8.4 The acceptance letter should be signed by a Strategic Management Board member.

6.8.5 If acceptance of a tender is for any reason delayed beyond the appropriate tender validity period, the *Supplier* must be asked to confirm his tender in writing before the acceptance is issued. This letter of confirmation must be included as part of the contract. If the recommended tenderer submits a revised price, the Borough Solicitor must be consulted.

²⁸ Contact the Senior Legal Assistant or Borough Solicitor to arrange.

- 6.8.6 Contract award notices must be published in the Official Journal of the European Union (OJEU) within 48 days of contract award via BIP²⁹.
- 6.8.7 Details of contracts within this value banding must be recorded in the Contract Register held by Internal Audit. An electronic copy of the contract must also be provided to Internal Audit for the central contracts database. Contracts, for the purpose of this exercise, will range from a simple letter confirming pricing and using standard *Supplier* terms and conditions to a large contractual document drafted by Legal. Contracts will also cover one off purchases and schedules of rates.
- 6.8.8 The officer may wish to use a contract progress checklist form to ensure all required steps have been followed. An example checklist can be found on the Intranet under staff info / procurement, although SDU's may use their own forms to reflect their special requirements.
- 6.8.9 The officer should provide his or her line manager, or Strategic Management Board member as considered necessary, with regular reports on the financial position of a contract for budget or funding monitoring purposes and to enable corrective action to be taken as necessary.
- 6.8.10 All interim valuations and final accounts in respect of staged payment contracts must also be submitted for checking by Internal Audit and recorded in the Contract Register held by Internal Audit before they are sent for payment to Finance.
- 6.8.11 The officer must monitor the performance of the *Supplier* to ensure that requirements of the contract are delivered satisfactorily. In performing this task the officer must monitor:
- a) Work performance
 - b) Compliance with specification and contract terms and conditions
 - c) Cost
 - d) Any *Best Value* requirements
 - e) User satisfaction
 - f) Risk management
- 6.8.12 All documents, communications and minutes pertaining to the tender exercise and contract award must be kept in accordance with the Document Retention Arrangements in Appendix A of the Financial Regulations.

²⁹ The Corporate Procurement Manager can undertake this task, if required.

SECTION 7 SPECIAL TYPES OF CONTRACTS

7.1 Engagement of Consultants

7.1.1. Overview

Estimated Value of the Procurement	Minimum No. of Consultants to be Invited to Quote or Tender	Shortlist Approval	Contract Signature
Up to £1,000	At least one consultant should provide a verbal quotation ³⁰	N/A	Officers authorised to sign purchase orders within this value banding
Up to £15,000	At least one consultant should provide a written quotation	N/A	Officers authorised to sign contracts within this value banding
Over £15,000 up to £75,000	At least three consultants should be invited to quote in writing	N/A	Officers authorised to sign contracts within this value banding
Over £75,000 but below the EU threshold	At least three consultants should be invited to tender	SMB Member or first line report to SMB Member	Officers authorised to sign contracts within this value banding
above the EU threshold	Follow the EU procedures	SMB Member or first line report to SMB Member	Under Seal

7.1.2 This standing order applies to all types of consultancy services for example, Architects, Engineers, Surveyors, IT, Management consultants etc. Consultants are specialists consulted for professional advice or services.

7.1.3 It is important that best value is obtained when employing consultants. The following procedure applies where in the opinion of the Head of Service or 1st Line Report because of the specialist nature of the services required, it is necessary to appoint a Consultant to provide the services to the Council.

7.1.4 For estimated values above £1,000 and before consultants are invited to quote/ tender, the officer shall submit a report to the SMB Member or First Line Report to SMB Member setting out:

- (a) The nature of the services for which the appointment of a Consultant is required, identifying the project objectives;
- (b) The estimated *Total Value* of the services (which should be project based);
- (c) Details of the in-house costs to support the consultants;
- (e) Confirming that no employee of the Council has the capacity or is available to undertake the services.

7.1.5 The SMB Member or First Line Report to SMB Member is then responsible for ensuring

³⁰ Unless exceptional circumstances provided for in CSO 4.2.3 apply

that a Project Brief is prepared including background, objectives, timetable, costs, monitoring arrangements, documentation standards, contact names and numbers for enquiries.

The Invitation to Quote / Tender

- 7.1.6 When the estimated *Total Value* of the consultancy is equal to or exceeds the *EU Threshold* for services, then the EU procurement procedure must be followed, as set out in Section 6.³¹
- 7.1.7 Where it can be demonstrated that there are insufficient suitably qualified consultants to meet the competition requirement in the above table, then all suitably qualified consultants must be invited. The officer must record in writing the reason why the services are so specialist and obtain an exemption approval as required by paragraph 3.3 of Section 3 of Contract Standing Orders to invite fewer consultants.
- 7.1.8 For consultancies over £15,000 related to construction, estates or building surveying work, the use of conditions of engagement is permitted where they are considered appropriate by the Head of Service in consultation with the Borough Solicitor³². Other consultancies over £15,000 including management and IT should use terms and conditions either, supplied by the Borough Solicitor, or have been approved by the Borough Solicitor.

Tender Evaluation and Contract Award

- 7.1.10 The tendering, evaluation and award procedure, as outlined in Section 5, shall apply to all consultancies where the total estimated value is over £75,000 and under the EU Threshold and in cases below that value where there is a strong likelihood of additional work (i.e. serial or extension contracts), which would bring the total value above £75,000.
- 7.1.11 It shall be a condition of the engagement of the consultant who is to be responsible to the Council for the supervision of a contract on its behalf, that in relation to that contract he/she shall:
- (a) Comply with these Standing Orders;
 - (b) At any time during the carrying out of the contract for which he is responsible produce to the Client Strategic Management Board member, or his representative, on request, all the records maintained by him in relation to that contract; and
 - (c) Within a specified period of contract completion, transmit all such records to the appropriate Strategic Management Board member.

Every written contract shall provide that the consultant shall not assign directly or indirectly the whole or any part of the contract without the written approval of the Council.

Contract Monitoring

- 7.1.12 For contracts over £75,000, the Strategic Management Board member shall be responsible for ensuring that the Consultants work is properly monitored on an ongoing

³¹ Certain consultancy related services are not subject to the full tendering requirements of the EU Procurement Directive. These are referred to as part B Services and are listed as an appendix to the Directive, which can be found on the Intranet under staff info / procurement

³² Standard terms and conditions for consultants approved by Legal are provided on the Intranet under Staff Info / Procurement.

basis. This includes:

- (a) Appointing a named Project Officer or Group
- (b) Specifying key tasks and dates for Consultants
- (c) Monitoring costs against budgets
- (d) Arranging regular progress meetings with Consultants

7.1.13 The project officer shall maintain and keep all records pertaining to the tender, award and ongoing maintenance of the contract.

7.2 Disposal Contracts

7.2.1 Where items cannot be re-used elsewhere in the Council, a report explaining why the items are surplus or redundant, any health and safety issues, and the proposed method of disposal should be submitted to the relevant SMB Member or First Line Report to SMB Member for approval in writing to proceed to dispose of the items.

7.2.2 The highest bid received if reasonable should be accepted. One of the following methods of disposal should be used:

- a) Invite sealed bids from interested staff.
- b) Invite quotations or tenders from outside organisations or members of the public
- c) Sale by Public Auction.
- d) Trade in for a new item when the circumstances are appropriate.
- e) Scrap the items in a safe manner.

7.2.3 The proposed method of disposal should be approved by a SMB Member or First Line Report to SMB Member. All disposals must comply as applicable with the Waste Electrical & Electronic Equipment Directive and Health & Safety legislation. All Council and personal data should be removed from any IT or recording equipment prior to their disposal.

Competition Rules

7.2.4 Where inviting quotations or tenders from outside organisations or members of the public the following number of bidders should be invited as follows:

<u>Estimated Value</u>	<u>Minimum number of bidders to be invited</u>
Up to £1,000	At least one bidder by quote
Over £1,000 up to £75,000	At least three bidders by quote
Over £75,000	At least four bidders by invitation to tender

7.2.5 Records of the bids received and written approval by an authorised officer to accept the most favourable bidder should be kept. The acceptance will be by letter signed by SMB Member or First Line Report to SMB Member if the value is under £75,000 or a Strategic Management Board member if the value is over £75,000.

7.3 Contract Extensions

- 7.3.1 All requests for extensions to existing contracts have to be made in writing to either the Assistant Chief Executive (Finance) or Borough Solicitor for his approval.
- 7.3.2 No extension to an existing contract shall be given unless it can be clearly demonstrated that a change of *Supplier* would result in one or more of the following:
- a) Unacceptable technical difficulties
 - b) A significant and unacceptable increase in costs to the Council
 - c) Significant disruption to the delivery of Council services.
- 7.3.3 It is not permitted to extend a contract renewable yearly on more than four occasions without re-tendering. Such cases should be reviewed annually and a written record of the decision (with reasons) to either extend the contract or carry out a new competitive tendering exercise must be kept.
- 7.3.4 In all cases where the extension of a contract has been approved, the Legal section shall be requested by the client department to undertake formalising the contract extension. Where the total contract value (including the original contract value) exceeds £75,000, details of the contract extension must be provided to Internal Audit for recording on the central contracts database.

7.4 Contract Hire and Lease/Rental Agreements

- 7.4.1 Contract hire and lease/rental agreements are procurements and are subject to the provisions in that respect contained in Contract Standing Orders.
- 7.4.2 Before entering into a contract hire or lease/rental agreement the officer shall ensure that the financial implications have been assessed by Accountancy.

7.5 Nominated Sub-Contractors and Suppliers

- 7.5.1 The terms of the contract between the Council and the main contractor should make it clear that the main contractor will be expected to enter into contract with the sub-contractors or *Suppliers* nominated by the Council.
- 7.5.2 *Tenders* for the nominated sub-contractors or *Suppliers* will be invited, opened and evaluated by the Council in accordance with Contract Standing Orders. The officer shall nominate the successful tenderer(s) to the main contractor.
- 7.5.3 The main contractor will ensure that the main contract indemnifies them against the sub-contractors own obligations in relation to the works, supplies or services included in the sub-contract.

7.6 Term Contracts and Framework Agreements

- 7.6.1 An officer may consider it advantageous to the Council, to invite tenders on a Term basis or under a *Framework Agreement* where payment is based not on defined works, services or supplies, but on a Schedule of Rates, Bill of Quantities or fixed unit cost over a defined period of time.
- 7.6.2 Unless a long term partnership, term contracts should not exceed five years, but will not normally exceed two years unless the contract contains a price fluctuation clause. It is not permitted to extend a contract renewable yearly on more than four occasions without re-tendering. Such cases should be reviewed annually and a written record of the

decision (with reasons) to either extend the contract or carry out a new competitive tendering exercise must be kept (contracts may be subject to other term restrictions under the EU Procurement Directive).

- 7.6.3 The relevant procedures and regulations in Sections 3 to 6 of Contract Standing Orders are applicable to all Term Contracts.
- 7.6.4 Any *Framework Agreement* must be tendered in accordance with Contract Standing Orders or under EU procurement rules, as applicable.
- 7.6.5 The estimated value of the Term Contract should be based on the full length of the contract (including any options for contract extensions) or for four years if the contract is renewable yearly.
- 7.6.6 Where additional items of work are not contained within the Schedule of Rates, all tenderers meeting the minimum quality threshold shall be given the opportunity of pricing such items which will then be added to the main Schedule of Rates to be used in the future.

7.7 Partnerships

- 7.7.1 The term 'Partnership' is used to cover a wide variety of joint ventures and other procurement arrangements. The Strategic Management Board member or contracting officer shall ensure that the prior approval of The Assistant Chief Executive (Finance) or the Borough Solicitor for the proposed partnership arrangement is obtained. The financial implications must be assessed by the Assistant Chief Executive (Finance) and all proposed partnership agreements must be cleared with the Borough Solicitor **at the earliest stage**.
- 7.7.2 All partnership agreements shall include *where relevant*:
 - a) The principles of the partnership
 - b) Output specification and specified inputs
 - c) Partnership board
 - d) Open book accounting
 - e) Any profit sharing arrangement and payment mechanism
 - f) Hierarchy of dispute resolutions mechanisms
 - g) Quality and Environment management systems
 - h) Asset transfer
 - i) Withdrawal arrangements
- 7.7.3 Partnership agreements which involve a joint venture/contractual arrangement with private sector bodies are subject to the provisions of Contract Standing Orders.
- 7.7.4 A competitive exercise shall be undertaken in accordance with the provisions of Contract Standing Orders to select the partner and award the work. In any cases where the proposed partnership would mean that Contract Standing Orders of another public sector body would take precedence over those of Stevenage Borough Council, the written approval of either the Assistant Chief Executive (Finance) or Borough Solicitor must first be obtained before any partnership is formalised.
- 7.7.5 Partnerships with the Voluntary Sector shall be in accordance with the grants policy of this Council.

SECTION 8 OTHER CONSIDERATIONS

8.1 Contractual Disputes

- 8.1.1 The officer should seek the advice and involvement of the Legal Section as appropriate in contractual disputes with *Suppliers*.
- 8.1.2 In the event of a claim from a *Supplier* for loss or expense incurred (either permitted by the terms of the contract or extra-contractual), the officer should assess whether the claim is justified and supported by adequate evidence and seek the advice of the Borough Solicitor. Unless the Borough Solicitor agrees that the relevant Head of Service can take the lead, the Borough Solicitor must be the lead officer in all cases where the claim is disputed by the Council.

8.2 Termination of Contracts

- 8.2.1 Subject to the terms and conditions of the contract, where the *Supplier* has demonstrably failed to deliver the work, services or goods in accordance with the contract the Council will be at liberty to terminate the contract either wholly or in part and to procure the works, supplies or services of the same or similar description elsewhere, in order to make good such default.
- 8.2.2 Adequate written evidence of poor unacceptable performance must be kept. Such records would include relevant correspondence and records of relevant meetings with the *Supplier*.
- 8.2.3 Legal Services must be involved in the termination of any formal contract to ensure that:
 - a) The Council's case for termination is legally sound; and,
 - b) The termination is carried out in accordance with the terms of the contract.

8.3 Bankruptcies and Liquidations

- 8.3.1 In the event that a *Supplier* ceases to trade as a result of a bankruptcy or a liquidation then the Borough Solicitor must be involved in any of the following:
 - a) Terminating the contract
 - b) The appointment of new *Supplier* to complete the work or service;
 - c) Negotiations with liquidator/receiver/administrator
 - d) Assignment of contract and Novation

8.4 Contract Variations

- 8.4.1 Variation orders shall relate to the work specified in an existing contract only and shall not be given in circumstances where a separate contract should or ought to have been entered into.
- 8.4.2 All variation orders must normally be issued to the *Supplier* prior to the relevant work being carried out but, in exceptional circumstances, should be given as soon as possible thereafter.

8.4.3 Variations shall be issued to the *Supplier* on an official Variation Order (VO), e.g. Architects Instructions (AI'S), in a form approved by the relevant professional association. Variation Orders shall contain the details of the work required and be appropriately priced. Variation Orders must be signed by an officer authorised to sign contracts for the new total value of the contract in question.

8.5 Green Environment and Sustainable Sources

Goods or services which are known to be harmful to the environment, and where there are other adequate options, will not be used. Wherever practical and cost effective, only materials from sustainable sources will be used.

8.6 Diversity

Officers should take steps in the procurement exercise to encourage a diverse and competitive supply market, including small firms, social enterprises, ethnic minority businesses and voluntary and community sector suppliers.³³ Providing details of any bidding opportunities on the Internet via the Corporate Procurement Manager will raise awareness for these organisations.

8.7 Equality

To comply with our duty under the Race Relations (Amendment) Act (RRA 2000), the Council must take race equality into account when procuring goods, works, or services from external providers. If race equality is a 'core requirement' i.e. an essential part of the contract³⁴, then race equality must be considered at every stage during the procurement process, including:

- a) Defining Race Equality requirements clearly and objectively, such as through a set of outcomes or performance targets.
- b) Consultation, training and monitoring to check whether such requirements are being achieved.
- c) SBC standard Race Equality clauses must be included to ensure that no unlawful discrimination takes place.

8.8 Innovative Procurement/Abnormal Contract Action

New or different ways of purchasing goods, services or works, which give better value for money, are encouraged. However, any proposals for innovative procurement or abnormal contract action (including the use of another organisation's Contract Standing Orders and E-auctions) must be cleared by the Borough Solicitor to ensure the proposal is legally sound.

8.9 Declaration Of Interest

Section 117 of the Local Government Act 1972 provides that, if it comes to the attention of any officer, that the Council has entered or is proposing to enter into a contract in which he or she has "pecuniary" interest, he or she must give notice in writing of that interest to the Authority as soon as is practicable. It is a criminal offence not to comply with this provision.

³³ Further guidance on how to encourage a diverse and competitive supply market is available on the Internet under staff info/ Procurement.

³⁴ An example of a contract where Race Equality would be a 'core requirement' is if the purpose of the contract is to provide services directly to the public. A supplier must then be able to provide a service that meets everyone's needs. Further guidance on Race Equality in Procurement can be found on the Internet under staff info / procurement.

- a) The register in which the written notice is to be given is held by the Constitutional Services Manager.
- b) "Pecuniary" includes any direct or indirect interest and is defined by reference to Section 95 of the Local Government Act 1972. The Borough Solicitor's advice should be sought in areas of uncertainty.
- c) The requirement to register applies even if the officer is not involved with the Contract.

8.10 Freedom of Information Act (2000)

The Borough Solicitor or his appointed nominee should be consulted where requests for information on tenders or contracts are received under the Freedom of Information Act (2000).

8.11 Security of Performance and Performance Liability

In order to protect the Council from non-performance or poor performance in a contract, the officer should consider whether a performance *bond* or a *liquidated damages clause* is required and in what form. These are especially relevant for Works and some Service contracts³⁵. The Borough Solicitor should be consulted about the type and wording of the bond or liquidated damages clause.

For Works contracts between £100,000 and £1,000,000, the Council shall normally require the *Supplier* to provide a performance bond for 10% of the total contract value. For Works contracts above £1,000,000 the performance bond is usually 5%.

Supplier contracts should be checked carefully for any limitations or liability and advice should be sought from the Borough Solicitor or Senior Legal Assistant as necessary. The foreseeable damage to the Council which might arise from the failure on the part of the supplier, any limitation on the contract, liability insurance carried by the supplier (other than public liability cover) and, security for performance, are all interrelated factors and should be considered carefully as a whole.

8.12 TUPE and The Best Value Code of Practice on Workforce Matters

If contracting out a service, the Transfer of Undertakings (Protection of Employment) Regulations ("TUPE") and new statutory guidance 'The Best Value Code of Practice on Workforce Matters in Local Authorities (circular 03/2003)' may apply. This is a very complex area where legal guidance and trade union consultation must be sought at an early stage.

³⁵ Standard templates and further explanations/guidance for Performance bonds and liquidated damages clauses can be found on the Intranet under staff info / procurement.

Appendix A - Table of Definitions

“Authorised Contract Signatory”	The named officer who has been sanctioned via SMB to sign contract with suppliers to a specified contract value. The list of authorised signatories and respective values are maintained by Exchequer Services.
“Best Value”	The duty, which the Part I of the Local Government Act 1999 places on local authorities, to secure continuous improvement in the way in which functions are exercised, having regard to a combination of economy, efficiency and effectiveness as implemented by the Council.
"Bond"	A bond is a legally enforceable financial guarantee given by a third party (the guarantor) to the Council to guarantee the obligations of a <i>Supplier</i> under a contract. The guarantor agrees to pay the Council a sum of money if the <i>Supplier</i> does not do what has been promised under a contract with the Council (e.g. a bond is often 10% of the total contract value). The purpose of a bond is to help the Council meet the extra expenses to remedy the contract default and/or complete the contract.
"Estimated Contract Value"	The calculation of the estimated value of a contract shall be based on the maximum total amount payable, excluding VAT, envisaged for the total term of the agreement (including any option for contract extensions). Contracts must not be artificially separated either in structure or duration so as to avoid having to comply with the requirements of the Council’s Contract Standing Orders or EU Procurement rules.
"EU Procedures"	The procedures required by the EU where the <i>Total Value</i> exceeds the <i>EU Threshold</i> – see <i>separate guidance on the Intranet under Staff/Procurement</i> .
"EU Threshold"	The contract value at which the EU public procurement directives must be applied, for example, as from 1 st January 2004, £153,376 for the supply of goods or services and £3,834,411 for building engineering and construction contracts. Guidance regarding EU procedures is available on the Intranet, under staff info/ procurement.
"Financial Regulations"	The Council’s financial regulations set out rules/procedures for financial management and the conduct required of Council staff in dealing with financial matters. They are issued by the <i>Assistant Chief Executive (Finance)</i> and form part of the <i>Constitution</i> .
“Framework Agreements”	Framework Agreements are non-binding agreements entered into between a Local Authority (or Local Authorities or Consortium) and a number of <i>Suppliers</i> , setting out the terms and conditions (e.g. pricing mechanisms, quantity and scope of services/supplies/works and duration) under which future purchases (or call offs) can be made throughout the term of the agreement.
“Insurance cover and indemnity / liability limits”	Normally, contracts should require suppliers to indemnify (protect) the Council from public liability and employers liability to an appropriate limit, but products liability and professional liability may be required when relevant to a particular contract. The appropriate limit of

indemnity should be judged individually depending on the nature of the contract, risk assessment, size of contracting firm etc. A brief explanation of each type of liability follows:

Public Liability provides indemnity for damages the insured is legally obliged to pay to a third party who has suffered damage or injury as a result of the insured's action. It does not extend to damage or injury suffered by employees of the insured. It does not include pure financial loss suffered as a result of advice given. The contract may include a co-indemnity or cross-indemnity clause, which effectively extends the supplier's cover to include SBC.

Employers' Liability provides indemnity for damages the insured is legally obliged to pay to an employee who has suffered damage or injury as a result of the insured's action. The contract should include a wide definition of "employee" so as to include apprentices, work-experience people, volunteers if appropriate.

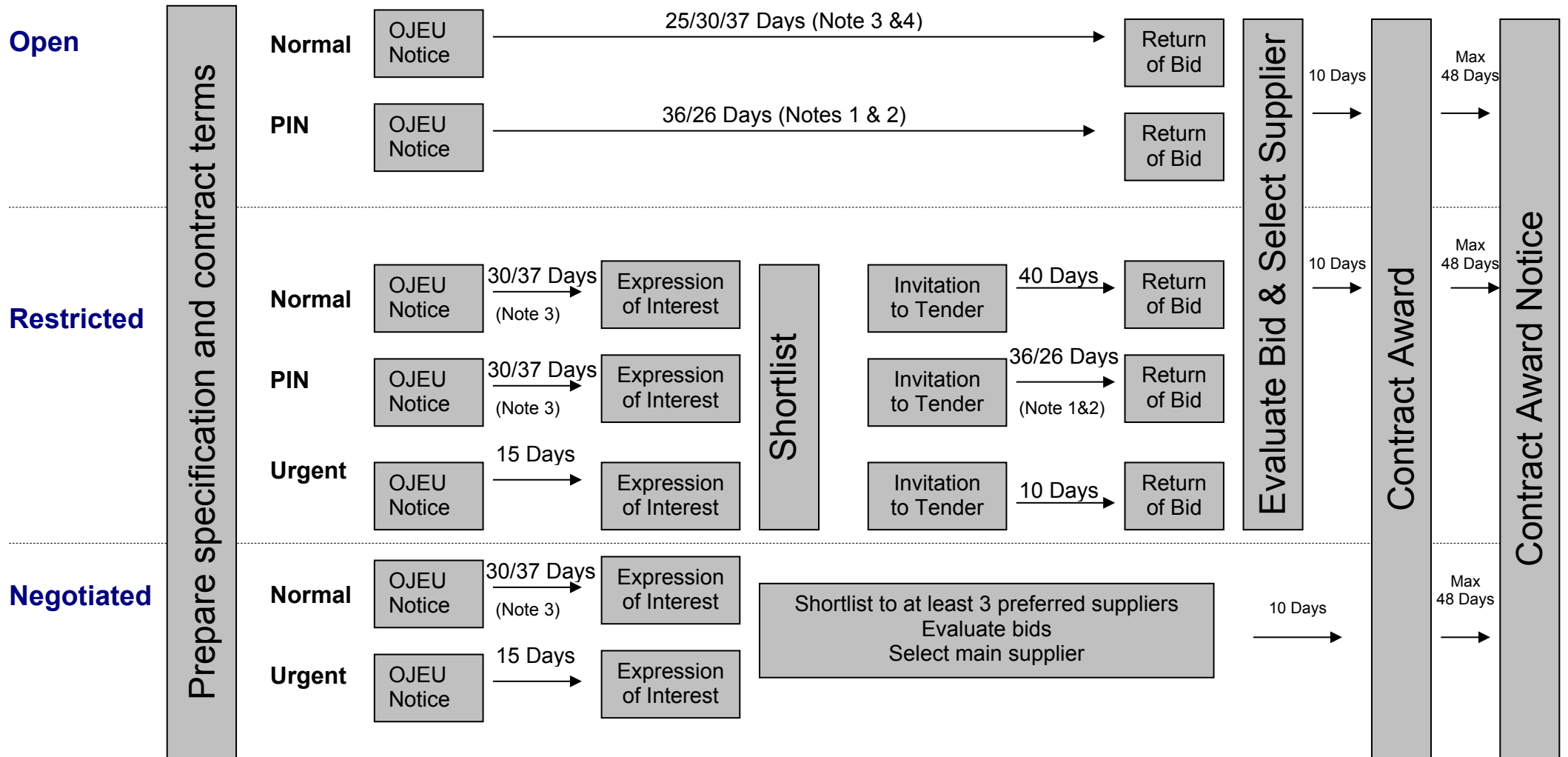
Products Liability, often included as part of general Public Liability Section of a policy, provides indemnity for damages the insured is legally obliged to pay to a third party who has suffered damage or injury as a result of the product for which the insured is responsible.

Professional Liability (or Indemnity) covers loss or damage (except bodily injury or damage to property) arising from the negligence or accidental error/omission of any official or employee while the Council is acting in a statutory capacity.

"Key Decision"	Decisions that are defined as Key Decisions in the <i>Constitution</i> . If the purchase is a Key Decision, the Officer must ensure that all appropriate steps have been taken. If the Contract value exceeds £250,000 or the contract will be significant in terms of its effects on communities living or working in the area, then the purchase is likely to be a key decision (See Decision Making - Article 13 in the Constitution for further information).
"Nominated Suppliers and Sub-contractors"	These are sub-contracts specified in the main contract where the Council will nominate specific <i>Suppliers</i> or sub-contractors to the main contractor. The main contractor is expected to establish sub-contracts with the <i>Suppliers</i> nominated by the Council.
Novation	The agreed transfer to another <i>Supplier</i> of the full obligations and rights under the contract.
"Post Tender Negotiation"	Post tender negotiation means negotiations with any tenderer after submission of a <i>Tender</i> and before the award of the contract with a view to obtaining an adjustment in price, delivery or content.
"Parent Company Guarantee"	The parent company (or holding company) guarantee the proper performance of a contract by one of its subsidiaries (the contractor). The conditions of the parent company guarantee will usually give the parent company the opportunity to remedy any default within a period of notice before the guarantee is called. The liability can take several forms including a financial guarantee of completion of the project itself or the employment of another <i>Supplier</i> to complete the project.

"Quotation"	"Quotation" means an offer to supply or purchase goods, or materials, execute works or provide services including consultancy, at a stated price based on terms and conditions agreed with the <i>Supplier</i> . For the purpose of Contract Standing Orders, the Council uses the term 'Quote' rather than 'Tender' for the more simplistic procurement process to be followed for estimated contract values below £75,000.
"Shortlisting"	Where <i>Suppliers</i> are selected: <ul style="list-style-type: none"> • to quote or bid or • to proceed to final evaluation.
"Supplier"	Any person, organisation or economic operator who supplies the Council with Goods, Works or Services. For the purpose of Contract Standing Orders, the term supplier includes contractors, consultants and service providers.
"Strategic Management Board member"	The officers defined as such in the Constitution.
"Tender"	"Tender" means a formal offer to supply or purchase goods, or materials, execute works or provide services including consultancy, at a stated price based on set terms and conditions. For the purpose of Contract Standing Orders, the Council uses the term 'Tender' as opposed to 'Quote' for the more complex procurement procedure required for estimated contract values over £75,000.

Appendix B Minimum Timescales (in calendar days)



Note 1 Provided PIN published no less than 52 days and no more than 12 months before the despatch of the Contract Notice and PIN contained relevant information which was available at the time of publication of the PIN

Note 2 The period is to be "sufficiently long to permit effective tendering, which generally, shall not be less than 36 days and in any case not less than 26 days"

Note 3 Under the New Consolidated Directive, as from 1st January 2006, the electronic submission of contract notices following the strict procedures laid out in Annex VIII allow minimum timescales for submission of responses to be reduced from 37 to 30 days.

Note 4 Under the New Consolidated Directive, as from 1st January 2006, where the contracting authority offers free direct access by electronic means to the entire contract documents and any other documents required to draw up tenders as from the date on which the contract notice is sent, the minimum timescale for receipt of tenders can be reduced by a further 5 days (cumulative to Note 3).