



# **CONTRACT STANDING ORDERS**

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Version 4

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## SECTION 1 INTRODUCTION AND GENERAL REQUIREMENTS

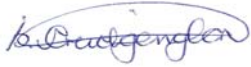
- 1.1 Contract Standing Orders (CSO's) are a framework of rules, which must be adhered to when purchasing goods, services, works, income generating contracts or disposing of Council property. These Contract Standing Orders<sup>1</sup> have been established to ensure that the Council is compliant with 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 land or buildings<sup>2</sup>.
- 1.2 Contract Standing Orders promote good purchasing practice, public accountability and help protect officers from any complaints. Following the rules are 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, works, income generating contracts 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 value for money review, drafting a business case, undertaking some market research, considering any workforce implications, health and safety and business continuity requirements or reporting a *Key Decision* to Executive.
- 1.5 Unless an exemption provided for in Section 3 has been approved, it is a disciplinary matter to fail to comply with Contract Standing Orders.
- 1.6 Contract Standing Orders should be read in conjunction with the 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, Financial Regulations and with all UK and European Union (EU) binding legal requirements.
- 1.8 **Contracts** mean 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 (excluding land and buildings); and,
  - e) hire, rental or lease agreements.
- 1.9 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	£5,001 – £75,000	Three written quotes to a purchaser specification
Band 3	£75,001 – EU Threshold	Invitation to Tender to at least three suppliers
Band 4	Above EU Threshold	<i>EU Procedure</i>

<sup>1</sup> Referred to from now on throughout this document as Contract Standing Orders

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

- 1.10 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 Crudginton - Strategic Director (Resources)**

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**For Further Advice on Contract Standing Orders:**

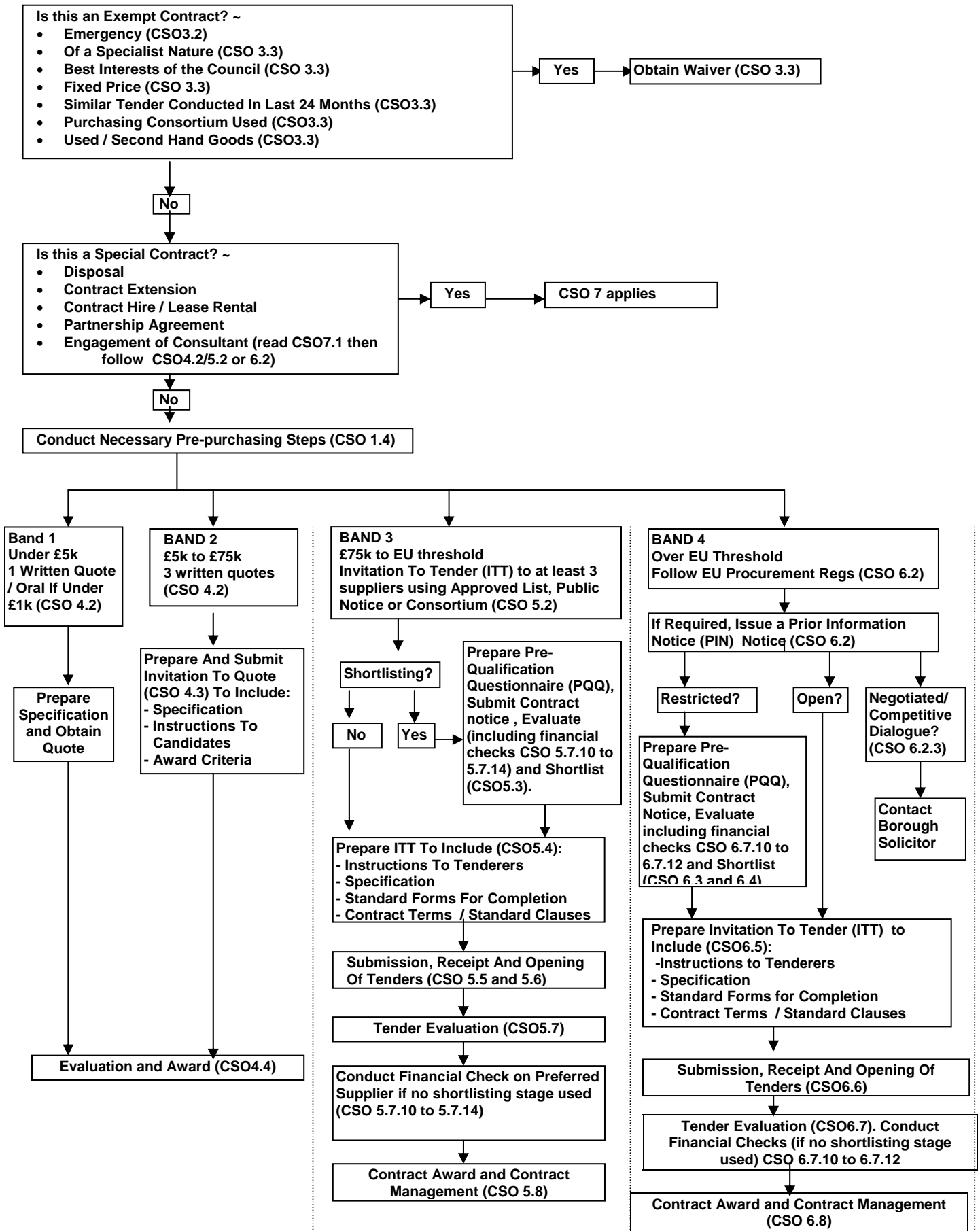
The authorised version of Contract Standing Orders and various supporting written guidance are held on the Council's intranet site, under "Staff info/Procurement".

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
- Finance ext 2933

***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 (SMB) member, in consultation if possible with the Chief Executive and the Strategic Director (Resources), 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 £75,001, 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 Strategic Director (Resources), the Borough Solicitor, the Head of Finance 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.<sup>3</sup>
  - b) Where exceptional circumstances clearly show it is in the best interests of the Council to negotiate a new contract with an existing Supplier.<sup>4</sup>
  - 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 Office of Government Commerce (OGC), Central Buying Consortium (CBC), Pro 5, Eastern Shires Purchasing Organisation (ESPO) 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 5.2.12 and CSO 6.3.2).
  - f) The goods are classed as used or second hand - where the Strategic Director (Resources), the Borough Solicitor, the Head of Finance or the Corporate Procurement Manager is satisfied that the market for such goods or materials is such that it would be unreasonable to tender or where the time required to complete the tender process is likely to lead to the loss of opportunity to purchase a used or second hand item and where the relevant officer has ensured that a Value for Money approach has been applied.
- 3.4 Once a request to waiver Contract Standing Orders has been received, a Waiver Action Response Form will be completed by the Officer requesting the waiver and reviewed by the Approving Officer. A record of the decision approving or rejecting a waiver request and the reasons for it must be kept and an entry made in the waiver request register which will be maintained by the Strategic Director (Resources).
- 3.5 Officers applying the exemption rules in 3.3 must, **as a minimum**, draft a specification

<sup>3</sup> 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.

<sup>4</sup> 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.

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 (including developing case law) 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.**



## 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 <sup>5</sup>

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).

The aggregate value of any contract is calculated on the basis of the total value of the consideration (usually the cost payable but may include any benefit in kind or other benefit to the contractor) estimated to be payable over the entire contract period. In relation to goods, works and services the value of the contract shall be the total expenditure incurred over a four year period unless the contract is longer, where the actual length would apply.

### 4.2 Supplier Selection

- 4.2.1 Suppliers 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 short list 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). If you are sourcing contracts of a similar nature on a regular basis i.e. a procurement for a decorating service as a one off procurement every year it is a requirement to ensure that you are rotating the suppliers you use to guarantee that all suppliers are treated fairly and given the opportunity to quote for the Council's business.
- 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 Customer Services and Business Improvement Division, who should be involved in the procurement process from an early stage. An authorised signatory for the Customer Services and Business Improvement 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 Strategic Director (Resources), the Head of Finance, Corporate Procurement Manager, or the Borough Solicitor and obtain his or her prior written approval before awarding the

<sup>5</sup> As per the authorised contract signatory list held by Exchequer Services.

contract(s).<sup>6</sup>

### **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 5.4.1). 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.
- 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 4.4.7).
- 4.3.4 Suppliers must be given a minimum of 5 working days to respond to an invitation to quote, but they 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 from the three quotations requested i.e. responses which meet a minimum quality standard under which the Council could award the contract. If the Council receives 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 5.7.6 and 5.7.7.
- 4.4.3 If the quoted contract value for the preferred supplier falls into the higher band 3 (£75,001 to the EU threshold) when processes for the lower Band 2 were followed, the officer must provide either the Strategic Director (Resources), 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, Strategic Director (Resources) or Corporate Procurement Manager will decide whether the contract should be re-tendered following the procedures within the higher band or whether the contract should be waived.
- 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 Head of Finance, the Strategic Director (Resources) 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

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<sup>6</sup> 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.

of the closing date and feedback provided, if requested.

- 4.4.6 Contracts or agreements over £5,000 must be signed by an authorised signatory. If there is no written contract, the authorised signatory 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 an authorised signatory is sufficient.
- 4.4.7 For contracts within this value banding, an Award Notification Form for contracts under £74,999 can be completed and passed to Corporate Procurement (the Award Notification Form is found as an SBC Word template). The contract will then be entered onto the Central Contracts Database by Corporate Procurement.
- 4.4.8 All documentation must be kept in accordance with the Document Retention Schedule which can be found on the intranet under the section marked Freedom of Information.

## SECTION 5 CONTRACTS BETWEEN £75,001 AND EU THRESHOLD

### 5.1 Overview

Band	Estimated Contract Value	Minimum No. of Respondents	Contract Signature
3	£75,001 to EU Threshold (see CSO 6.1 for EU values)	At least three written responses to an Invitation to Tender. <sup>7</sup>	Officers authorised to sign contracts within this value banding <sup>8</sup> , unless under seal (see CSO 5.8.6)

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).

The aggregate value of any contract is calculated on the basis of the total value of the consideration (usually the cost payable but may include any benefit in kind or other benefit to the contractor) estimated to be payable over the entire contract period. In relation to goods, works and services the value of the contract shall be the total expenditure incurred over a four year period unless the contract is longer, where the actual length would apply.

### 5.2 Supplier Selection: Approved Lists, 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, a public notice or a purchasing consortium such as the OGC, ESPO, Pro 5 or CBC.

#### Approved Lists

5.2.2 Approved Lists must only be drawn up after an advertisement (Public Notice) inviting applications for inclusion on the list. Suppliers must complete a Pre-Qualification Questionnaire (PQQ) 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 Head of Service to maintain the Approved List. Details of approved lists **must** be forwarded to Corporate Procurement for information purposes.

5.2.5 The approved list and short listing 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

<sup>7</sup> 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.

<sup>8</sup> As per the Authorised Signatory list held by Exchequer Services.

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 or whether a rotation system will be applied.
- 5.2.7 Suppliers can be removed from the list following on from poor performance or consecutively high quotes. Suppliers must be advised of this at the start of the process by explaining how this will be enforced.

#### Public Notice

- 5.2.8 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 (ITT) and all responses are evaluated.
  - b) Restricted procedure – all Suppliers expressing an interest are sent a PQQ to enable short listing. Only short listed Suppliers are then sent the Invitation to Tender.
- 5.2.9 The public notice would normally be placed via the Corporate Procurement Team in the Councils Buyer Profile, the government website [www.contractsfinder.businesslink.gov.uk](http://www.contractsfinder.businesslink.gov.uk) Contrax Weekly (where appropriate), a trade journal (if necessary) and/or via OJEU (Official Journal of the European Union) in order to maximise competition<sup>9</sup>. The public notice must state the scope of the requirement and the deadline for expressions of interest to be received.

#### Purchasing Consortium

- 5.2.10 Council approved purchasing consortiums are the OGC, Pro 5, CBC, ESPO, Procurement for Housing and collaboration with other Hertfordshire authorities through Supply Hertfordshire..
- 5.2.11 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 value for money has been proven. Any procedures provided by the purchasing consortium must be followed.
- 5.2.12 Where fixed unit prices have not been pre-agreed under a framework agreement, the officer may issue an Invitation to Tender to all suppliers that are capable of fulfilling the requirement within the relevant framework under one purchasing consortium only (usually referred to as mini-competition).

### **5.3 Short Listing**

- 5.3.1 Any short listing must have regard to financial and technical standards relevant to the contract. It is important that the process for short listing suppliers for being invited to tender is transparent and fair<sup>10</sup>. Evaluation criteria that is to be used for the short listing process should be shown within the documentation sent to the suppliers.
- 5.3.2 For contracts within this value banding, the short listing mechanism and the suppliers to be short listed must be approved in writing by an officer authorised to sign contracts

<sup>9</sup> The Corporate Procurement Team can arrange for a contract notice advert to be placed

<sup>10</sup> A standard Pre-Qualification Questionnaire (PQQ) can be found on the intranet under staff info/procurement.

within this value banding.

- 5.3.3 Unless the short listing process is particularly complex, unsuccessful respondents should be sent a letter explaining why they were unsuccessful within 15 working days of the deadline for receipt of expressions of interest.

## 5.4 The Invitation to Tender

- 5.4.1 The **Instructions to Tenderers**<sup>11</sup> 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 7-14 days before the closing date for receipt of responses) and that additional information requested will be distributed to all suppliers (this should be distributed to all suppliers at the same time no later than 5 days before the closing date for receipt of responses).
- e) Outline how the responses will be evaluated, listing the appropriate award criteria and their relative weightings, 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 three 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.

- 5.4.3 For contracts within this value banding, the following **Standard Forms**<sup>12</sup> should either form part of the Pre-Qualification Questionnaire or the Invitation To Tender and should

<sup>11</sup> An outline Invitation to Tender can be found on the intranet under staff info/procurement.

<sup>12</sup> Standard Forms can be found on the intranet under staff info/procurement

be included in the final contract documentation:

- a) Form of Tender
- b) Certificate that the Tender is Bona Fide
- c) Parent Company Guarantee (if applicable).
- d) Performance Bond Certificate (if applicable).
- e) Insurance requirements (if applicable)
- f) 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 Joint Contracts Tribunal Ltd (JCT) contracts for building work, or the **Council's own standard contracts**, such as the "Stevenage Borough Councils (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 must 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.<sup>13</sup>

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 short listed Suppliers, that a lesser time period is practical and realistic. All tender documents 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.<sup>14</sup>

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

## 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

<sup>13</sup> 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.

<sup>14</sup> An insurance checklist can be found on the intranet under staff info/procurement

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 Strategic Director (Resources), 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 Committee Services or via Vault (a BiP Solutions Ltd (BIP) secure tendering system managed by Corporate Procurement). An alternative secure email account may be permitted, subject to the prior written approval of either the Strategic Director (Resources), Borough Solicitor or the Corporate Procurement 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 Committee 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 Head of Finance.

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 system<sup>15</sup> 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/value for money considerations.
- b) Weightings applied to quality/value for money 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 The Procurement process should take no longer than 12 months from issue of advertisement to award of contract. Should the procurement process take longer than 12 months, authorisation must be sought from the Borough Solicitor or Strategic Director (Resources) to proceed with the contract award.

5.7.6 **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 Strategic Director (Resources), the Borough Solicitor or the Corporate Procurement Manager and that the request is authorised by either the Strategic Director (Resources), 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.

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<sup>15</sup> A sample criteria and measurement template can be found on the intranet under staff info/procurement.

- c) For any supply of any goods or services where the leading bid is above budget, price reduction measures are necessary and the Tender cannot be clarified readily to produce a reduced price.

- 5.7.7 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.
- 5.7.8 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 Strategic Director (Resources) or the Borough Solicitor. Staged payments are acceptable but must be proportionate to the cost of the goods, works or services received and must be submitted for checking to Treasury and Capital in Accountancy, see CSO 5.8.8.
- 5.7.9 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 Strategic Director (Resources), 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, Strategic Director (Resources) or Corporate Procurement Manager will decide whether the contract should be re-tendered following the procedures within the higher band.

#### Checks on Financial Status

- 5.7.10 For contracts within this value banding, the officer must provide two years annual accounts for the preferred Supplier before contract award (unless this is not possible, for example where a company has recently been established). Annual accounts are to be provided to Corporate Procurement, who will conduct an online financial check before passing to Accountancy to make a recommendation. Please allow at least 1 week for this process to be completed.
- 5.7.11 Should this be a restricted procurement process, then short listed suppliers should be financially assessed at pre-qualification stage and before they are invited to respond to the Invitation to Tender. Please allow a longer period for the financial appraisal of several suppliers. The process to be followed for conducting financial appraisals can be found on the internet under staff info/procurement.
- 5.7.12 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 Strategic Director (Resources) for his/her approval. Any conditional approval given by the Strategic Director (Resources) must be strictly complied with.
- 5.7.13 At the discretion of Corporate Procurement, 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.
- 5.7.14 All contracts in this value banding with a term of over 24 months will need to be registered with Corporate Procurement for monitoring updates on financial status.

### **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 grounds, 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 an officer authorised to sign contracts within this value banding 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 an authorised contract signatory, 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 price 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 sealed<sup>16</sup> in the following cases:
- a) For all formal construction/works contracts over £75,001
  - b) Where an extended limitations period is required (the normal limitation period is 6 years after the end of the contract).
- 5.8.7 **For contracts within this value banding, an electronic Award Notification Form (ANF) must be completed and passed to Corporate Procurement** (the Award Notification Form is found as an SBC Word template). **An electronic copy of the acceptance letter and signed contractual documents must also be provided to Corporate Procurement 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 Treasury and Capital in Accountancy and recorded in the Central Contracts Database before they are sent for payment to Exchequer.

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<sup>16</sup> Contact the Borough Solicitor or Senior Legal Assistant to arrange.

- 5.8.9 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 SDUs may use their own forms to reflect their special requirements.
- 5.8.10 All documentation and records of communications pertaining to the tender must be kept in accordance with Document Retention Schedule which can be found on the intranet under the section marked Freedom of Information.
- 5.8.11 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 Value for Money requirements
  - e) User satisfaction
  - f) Risk management

## SECTION 6 CONTRACTS ABOVE THE EU THRESHOLD (BAND 4)

### 6.1 Overview

Band	Category	Estimated Contract Value / EU Thresholds <sup>17</sup>	Minimum Number of Suppliers Short Listed		Shortlist Approval	Contract Signature
			Procedure	No		
4	Service Contracts	Above £156,442	Open Restricted Negotiated Competitive Dialogue	N/A 5 3 3	SMB Member or Head of Service	Under Seal
4	Supplies Contracts	Above £156,442	Open Restricted Negotiated Competitive Dialogue	N/A 5 3 3	SMB Member or Head of Service	Under Seal
4	Works Contracts	Above £3,927,260	Open Restricted Negotiated Competitive Dialogue	N/A 5 3 3	SMB Member or Head of Service	Under Seal

(See also Appendix B for EU Procurement timescales)

A check list can be found on the intranet to guide procuring officers through the tender exercise (see: staff info/procurement). Further advice should be sought by contacting Corporate Procurement.

The aggregate value of any contract is calculated on the basis of the total value of the consideration (usually the cost payable but may include any benefit in kind or other benefit to the contractor) estimated to be payable over the entire contract period. In relation to goods, works and services the value of the contract shall be the total expenditure incurred over a four year period unless the contract is longer, where the actual length would apply.

### 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

<sup>17</sup> EU threshold values were current as at 1<sup>st</sup> January 2010, but are subject to change. If in doubt, please check the latest EU threshold values on the intranet under staff info/ procurement.

Regulations<sup>18</sup>.

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 suppliers invited by the Council after short listing may submit a tender;
- 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**<sup>19</sup>, the Council conducts a dialogue with the suppliers 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 suppliers 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 (PIN), 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 Team will assist with this.

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).

### 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 at the same time or after the placement of the OJEU advertisement. All responses must be via OJEU.

6.3.2 The use of ESPO, Pro 5, 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, Strategic Director (Resources) or the Corporate Procurement Manager. If it is determined that the Purchasing Consortium framework can be used, then where fixed prices have not been pre-agreed under the framework agreement and as such it is not possible to pre-determine value for money, the officer must issue an invitation to tender to all suppliers that are capable of fulfilling the requirement within the framework concerned. Procedures provided by the Purchasing Consortium must be followed.

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<sup>18</sup> The list of Works, Services and Supplies categories (including exempt Part B service categories) can be found on the intranet under staff info/procurement.

<sup>19</sup> The Competitive Dialogue Procedure should only be considered after consultation with the Corporate Procurement Manager or the Borough Solicitor.

## 6.4 Short Listing

- 6.4.1 Short Listing will be applicable if the Council is using the restricted procedure, as outlined in the EU Procurement Directive.
- 6.4.2 For contracts within this value banding a minimum of two years annual accounts for each Supplier must be provided and these must be forwarded to Accountancy for inspection. See CSO 6.7.10.
- 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 15 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.
- 6.4.4 The Supplier's experience, economic and financial standing, manpower and equipment or their ability to perform the contract by the anticipated deadline ('qualitative selection criteria') should be considered at the Short listing stage as the Council is precluded from taking these factors into account as 'award criteria' within the tender stage.<sup>20</sup> When using the open procedure these factors should be considered as part of the tendering process.

## 6.5 The Invitation to Tender

6.5.1 The **Instructions to Tenderers**<sup>21</sup> 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 7-14 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 suppliers at the same time no later than 5 days before the closing date for receipt of responses)
- e) Set out in detail how the responses will be evaluated, listing award criteria and weightings as you will not be able to introduce new award criteria or weightings later. 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, 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 - but note 6.4.4 above
- f) State that late responses will not be considered and that the Council is not bound to accept any Tender
- g) State the price validity period (usually up to a maximum of three months)

<sup>20</sup> If you are unsure about the 'qualitative selection' please contact the Corporate Procurement Team

<sup>21</sup> An outline Invitation To Tender can be found on the intranet under staff info/procurement.

- 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 documentation<sup>22</sup>:
- a) Form of Tender
  - b) Certificate that the Tender is Bona Fide
  - c) Parent Company Guarantee (if applicable)
  - d) Performance Bond Certificate (if applicable)
  - e) Insurance requirements (if applicable)
  - f) Safety Declaration / Method Statement (if applicable)
- 6.5.4 The officer should seek advice from the Borough Solicitor 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.<sup>23</sup>
- 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.<sup>24</sup>
- 6.5.7 The advice of the Borough Solicitor must be sought as necessary, particularly for contracts which are complex.
- 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 info/Procurement and also Appendix B)

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<sup>22</sup> Standard forms can be found on the intranet under staff info/procurement

<sup>23</sup> 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.

<sup>24</sup> An insurance checklist can be found on the intranet under staff info/procurement



- 6.5.9 If the procurement is via OGC, Pro 5, 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 short listed 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, CSO 5.5 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 Head of Finance;
- 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 The Procurement process should take no longer than 12 months from issue of advertisement to award of contract. Should the procurement process take longer than 12 months, authorisation must be sought from the Borough Solicitor or Strategic Director (Resources) to proceed with the contract award.
- 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. Post Tender Negotiation includes revising pricing and contract terms and conditions.
- 6.7.6 The Competitive Dialogue procedure permits the Council to enter into dialogue with suppliers to identify possible or alternative solutions. This procedure can only be used where the financial or technical make-up of the contract cannot be ascertained without such dialogue. Prior written approval **must** first be sought from either the Borough Solicitor or Corporate Procurement Manager to use the Competitive Dialogue procedure.
- 6.7.7 The officer must use the award criteria and measurement system as set out in the public notice and Invitation to Tender<sup>25</sup>. The measurement system should usually include the following three elements:

<sup>25</sup> A sample criteria and measurement template can be found on the intranet under staff info/procurement.

- a) A point scoring system for individual quality/value for money considerations.
- b) Weightings applied to quality/value for money factors in accordance with their importance to the completion of the contract. Any sub-criteria must also be identified at this stage and the appropriate breakdown weighting disclosed.
- c) A "Quality Threshold" which sets the minimum standard expected. Tenders which fall below this shall be excluded from consideration.

6.7.8 All suppliers 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 15 calendar days after letters have been sent**, (10 days if sent by electronic means such as e-mail or fax) allowing unsuccessful suppliers time to dispute any decision made.<sup>26</sup>

6.7.9 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 Strategic Director (Resources) or the Borough Solicitor. Staged payments are acceptable but must be proportionate to the cost of goods, works or services received and must be submitted to Treasury and Capital in Accountancy for checking, please see CSO 6.8.10.

### Checks on Financial Status

*(Note 6.4.4 above)*

6.7.10 When following the restricted procedure within this banding, checks on financial status must only form part of the overall evaluation at pre-qualification stage. Financial appraisals cannot be used as an evaluation criteria at the Invitation To Tender stage. See staff info / procurement for the full financial appraisal process. When using the open procedure, financial appraisals should be carried out as part of the tendering process.

6.7.11 At the discretion of Corporate Procurement, 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.

6.7.12 All contracts in this value banding with a term of over 24 months will need to be registered with Corporate Procurement for monitoring updates on financial status.

## 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).<sup>27</sup>

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

<sup>26</sup> A sample rejection letter showing the standstill period is shown on the intranet under staff info/procurement

<sup>27</sup> Contact the Senior Legal Assistant or Borough Solicitor to arrange.

- 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 an authorised contract signatory.

6.8.5 If acceptance of a tender is for any reason is delayed beyond the appropriate tender price 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.

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 BIP Project<sup>28</sup>.

6.8.7 For contracts within this value banding, **an electronic award notification form must be completed and passed to Corporate Procurement** (the Award Notification Form is found in Word as an SBC template). **An electronic copy of the acceptance letter and signed contractual documents must also be provided to Corporate Procurement 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 SDUs 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 Treasury and Capital in Accountancy and recorded in the Central Contracts Database before they are sent for payment to Exchequer.

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 Value for Money requirements

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<sup>28</sup> The Corporate Procurement Team can undertake this task, if required.

- 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 Schedule which can be found on the intranet under the section marked Freedom of Information.

## SECTION 7 SPECIAL TYPES OF CONTRACTS

### 7.1 Engagement of Consultants

- 7.1.1 It is important that value for money is obtained when employing consultants. Therefore, for all instances where the Contract Value of a consultancy appointment is over £5,000, the commissioning officer must provide a report to the Head of Service responsible containing as a minimum the details listed under CSO 7.1.2.
- 7.1.2 Before consultants are invited to bid/tender the Head of Service is responsible for:
- a) identifying the project objectives; and
  - b) documenting the reasons for the employment of consultants including the benefits of employing consultants against in house staff or agency staff; and
  - c) documenting the residual in-house costs to support the consultant and ensuring that sufficient budget is available to meet all identified costs;
  - d) Preparing a project brief, including:
    - (i) background; and
    - (ii) objectives; and
    - (iii) timetable; and
    - (iv) costs; and
    - (v) monitoring arrangements; and
    - (vi) documentation standards; and
    - (vii) contact names and numbers for enquiries
- 7.1.3 All consultants must provide evidence of adequate professional indemnity insurance as determined by the Council's Insurance Officer prior to their appointment. The requirement for insurance and the levels required should be advertised in the specification of works.
- 7.1.4 If a consultant is appointed and employed through an agency or through the payroll at Stevenage Borough Council you must advise Human Resources on the appointment as the consultant may fall under the Agency Workers Regulations 2010.
- 7.1.5 It should be a condition of contract with any consultant, agent or professional advisor who is to be responsible to the Council for the award or supervision of a contract on its behalf, that in relation to that contract they shall:
- a) comply with these Contract Standing Orders as though they were an employee of the Council; and
  - b) produce on request all the records maintained by them in relation to the contract award and award of contract; and
  - c) on completion of the contract, transmit all records that they have produced or received that relate to the contract to the appropriate Head of Service
- 7.1.6 Any letter of appointment or contract must set out the consultants legal obligations to the Council including where the ownership of intellectual property rights will sit. Advice on intellectual property can be sought from the Borough Solicitor. 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.

#### The Invitation to Quote / Tender

- 7.1.7 When procuring consultants the total estimated contract value should be used to adopt the procurement band to use. Details on Band 1 and 2 can be found under CSO 4.1 and Band 3 under CSO 5.1. 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.<sup>29</sup>

7.1.8 Where it can be demonstrated that there are insufficient suitably qualified consultants to meet the competition requirement, 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.

7.1.9 For consultancies over £5,001 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 Solicitor<sup>30</sup>. Other consultancies over £5,001 including management and IT should use terms and conditions either supplied or 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 £75,001 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 £75,001.

### **Contract Monitoring**

7.1.11 For contracts over £75,001, the Strategic Management Board member shall be responsible for ensuring that the Consultants work is properly monitored on an ongoing 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

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

7.1.13 The project officer shall maintain the following documentation:

- a) project brief/objectives; and
- b) minuted authority, where required; and
- c) the agreement with the consultant and any subsequent variations; and
- d) records that can demonstrate contractors compliance with contract standards prior to payments being made; and
- e) record of payments made to the consultant and for the project; and
- f) a project evaluation form.

7.1.14 The project officer shall report immediately to the Head of Service any material technical or financial deviation by the consultant from the specified agreement.

## **7.2 Disposal Contracts**

7.2.1 Where items, excluding land and buildings over the cost of £500 (at the time of

<sup>29</sup> 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

<sup>30</sup> Standard terms and conditions for consultants approved by Legal are provided on the intranet under staff info/procurement.

purchase) cannot be re-used elsewhere in the Council an asset disposal certificate form found on the staff intranet under staff info/procurement must be completed, explaining why the items are surplus or redundant, any health and safety issues, and the proposed method of disposal. The form should be submitted to the relevant SMB member or Head of Service for approval to proceed with disposal of the items. All vehicles must be disposed of through sale by public auction or by quotations from a reputable dealer.

- 7.2.2 Where small items of equipment such as keyboards are scrapped under the cost of £500 (at the time of purchase), they must be recorded on a list held by each relevant Head of Service and signed off at year end. The list must be passed to Treasury and Capital in Accountancy at year end.
- 7.2.3 The highest bid received for an item if reasonable should be accepted. One of the following methods of disposal should be used:
- a) Invite quotations or tenders from outside organisations or an approved list of purchasers (please see 5.2.3 Approved Lists)
  - b) Sale by Public Auction.
  - c) Trade in for a new item when the circumstances are appropriate.
  - d) Scrap the items in a safe manner.
- 7.2.4 The proposed method of disposal should be approved by a SMB Member or Head of Service. All disposals must comply as applicable with the Waste Electrical & Electronic Equipment Directive and Health & Safety legislation. All Council and personal data must 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 the following number of bidders should be invited as follows:

<u>Estimated Value</u>	<u>Minimum number of bidders to be invited (for Plant &amp; Equipment only)</u>
Up to £5,000	At least one bidder by quote
Over £5,001 up to £75,000	At least three bidders by quote
Over £75,001	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 Head of Service if the value is under £75,000 or a Strategic Management Board member if the value is over £75,001.

### 7.3 Contract Extensions

- 7.3.1 All requests for extensions to existing contracts have to be made in writing to either the Strategic Director (Resources) 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 £75,001, details of the contract extension must be provided to Corporate Procurement 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. Lease/Rental agreements can only be signed off following approval from the Strategic Director (Resources) or Head of Finance.

#### **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 or in the case of framework contacts four 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 or is a framework agreement.

7.6.6 Where additional items of work are not contained within the Schedule of Rates, all tenderers on the framework agreement or term contract 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 Strategic Director (Resources) or the Borough Solicitor for the proposed partnership arrangement is obtained. The financial implications must be assessed by the Strategic Director (Resources) 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 Strategic Director (Resources) 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.

## 7.8 Income Generating Contracts

7.8.1 All income generating contracts must be subject to competition, as follows:

	<b>Estimated Value</b>	<b>Minimum Number of Bidders to be Invited</b>
<b>Band 1</b>	Up to £5,000	At least one bidder by quote
<b>Band 2</b>	£5,001 – £75,000	At least three bidders invited to quote (a minimum of two responses received)
<b>Band 3</b>	Above £75,001	At least four bidders by invitation to tender (a minimum of two responses received)

- 7.8.2 Details of all income generating contracts in band 2 or above must be reported to and approved in writing by a Strategic Director.
- 7.8.3 For contracts with an estimated value above £75,001, CSO 5.5 or CSO 5.6 (regarding the submission, receipt and opening of tenders) must be followed.
- 7.8.4 Where income generating contracts also incur a cost to the Council, the cost element may be subject to Contract Standing Orders in its own right. In this instance, the advice of the Strategic Director (Resources), Borough Solicitor or Corporate Procurement Manager should be sought.

## **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 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.<sup>31</sup> Providing details of any bidding opportunities on the Internet via the Corporate Procurement Manager will raise awareness for these organisations.

## **8.7 Equality**

The Council must have due regard to the requirements of the public sector equalities duty under the Equalities Act 2010, which must be taken into account when procuring goods, works, or services from external providers.

## **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.

- 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

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<sup>31</sup> Further guidance on how to encourage a diverse and competitive supply market is available on the internet under staff info/procurement.

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 contracts<sup>32</sup>. 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") 2006 may apply. This is a very complex area where legal guidance and trade union consultation must be sought at an early stage.

### **8.13 Health and Safety**

Officers should take steps during the procurement exercise and throughout the length of the contract to ensure that health and safety is appropriately covered. Considerations include:

- Clearly identify all aspects of work to be carried out by the contractor
- Consider the health and safety implications
- Competency to do the job safely?
- How reliant on sub- contractors and sub-sub-contractors?
- Reputation?
- Prosecutions, notices, accident record?
- Ensure contractors know what is expected
- Show SBC safety policy procedures, permit systems, contractor guidance and confirm they have been read and understood
- All Works contractors should be SSIP registered

Contractor to:

- Outline recent health and safety performance
- List, with evidence, qualifications and skills
- Provide safety method statement
- Be a member of trade organisation or professional body
- Provide clear information about the risks of the operation
- Provide safety rules and procedures

<sup>32</sup> Standard templates and further explanations/guidance for performance bonds and liquidated damages clauses can be found on the intranet under staff info/procurement.

- Any employee, contractor or sub contractor working on behalf of SBC on SBC premises including tenanted properties must have ID relevant to their employment.

For further guidance, please refer to the Councils Health and Safety Policy which can be found on the intranet under staff info/health and safety.

## **8.14 Safeguarding Children**

All services commissioned by the Council must operate within the requirements of the Council's Safeguarding Children Policy and meet the relevant legislative standards. Where appropriate, procuring officers will need to ensure that contractors demonstrate that they meet these requirements. As an indicator, contractors/agencies must have in place the following:

- Senior Management Commitment to Safeguarding
- Clear, Accessible Statement of Responsibility (including Safeguarding Policy, Complaints, Equal Opportunities and Incident Monitoring Procedures)
- Clear mechanisms for identification and investigation/action regarding safeguarding concerns
- Clear Line of Accountability for Reporting Safeguarding Concerns
- Child and Family conscious service planning and delivery
- Staff Training programme for Safeguarding
- Safer Recruitment Policy
- Information Sharing procedure

"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.
"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.
"CBC"	Central Buying Consortium - a local authority approved purchasing consortium.
"CSO"	Contract Standing Orders
"ESPO"	Eastern Shires Purchasing Organisation - a local authority approved purchasing consortium.
"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 <b>must</b> 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"	European Union.
"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 <sup>st</sup> January 2010, £156,442 for the supply of goods or services and £3,927,260 for building engineering and construction contracts. These figures are subject to change every two years or possibly more frequently so staff should review the guidance regarding EU procedures 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>Strategic Director (Resources)</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.

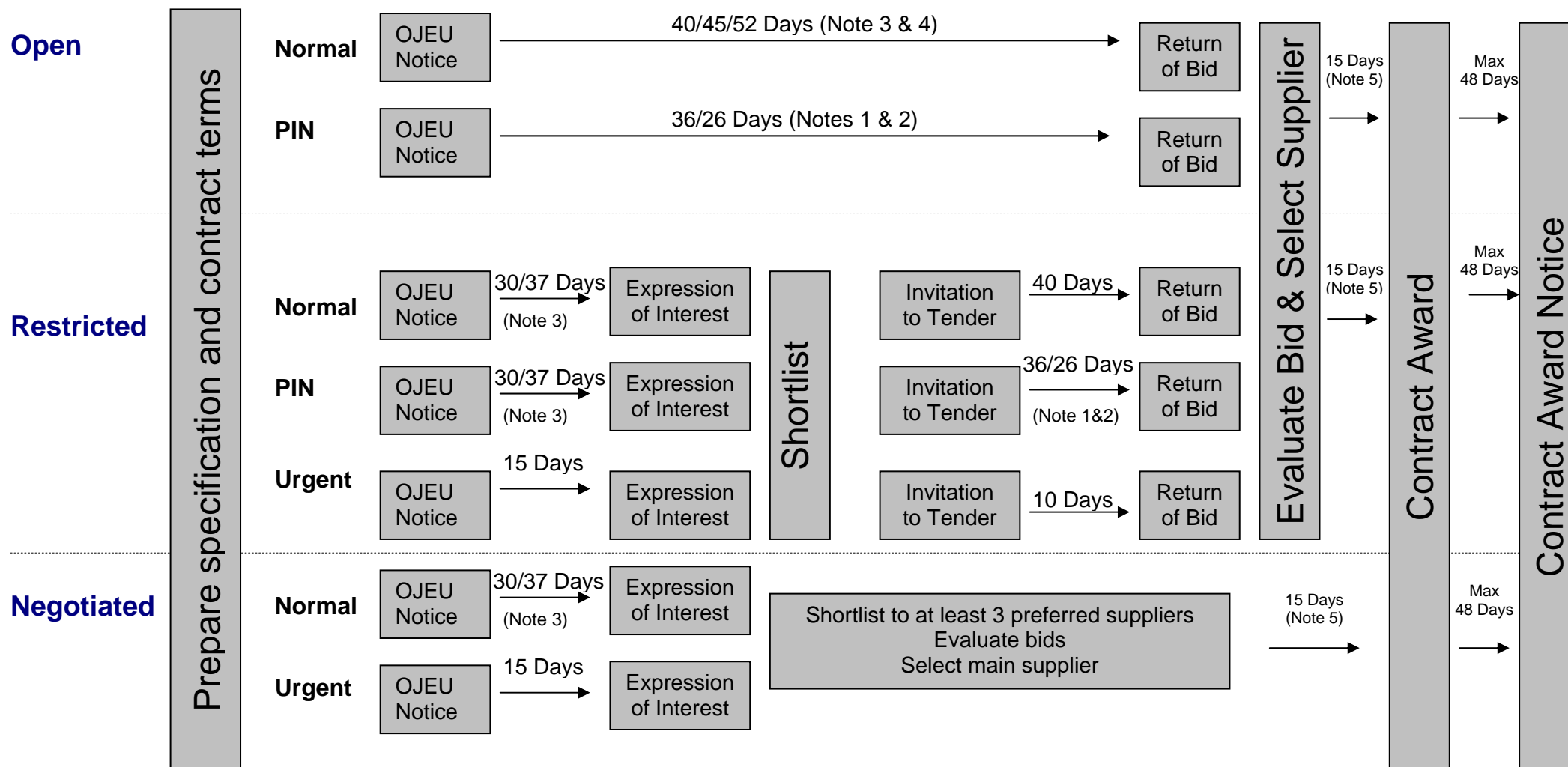
“Insurance cover and indemnity / liability limits”	<p>Normally, contracts should require suppliers to indemnify (protect) the Council from public liability and employers liability to an appropriate limit, but products liability and professional liability may be required when relevant to a particular 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:</p> <p><b>Public Liability</b> 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.</p> <p><b>Employers' Liability</b> 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, and volunteers if appropriate.</p> <p><b>Products Liability</b>, 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.</p> <p><b>Professional Liability (or Indemnity)</b> 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.</p>
“ITT”	Invitation to Tender.
“Key Decision”	<p>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).</p>
"Nominated Suppliers and Sub-contractors"	<p>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.</p>
“Novation”	<p>The agreed transfer to another <i>Supplier</i> of the full obligations and rights under the contract.</p>
“OGC”	<p>Office of Government Commerce - a local authority approved purchasing consortium.</p>
"Parent Company Guarantee"	<p>The parent company (or holding company) guarantees 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</p>



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 *Supplier* to complete the project.

“PIN”	Prior Information Notice posted to the European Union
“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.
“Pro 5”	A local authority approved purchasing consortium made up of the Central Buying Consortium (CBC), Eastern Shires Purchasing Organisation (ESPO), North Eastern Purchasing Organisation (NEPO), West Mercia Supplies (WMS) and Yorkshire Purchasing Organisation (YPO).
"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.
“SBC”	Stevenage Borough Council
"Short Listing"	Where <i>Suppliers</i> are selected: <ul style="list-style-type: none"> <li>• to quote or bid or</li> <li>• to proceed to final evaluation.</li> </ul>
“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 £75,001.
“TUPE”	Transfer of Undertakings (Protection of Employment) Regulations

**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 1<sup>st</sup> 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 by 7 days.
- Note 4 Under the New Consolidated Directive, as from 1<sup>st</sup> 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).
- Note 5 Where notification of intention to award is sent only by electronic means the Alcatel period may be shortened to 10 days, the last day of the Alcatel standstill period **must** be on a working day whether using the 15 or 10 days option.

