



# Contract Standing Orders Feb 2020

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## Definitions and Interpretations

In these Contract Standing Orders the following definitions apply:

<b>Approved List</b>	a list of providers that have been selected by the Council through a non-OJEU tendering process, from which the Council may select, by way of a mini competition, to Contract with to provide Services for the Council.
<b>Authorised Officer</b>	means any officer with responsibility for carrying out procurement process(es) detailed in these Contract Standing Orders
<b>Contract</b>	means any form of agreement (including, without limitation, official purchase orders) for the supply of Goods, provision of Services or carrying out of Works.
<b>Contract Manager</b>	means an officer responsible for the managing and monitoring of a Contract.
<b>Contract Standing Orders</b>	means these Contract Standing Orders.
<b>Contractor</b>	means any Contractor, supplier or provider with whom the Council enters into a Contract for the carrying out of Works, provision of Services or the supply of Goods.
<b>Corporate Contracts Register</b>	means the register of all quotations and tenders undertaken through the Procurement Gateway Process.
<b>Council</b>	means Newport City Council
<b>eAdvertisement</b>	means the electronic Contract advertisement portal which Newport City Council uses to advertise Contract notices.
<b>eSourcing</b>	means the Electronic Tendering portal which Newport City Council uses to conduct all Tendering processes
<b>Framework Agreement</b>	an agreement with one or more Contractors, the purpose of which is to establish the terms (in particular with regard to price and quantity) governing a Contract or Contracts to be awarded during the period for which the framework agreement applies.
<b>Head of Service</b>	means the officer in charge of a service area within the Council.
<b>Goods</b>	Covers all Goods, Supplies, Substances and Materials that the Council Purchases, Hires or otherwise obtains.
<b>Light Touch Regime</b>	means rules within the Public Contract Regulations relating to certain social and other specific services.
<b>Lots</b>	means the sub division of contracts into different parts or categories, usually to increase competition and allow greater supplier access.
<b>National Procurement Service (NPS)</b>	means the Welsh Government National Procurement Service or any subsequent National Contracting Body.
<b>OJEU/EU Thresholds</b>	means the financial values at which the Public Contracts Regulations 2015 require tenders to be advertised in the Supplement to the Official Journal of the European Union ("OJEU"), or any subsequent UK National eNotification service. These thresholds vary from time to time and can be checked on the OJEC website at <a href="http://www.OJEC.com/thresholds">www.OJEC.com/thresholds</a>

<b>Procurement</b>	means the process by which the Council manages the acquisition of all its Goods, Services and Works, in a way that achieves value for money on a whole life basis in terms of generating benefits not only to the organisation, but also to society and the economy, whilst minimising damage to the environment. It includes the identification of need, consideration of options, the actual procurement process and the subsequent management and review of the Contracts.
<b>Procurement Gateway Process</b>	means the procedure that must be followed when procuring Goods, Works or Services over the value of £4k
<b>Procurement Guidance</b>	means the Guidance issued/to be issued from time to time by Strategic Procurement.
<b>Procurement Process</b>	means the procurement process that spans the whole life cycle, from identification of needs, options appraisal, supplier selection, award, and Contract management through to the end of a Contract or the end of the useful life of the asset, or disposal of the asset.
<b>Public Contract Regulations</b>	means the Public Contract Regulations 2015 or any subsequent amendments or variations to these UK regulations.
<b>Services</b>	includes all Services, which the Council purchases or otherwise obtains including advice, specialist consultancy work, agency staff etc.
<b>Service Manager Procurement &amp; Payments</b>	means the Manager or any officers under that person's supervision or management who have responsibility for carrying out any of the obligations, duties or activities required to be performed by that person under these Contract Standing Orders or to act in that person's absence.
<b>Standstill Period</b>	means the statutory time period between notifying tenderers and awarding a contract, as per regulation 87 of the Public Contract Regulations.
<b>Tender(s)</b>	means the competitive process used to obtain pricing through either a quotation or tender exercise.
<b>Tenderer(s)</b>	means an individual, individuals, partnerships, companies or other bodies invited to submit pricing for providing the Council with Services, supplying Goods or carrying out Works.
<b>Variant Bid/Tender</b>	means an offer/bid which contains variants on the requirements specified by the Council in its procurement documentation.
<b>Variation &amp; Variations</b>	means any alteration to a Contract, including additions, omissions, substitutions, alterations, or changes of any other nature.
<b>Works</b>	includes all Works of new construction and repairs in respect of physical assets (buildings, roads, etc.) including all those activities constituting Works for the purposes of the Public Contracts Regulations.

# 1 Introduction

## 1.1 **These Contract Standing Orders:**

- 1.1.1 Are made under Section 135 of the Local Government Act 1972 and all other powers enabling the Council.
- 1.1.2 Are applicable to all parts of the Council's activities, including any type of sub-contracting, apart from contracts for the acquisition and sale of interests in land and the Excepted Contracts described in section 2 below.
- 1.1.3 Are applicable where the Council is acting as agent for another body unless the principal directs otherwise.
- 1.1.4 Must be adopted by any external Contractors empowered to form Contracts on behalf of the Council and by any person who is not an Officer of the Council engaged to manage a Contract on behalf of the Council.
- 1.1.5 Shall apply to the selection of nominated suppliers and nominated Sub-Contractors for Goods, Works or Services covered by prime costs and provisional sums in a main Contract.
- 1.1.6 Are not applicable to expenditure between Service Areas or through formal joint arrangements or ventures involving the Council.

## 1.2 **Key Messages**

- 1.2.1 Any Officers delegated with responsibility for the procurement of Goods, Services (including contracts for consultancy) or Works for or on behalf of the Council (in accordance with the Scheme of Delegation) are affected by these Contract Standing Orders.
- 1.2.2 The funding for all contracts must be in accordance with approved budgets and comply with [Financial Regulations](#).
- 1.2.3 All values referred to in these Contract Standing Orders are exclusive of VAT.
- 1.2.4 Procurement is the process by which the Council manages the acquisition of all its Goods, Services (including but not limited to consultants/consultancy Services of any type) and Works of all varieties. It includes the identification of need, consideration of options, the actual tendering process and the subsequent management and review of the contracts. These 'Contract Standing Orders' should be read in conjunction with the guidance available on the Council's Procurement intranet pages and the Council's Procurement Gateway Process. All Procurement activity must be conducted in-line with the Council's [Procurement Gateway Process](#).
- 1.2.5 The 'Gateway' process is mandatory to follow if seeking to commission or procure Goods, Services or Works over £4k in value. The processes are designed to give a consistent, compliant approach to procurement across the authority and enable senior management to have visibility of the Goods, Services and Works being purchased by the Council. The extent and complexity of the 'Gateway Process' is linked to the value of the Goods,

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Works or Services being purchased – with four main processes stepping up in detail.

- 1.2.6 Procurement by the Council is governed by detailed UK legislation. The Law requires all Council procurement and contracting to be conducted transparently, fairly and in a non-discriminatory manner. In the event of statutory or other legal requirements exceeding the requirements contained within these Contract Standing Orders, then statute shall take precedence over any provision in these Contract Standing Orders.
- 1.2.7 Before undertaking any competitive tendering process on behalf of the Council, Officers must check with Strategic Procurement to ensure there isn't a NCC contract (or other approved contract) that already exists for the goods/services being considered. Where they so exist, Officers must make full use of [NCC Corporate Contracts](#).
- 1.2.8 Guidance on other established Framework Agreements or legally available arrangements can be sought from the Council's Strategic Procurement Section.
- 1.2.9 Details of all Contracts available for use can be obtained from the Council's Procurement Intranet Site or the Council's iproc Purchase to Pay (P2P) system. If unsure, please contact the Procurement Section for guidance.
- 1.2.10 These Contract Standing Orders are not intended as detailed guidance for implementation and they should be read in conjunction with the Council's Constitution as a whole and in particular, in respect of Contract payments, the Council's Financial Regulations and the Council's Procurement Gateway Process.
- 1.2.11 The Service Manager Procurement & Payments shall undertake a formal review of these Contract Standing Orders at least every three years.
- 1.2.12 Any dispute regarding interpretation of these Contract Standing Orders shall be referred to the Head of Law & Regulation and Service Manager Procurement & Payments for resolution.

### **1.3 Purpose - These Contract Standing Orders:**

By following the Procurement Gateway Process the Council will;

- 1.3.1 Ensure the achievement of value for money for the Council in the market by ensuring provision for securing appropriate competition at different levels of expenditure.
- 1.3.2 Ensure fullest accountability and compliance at all levels whilst ensuring an adequate audit trail.
- 1.3.3 Ensure that Officers follow proper and fair procedures for the involvement and selection of Contractors.
- 1.3.4 Ensure compliance with the Public Contract Regulations and Welsh Government and Council Policy. Ensure that levels of monitoring and training exist to ensure proper compliance and that these Contract Standing Orders are regularly reviewed to take account of new circumstances.

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- 1.3.5 Ensure that consideration is given to meeting the goals and principles of the [Well-being of Future Generations \(Wales\) Act 2015](#), and delivering social, economic and environmental benefits whilst spending public money.
  - 1.3.6 Ensure immediate action is taken in the event of a breach of Contract Standing Orders, to keep proper records of all contracts, tenders etc. including electronic data files (where electronic tendering systems are used), minutes of tender evaluation panels and other meetings;
  - 1.3.7 Ensure waivers of any provision of these Contract Standing Orders are recorded and reported to Audit Committee on at least a six monthly basis.
  - 1.3.8 Ensure proper records of all contracts awarded.
  - 1.3.9 Ensure the safekeeping of all original contracts which have been completed by signature and ensuring contracts to be executed under the seal of the Council are provided to the Head of Law and Regulation for completion within an appropriate timeframe. Sealed contracts are retained by the Head of Law and Regulation.

#### **1.4 Who is affected by these Contract Standing Orders?**

- 1.4.1 Any Authorised Officer with responsibility for the procurement of Goods, Services (including contracts for consultancy) or Works for or on behalf of the Council.

#### **1.5 Compliance**

- 1.5.1 Every Contract entered into by the Council shall be entered into pursuant to or in connection with the Council's functions and shall comply with:
  - 1.5.1.1 All relevant statutory provisions;
  - 1.5.1.2 The [Public Contracts Regulations 2015](#) or such other amendment, variation or replacement Regulations in force from time to time ("Regulations")
  - 1.5.1.3 The Council's Constitution including these Standing Orders for Contracts, the Council's Financial Regulations and Scheme of Delegation.
- 1.5.2 The highest standards of probity are required of all Officers and Members involved in the procurement, award and management of Council contracts. Any serious non-compliance could lead to the Council's disciplinary procedures being invoked.
- 1.5.3 Officers and Members are reminded of their responsibilities in relation to gifts and hospitality and should ensure that they comply with the obligations set out in the Officers' Code of Conduct and Members' Code of Conduct respectively and any guidance issued in that regard.
- 1.5.4 Officers shall take appropriate measures to effectively prevent, identify and remedy Conflicts of Interest arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all Contractors as set out in the Regulations.

- 1.5.5 All contracts must contain a provision allowing the Council to terminate without compensation in the event that there has been actual or attempted fraud or corruption in connection with the procuring, continuation, renewal or performance of the Contract, including appropriate exclusion grounds as set out in the Regulations.

## 2 Exempt & Excepted Contracts

### Exempt Contracts

- 2.1 The following Contracts are exempt from the requirements of these Contract Standing Orders:
- 2.1.1 Employment Contracts (this exemption does not extend to the recruitment of agency staff or external secondment arrangements).
- 2.1.2 Contracts relating solely to disposal or acquisition of an interest in land and property.
- 2.1.3 The execution of requirements which can only be provided by, or on behalf of, a public utility, statutory undertaking or local authority.
- 2.1.4 In a genuine emergency threatening public health, injury to persons or serious and immediate damage to property, an Authorised Officer can take any necessary action to alleviate the threat. This power is limited to the alleviation of the threat and does not extend to any Works beyond what is strictly essential.
- 2.1.5 Tenders invited on behalf of any consortium, associated or other body of which the Council is a Member, but not leading the procurement and provided that the tenders are invited in accordance with the method prescribed by any such body and comply with the Public Contract Regulations.
- 2.1.6 Purchase of Works, Goods or Services from a supplier under an acknowledged public sector agreement or a collaborative procurement agreement arranged through another public sector body.
- 2.1.7 Purchase of Works, Goods or Services from an in-house service provider
- 2.1.8 Purchase of Works, Goods or Services from an existing Contract on the Council's Corporate Contracts Register.
- 2.1.9 Purchases of between £1 and £4,000. However, officers should provide evidence that the purchase represents value for money in accordance with the Council's Financial Regulations. This may be via a note of cost comparison's or other evidence for internal audit purposes.

### Excepted Contracts

- 2.2 Where an Authorised Officer can demonstrate good reason, and where the value of such action does not exceed the EU Procurement thresholds, or any subsequent UK Government threshold and where Strategic Procurement and Head of Service\* approval has been obtained via the [Excepted Contracts Form](#), Contract Standing Orders shall not apply to the following:

*\*Note – Approvals above Head of Service level are required from;*

- a. Strategic Director/Chief Executive Officer for submissions by Head of Service*
- b. Chief Executive Officer for submissions by Strategic Director*
- c. Leader of the Council for submissions by Chief Executive Officer*

- 2.2.1 Purchase by auction or at public fairs or markets.
- 2.2.2 The purchase of Goods, materials or Services which are only available from one provider, or are of a specialist nature, for which no satisfactory alternative is available.
- 2.2.3 The acquisition of Services from artists and performers where the identity and or skills of the artist or performer is the primary consideration. Officers must ensure that the engagement of such artists represents value for money and is an appropriate business decision.
- 2.2.4 Extensions of existing contracts where the extension is in accordance with the terms & conditions, specification, rates and/or prices of the original Contract award, notwithstanding existing Contract conditions in relation to price variations.
- 2.2.5 First extension of existing contracts where the value of the extension does not exceed the applicable EU/UK threshold and no provision for extension was provided in the original Contract award, and where valid reasons can be demonstrated.
- 2.2.6 Extensions of consultancy contracts up to 50% of the original Contract (where the combined original value and extension value do not exceed any EU/UK thresholds), where continuation of Services is deemed necessary, and where the particular knowledge and understanding of the commission is intrinsically linked to the supplier, and no suitable supplier could undertake the work without undue delay or additional/further cost.
- 2.2.7 The execution of Works or the purchase of Goods or Materials necessary for urgent maintenance work to highways, buildings, plant or other assets to prevent rapid and progressive deterioration or to maintain essential Services.
- 2.2.8 Where it is necessary to procure against 2.2.1 to 2.2.8 above the excepted Contract forms must be sent to Strategic Procurement for reporting to the Procurement Gateway Board on a Quarterly Basis.

### **3 Social Services**

- 3.1 In the case of social care contract let under the provisions of the Social Services and Well Being (Wales) Act 2014, Children's Act 2004 and the NHS and Community Care Act 1990 and regulated by Care Inspectorate Wales, the Head of Adult and Community Services and the Head of Children and Young People Services (herein after referred to as Head of Service) are not required to invite tenders for individual service contracts (being a support contract for an individual person) in the following circumstances, and where the Council does not have any suitable existing contract or framework;

- 3.1.1 where the Head of Service is reasonably satisfied that there is only one suitable provider of such services due to the specialist nature of the provision, whilst having regard to locality and family/carer access and visitation.
- 3.1.2 where emergency situations arise and the Council need to commission a service to protect and safeguard vulnerable people, for example in the event of provider failure.
- 3.1.3 where a service user (or their nominated representative) chooses a particular service provider to deliver their care, over another provider, which is in accordance with Social Services and Well Being (Wales) Act 2014. In such circumstances, any appropriate top up fees, in line with Service Area procedures must be levied.

Note - Where it has been necessary to let an individual service contract in respect of 3.1.1, 3.1.2 or 3.1.3, the Service Area must maintain a register of placements, detailing the rationale and cost for the placement. At the end of each financial year, the register must be provided to the Service Manager Procurement & Payments.

- 3.1.4 for all residential and supported living providers, however each provider will need to be accredited on the Councils Registered Provider List and all individual placements must still be brokered.
- 3.2 In respect of contracts for general service provision, general Contract Standing Orders shall apply.

## **4 Internal Providers**

- 4.1 These Contract Standing Orders are the Council's procedure for buying Goods and Services for the Council. They do not apply to internal purchases or service provision. Where an in-house service provider has declined the opportunity to provide Goods, Works or Services, any subsequent procurement from an external supplier must comply with the principles of these Contract Standing Orders and follow the Procurement Gateway Process.
- 4.2 Where a service area believes the costing provided via an in-house provider does not represent value for money, they may apply to the Head of Finance for authority to waive this requirement and tender the provision. For the avoidance of doubt, the In-house service providers included specifically are as listed in the "Approved In-House Provider List"

## **5 Procurement Planning**

- 5.1 In accordance with the Procurement Gateway Process by the end of March each calendar year, Heads of Service shall submit to the Service Manager Procurement & Payments a completed Procurement Forward Plan detailing the planned procurement activities over £4,000 (new purchasing requirements associated with budget planning for the forthcoming financial year). The Strategic Procurement team will use this information for procurement planning, to identify collaborative opportunities, to allocate appropriate resources and to ensure all relevant legislative requirements are observed.

Procurement plans will be under constant review and updated as and when required.

## 6 Procurement Tendering Process

### 6.1 Procurement Gateway Process

6.1.1 For all **Goods, Services and Works** please refer to the Council's procurement gateway process and flowcharts on the [intranet procurement pages](#).

6.1.2 The processes are designed to give a consistent approach to procurement across the authority and enable senior management to have visibility of the Goods and Services being purchased by the Council.

6.1.3 The 'Gateway' process is mandatory to follow if seeking to commission or procure Goods, Services or Works over £4k in value. Officers must not disaggregate requirements in order to avoid the applicable thresholds, and must consider the aggregated spend over the length of the contract.

*Reminder: The below thresholds apply where there is no In-House provider, existing Contract arrangement or appropriate framework agreement available., Up to £4,000 it is necessary only to demonstrate and record that value for money is being achieved.*

### 6.2 Thresholds for Procurement

#### 6.2.1 Process One – Quotations (see Gateway Process One)

From £4,000 to £25,000 written quotations should be sought from either;

- 1) a minimum of three recognised suppliers in the appropriate market, or previously established competitive sources of supply, or
- 2) where it is not possible to identify suppliers, an open and advertised quotation process should be undertaken using the Councils approved eAdvertisement and eSourcing tool.

#### 6.2.2 Process Two – Low Value Tenders (see Gateway Process Two)

From £25,001 to £75,000 formal tenders must be undertaken using the Councils approved eSourcing tool, either by selecting a minimum of four recognised suppliers in the appropriate market, or previously established competitive sources of supply. Where it is not possible to identify suppliers, an open and advertised tender process must be undertaken.

#### 6.2.3 Process Three – Mid Value Tenders up to EU/UK Procurement Thresholds (see Gateway Process Three)

From £75,001 to current EU/UK Procurement Thresholds (current levels detailed on "link to thresholds on intranet pages") an openly advertised formal tendering process must be undertaken using the Councils approved eAdvertisement and eSourcing Tools.

#### 6.2.4 Process Four – High Value Tenders Above EU/UK Procurement Thresholds (see Gateway Process Four)

Above threshold procurements must be undertaken via an openly advertised formal tendering process using the Councils approved eAdvertisement and eSourcing Tools, and in compliance with the Public Contract Regulations.

6.2.5 For Process One & Two, when selecting suppliers, consideration must be given in regard to supporting opportunities for local suppliers, and the wider Welsh supply base and its ability to meet the needs of the Council.

### 6.3 Code of Practice – Ethical Employment in Supply Chains

Newport City Council have signed up to the [Welsh Government's Code of Practice – Ethical Employment in Supply Chains](#), and therefore all tenders must consider the principles of the Code when compiling documentation, vetting suppliers and awarding contracts. The overarching principle of the Code is to ensure that workers in public sector supply chains are employed ethically and in compliance with both the letter and spirit of UK, EU, and international laws. The Code covers Modern Slavery and human rights abuses, Blacklisting, False self-employment, Unfair use of umbrella schemes and zero hours contracts as well as considering paying the living wage. Advice must be sought from Strategic Procurement during tender preparation to ensure processes adhere to the principles of the Code.

### 6.4 Division of Contracts into Lots

The Council may where it considers appropriate decide to award a Contract in a form of separate lots and may determine the size and subject matter of such lots in accordance with the Public Contract Regulations.

Where the Council has decided not to subdivide an above EU/UK Threshold Contract (Process Four) into lots it shall provide an indication of the main reasons within the Procurement Gateway report. Officers must not use lotting opportunities or split up requirements into smaller elements to disaggregate requirements in order to avoid the Procurement Gateway Processes detailed above.

### 6.5 Supplier Selection

6.5.1 It must be demonstrated that the appropriately experienced, technically competent Contractors or suppliers have been shortlisted.

6.5.2 Care must be taken to differentiate supplier selection criteria for short-listing from award criteria.

6.5.3 This demonstration may include, but need not be limited to:

- Eligibility
- Financial standing, including provisions for insurance and liability
- Technical or professional capacity and capability
- Health and Safety
- Quality Standards including certification by official quality control institutes or agencies of recognised competence and or attesting conformity to quality assurance standards and/or measures
- Sustainability, including environmental management measures

- Evidence as to whether they are unsuitable on certain grounds, e.g., of bankruptcy, criminal conviction or failure to pay taxes.
- 6.5.4 The Welsh Public Sector standard supplier selection template is called the Supplier Qualification Information Database (SQulD). In addition to this, for above EU/UK threshold procurements there is the European Single Procurement Document (ESPD). These are the templates that the Council use as standard and Authorised Officers in Service Areas will need to complete this template with the assistance of their Procurement Officer within Strategic Procurement.

## 6.6 Financial Vetting

- 6.6.1 Financial vetting shall be considered for all tenders in excess of £75k. The decision as to whether a financial assessment is required should be based on risk and the impact on the Council of Contract failure. All vetting shall be agreed with the Council's Central Accountancy Team via a method approved by the Head of Finance for that purpose and be conducted at the selection stage.

## 6.7 Evaluation

- 6.7.1 The Authorised Officer shall examine tenders in accordance with the predetermined evaluation criteria for the tender and identify tenders that best meet the criteria including value for money.
- 6.7.2 Where the evaluation criterion is the most economically advantageous, the evaluation criteria or sub-criteria shall as a minimum be listed in the Invitation documentation in order of importance. Any particular scoring or weighting attributable to any criteria or sub-criteria must be clearly stated. In addition, the criteria shall be strictly observed (and remain unchanged) at all times throughout the evaluation and Contract award procedure. Further information on award criteria and weightings can be obtained from the Strategic Procurement Team.
- 6.7.3 Where tenderers submit "conditional" offers, seeking to add new conditions to the Contract the Authorised Officer should notify the tenderer that conditional offers will not be accepted and the tenderer must either withdraw the conditions or withdraw their tender. In the event the tenderer elects to withdraw their tender, their submission will be removed from the evaluation process. Only in exceptional circumstances will the Council consider conditional offers e.g. where only one tender has been received and it is conditional, and only then with approval from the Head of Law & Regulation.

## 7 Electronic Tendering

- 7.1 All procurements above the value of £25k must be conducted electronically in line with the Council's Procurement Gateway Process, Welsh Procurement Policy and The Public Contracts Regulations.
- 7.1.1 The tender process will be conducted electronically by Authorised Officers or Strategic Procurement as determined by the Procurement Gateway Process. All communications related to a tender conducted electronically shall be directed through the Council's approved eSourcing tool. No formal communication shall be made outside of the system.

- 7.1.2 Further information regarding the use of the Council's eSourcing tool may be obtained from Strategic Procurement.

## **8 Estimating the Contract Value**

- 8.1 The value of a Contract means the estimated total monetary value over its full duration (not the annual value), including any extensions or other options. Where the duration of a Contract is indeterminate, this should be taken to be the estimated value of the Contract over a period of four years. No procurement may be artificially split to avoid compliance with these Contract Standing Orders and EU/UK procurement directives. The Council shall make the best use of its purchasing power by aggregating purchases wherever possible.
- 8.2 If it is known that the Contract duration will be longer than four years, then the Contract value will be the total value over the full term of the Contract.
- 8.3 Where the value is, or may be, equal to or greater than the relevant EU/UK threshold, the Council should also have regard to regulation 6 of the Public Contracts Regulations, which deals with the methods for calculating the estimated value of a procurement and the treatment of Lots.

## **9 Form of Contract**

- 9.1 Every Contract where the value or amount of the Contract does not exceed £25,000 shall be in writing in a form approved by the Head of Law and Regulation.
- 9.2 Every Contract that exceeds £25,000 but does not exceed £100,000 shall be signed by either the Head of Service or their Authorised Officer. Contracts between £100,000 and £250,000 shall be signed by the Head of Law and Regulation.
- 9.3 Every Contract that exceeds £250,000 in value shall be made under the Seal of the Council.
- 9.4 All contracts shall be recorded using the information from the Procurement Gateway form on the Council's Corporate Contracts Register maintained by Strategic Procurement.

## **10 Framework Agreements**

- 10.1 All Framework Agreements must be awarded, set up and managed strictly in accordance with the Public Contracts Regulations.
- 10.2 Framework Agreements can be used where the Council wishes to Contract for the provision of Goods, Services or Works without conducting multiple procurement exercises.
- 10.3 Established framework and consortia arrangements endorsed by Strategic Procurement for use by the Council shall be mandatory. On occasion, it may be deemed that the framework agreement would not provide best value – this will need to be proven and approved by Strategic Procurement.

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- 10.4 The Framework Agreement may include within its terms a requirement for a further competition exercise between those Contractors who are parties to the Framework Agreement. These shall be tendered in accordance with the terms of the Framework Agreement itself.
  - 10.5 Where the Council is able to call off from existing Framework Agreements procured by Central Government Agencies, purchasing consortia or other Local Authorities or Public Bodies, then the Council may benefit from using those Frameworks without entering into a separate procurement exercise. Where such Framework Agreements contain a number of different Contractors able to provide a particular category of Goods or Services, competition in line with the Framework guidance must be followed.
  - 10.6 Any Framework Agreement identified by a Service Area shall be notified to Strategic Procurement by the Authorised Officer and must be approved by the Procurement & Payments Manager in order to ensure suitability, legal compliance and value for money. Upon approval, Strategic Procurement can incorporate the Framework Agreement onto the Council's Contract Register.
  - 10.7 Any joint procurement arrangements with other Local Authorities and/or Public Sector Bodies including membership or use of any consortia must be approved by Strategic Procurement to ensure suitability, legal compliance and value for money.
  - 10.8 The term of a Framework Agreement must not exceed four years and, while a Framework Agreement may be entered into with one Contractor, where a Framework Agreement is concluded with several Contractors, there should be at least three in number.

## 11 Approved Supplier Lists

- 11.1 In circumstances where no other suitable Contract arrangement exists for the purchase of Services or Works on a regular basis, and where approval is granted by Strategic Procurement, an [Approved List of Suppliers](#) may be maintained by a Service Area.

This Contract Standing Order shall have effect where:-

- 11.2 A Head of Service, or Authorised Officer maintains an approved list of suppliers to be invited to tender for contracts for the supply of Works or Services of specified categories or
- 11.3 Where Strategic Procurement has approved the use of an external approved list maintained by a third party.

Lists maintained by the Council

- 11.4 The List shall be compiled and maintained in accordance with these Contract Standing Orders, and the Council's [Procurement Gateway Process](#).
- 11.5 Approved Lists must be established in consultation with Strategic Procurement and must be listed on the Council's Contract Register.
- 11.6 In establishing and using an Approved List, the procedure detailed on the [Strategic Procurement Intranet Site](#) must be followed.

## 12 Community Benefits and Wellbeing of Future Generations (Wales) Act 2015

- 12.1 The Council is committed to achieving economic, social and environmental well-being for its residents and implementing Community Benefits and meeting the requirements of the Wellbeing of Future Generations (Wales) Act 2015 so as to ensure a better quality of life for everyone, now and for generations to come.
- 12.2 For all procurements over £75k, the Authorised Officer **must** consider the Economic, Social and Environmental impact of the project when determining the specification and evaluation criteria, and potential for community benefits to maximise the added value of the procurement.
- 12.3 Authorised Officers shall seek guidance from Procurement and the Council's Community Regeneration section on how best to incorporate Community Benefits into the tender and Contract.

## 13 Amendment to Tenders, Errors and Omissions

- 13.1 As a general rule, no adjustment or qualification to any tender(s) is permitted. Only where approval has been obtained from Strategic Procurement, errors found during the examination of tenders shall be dealt with as follows:
- 13.1.1 Where the error contained in a tender appears to be a genuine mistake by typing, printing or arithmetic, or appears to be an eSourcing technical issue, the tenderer shall be given details of the error(s) and shall be given the option to either agree to the tender being corrected or withdrawing the tender. This rule also applies where the genuine mistake may have been made by the Council.
- 13.1.2 The tenderer will be given up to 3 working days to respond.
- 13.1.3 If confirmation from the tenderer is not received within 3 working days, the tender will be withdrawn.
- 13.1.4 Invitation to Tender documents must state how errors in Tenders will be dealt with.
- 13.1.5 All correspondence must be in writing, and where applicable through the Council's approved eSourcing tool.
- 13.1.6 No request to amend a Tender after the time fixed for receipt shall be accepted.

## 14 Tender Clarification and Negotiation

- 14.1 An Authorised Officer may seek clarification of the information provided (or not provided) by a Tenderer only where this is necessary to aid understanding. The types of clarification will generally be:

Where a Tenderer has made an accidental omission such as not including a relevant certificate;

Where ALL Tenderers responding have misinterpreted a question;

- 14.1.1 The Council will not seek clarifications from individual Tenderers where a question has been misinterpreted and/or poorly answered (this will include where a Tenderer has not followed the format of the Invitation To Tender and/or submitted standard text in place of a fully informed written answer) and other submissions received, fully interpreted and answered in full the same question. A clarification of this nature would not be permissible due to the Tenderer having a second chance at providing information which would alter the evaluation, and be unfair to other Tenderers.
- 14.1.2 If, for any reason, it is necessary to amend the Specification after Tenders have been received, a new Tender process shall be undertaken.
- 14.1.3 Where procurement is conducted pursuant to the Public Contracts Regulations advice must be sought from Strategic Procurement. The Authorised Officer may seek clarification from tenderers where appropriate in consultation with Strategic Procurement.
- 14.1.4 Where procurements do not exceed the applicable EU/UK thresholds, if it is in the Council's interest to do so to achieve value for money Strategic Procurement may authorise negotiations. Strategic Procurement will also establish the timescales for said negotiation procedure. Such actions must not distort competition. At all times during the procurement process the Council shall ensure that all tenderers are treated in accordance with the principles of the European Treaty.

## **15 Authorised Award of Tenders/Quotations and Reports**

- 15.1 The Council shall only award a Contract where it represents best value for money. A Contract shall only be awarded using the pre-determined tender evaluation criteria and weightings. Where a tender is to be evaluated on price only, the Contract must be awarded to the Tenderer submitting the lowest (compliant with specification) price.
- 15.2 A Contract may only be awarded by an authorised officer with the required approval to award contracts in accordance with the Council's Scheme of Delegations. For all Procurements valued at above £4,000, the decision to award a Contract shall be made using the Council's Procurement Gateway Process.
- 15.3 Where Procurement is conducted pursuant to the Public Contract Regulations the Authorised Officer must notify all tenderers in writing of the outcome of the tender, and the Council's intention to award a contract. Unsuccessful tenderers must be informed of the scoring attributed to the evaluation, being their score and the score of the winning tender, as well as any characteristics and relative advantages of the winning tender. The name of the winning tenderer should also be provided. The statutory standstill period must be observed prior to any final contract award.
- 15.4 Where a tender has been advertised on the Councils approved eAdvertisement website, the Council shall publish a Contract Award Notice on the same website as soon as possible after the decision to award the Contract has been taken, and in any case within 30 days.

- 15.5 Where Procurement is conducted pursuant to the Public Contract Regulations the Authorised Officer must allow the statutory standstill period prior to issuing a final award and shall publish a Contract award notice in the Official Journal of the European Union no later than 30 days after the date of award of the Contract or such other requirements or time limits as are set out in the Regulations. An official Tender report in-line with Rule 84 of the Public Contracts Regulations must also be produced.
- 15.6 Where the Public Contract Regulations do not apply and an unsuccessful tenderer requests feedback on their tender, the Authorised Officer must within 15 days of any request, inform the tenderer of the reasons for being unsuccessful. If the supplier was unsuccessful at the award stage the responsible officer shall also inform it of the characteristics and relative advantages of the successful tender as well as the name of the bidder awarded the contract.

## 16 Contract Management

- 16.1 Once the Contract has been awarded, the Service Area Contract Manager will manage the day-to-day aspects of the Contract for its term.
- 16.2 The day-to-day management of the Contract shall be undertaken by the Contract Manager and shall include monitoring and reporting in respect of:-
- (i) performance
  - (ii) compliance with specification and Contract terms
  - (iii) cost
  - (iv) any value for money/best value requirements
  - (v) user satisfaction
  - (vi) risk management, and
  - (vii) delivery of agreed Community Benefits
- 16.3 For all contracts, it is the responsibility of the Contract Manager to raise any incidents of poor performance immediately with the Contractor and seek rectification. In instances of particularly poor performance, or persistent poor performance, the Contract Manager should consider the appropriate course of action to take under the Contract, taking advice from Strategic Procurement and/or Law & Regulation.
- 16.4 Where the Contract has key performance indicators built into monitoring objectives, the Contract Manager must make a written report evaluating the extent to which the Contract is meeting the objectives set. This should be done normally when the Contract is completed but for term contracts, such report should be prepared annually. The report should be presented to the appropriate Head of Service and the Service Manager Procurement & Payments.

## 17 Variations to Contract

- 17.1 Whether or not it is a requirement of the Contract, every variation (whether having a financial implication or not) will be authorised in writing by the appropriate officer(s). The Authorised officer will keep detailed records of any such variation and any variation of a financial matter shall be open to inspection by the Head of Finance. The authorisation will be issued before the variation is placed.

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- 17.2 For variations approved by an Authorised Officer, the Contract Manager shall monitor at least monthly the overall level of variations approved to gain assurance that they are correct and appropriate.
- 17.3 Any variation to the original Contract must be in the best interests of the Council and of continued delivery of Services.

## **18 Extensions of Contract Period / Term**

- 18.1 The decision to extend the Contract period (term) may only be made before the original expiry date, where it is in accordance with the terms and conditions of the original Contract. The relevant Head of Service must authorise any extension of Contract using the [Excepted Contracts form](#), which must also be approved by Strategic Procurement. The value of any extended term shall be assessed and recorded within the Excepted Contracts form as part of the extension procedure.
- 18.2 The decision to extend a Framework Agreement may only be made before the original expiry date, where the extension is in accordance with the terms and conditions of the original Contract. Strategic Procurement must take all such decisions to extend framework arrangements. The aggregate term of the Framework Agreement must not exceed 4 years.
- 18.3 Where the terms of the Contract and or original procurement exercise do not expressly provide for extension then such Contract may only be extended in exceptional circumstances, where legislation permits and value for money issues have been addressed. Such decisions shall be made by the relevant Head of Service and Strategic Procurement.

## **19 Procurement of Consultants**

- 19.1 For the avoidance of doubt, the appointment of consultants shall be made in accordance with the requirements of these Contract Standing Orders.

## **20 Procurement by Consultants**

- 20.1 Where the Council uses consultants to act on its behalf in relation to any procurement, then the Head of Service shall ensure that the consultants carry out any procurement in accordance with these Contract Standing Orders.
- 20.2 All decisions must be made in accordance with the Council's Scheme of Delegations and are subject to the Council's Procurement Gateway Process.
- 20.3 No consultant shall make any decision on whether to award a Contract or who a Contract should be awarded to outside of the Procurement Gateway Process.. The Head of Service shall ensure that the consultant's performance in relation to procurement is in accordance with these Contract Standing Orders and all statutory procurement obligations.
- 20.4 Where the Council uses consultants to act on its behalf in relation to any procurement, the consultant must declare any potential conflict of interest that may arise to the Head of Service prior to the commencement of the procurement process or at such time that the Contractor becomes aware of such a potential conflict of interest. Where the Head of Service considers that

such a conflict of interest is significant, the consultant shall not be allowed to participate in the procurement process.

*Note: it is the Council, which is responsible for all actions and decisions of consultants in relation to the conduct of procurements, therefore there need to be proper governance procedures in place to manage and monitor consultants appropriately.*

## **21 Variant Tenders**

21.1 Variant tenders may be considered where this was indicated in the Invitation to Tender documentation. This must be in accordance with the Public Contract Regulations and in consultation with Strategic Procurement.

## **22 Abnormally Low Tenders**

22.1 Where as a result of identifying that the overall tendered price or costs raises significant doubts that the Contractor will be able to complete the Contract within the Contract terms, the Council shall require tenderers to explain the price or costs proposed. Where the Council determine the explanation is insufficient or believe significant doubts as to the Contractors ability to meet the requirements still exist, the Council reserve the right to reject the tender. This must be undertaken in accordance with the Public Contract Regulations and in consultation with the Service Manager Procurement & Payments.

## **23 Capital Contracts**

23.1 In the case of capital contracts, the appropriate Head of Service must ensure that the scheme is in the approved capital programme before inviting tenders in accordance with the Procurement Gateway Process.

23.2 For awarded contracts the Head of Service and Head of Finance must be made fully aware of the implications of a major change in the specification of a project in both financial and operational terms, and be made fully aware of all other significant decisions affecting the project. At the first indication or identification of a significant potential overspend of either £25k or 10% of the Contract value (whichever is the lowest), the appropriate Head of Service and Head of Finance shall be notified. This must be reported to the Councils Cabinet for further consideration.

## **24 Disposal of Assets**

24.1 Heads of Service shall be authorised to dispose of Goods and materials surplus to the Council's requirements by whichever means would, in the judgement of the officers, result in the best value for the Council; examples may include;

- auction
- tender
- private sale
- transfer to another service
- donation to a not for profit organisation

- 24.2 Where a surplus item is likely to raise more than £1,000, the appropriate Head of Service shall be consulted before its disposal. Written tenders should be invited for any item likely to realise more than £5,000.
- 24.3 Irrespective of likely value, all Vehicle and Plant assets should be disposed of via the Head of City Services and all IT assets should be disposed of via the Head of People and Business Change, where they are not owned or managed by the Shared Resource Service (SRS). In the event that a Head of Service determines that Goods are beyond their economic useful life and therefore of no value, they should arrange for recycling as appropriate or disposal as waste. Appropriate records of disposal should be maintained and where assets are maintained on an Asset Register, the appropriate Head of Service should be informed to update the register.

## **25 Waiver of Contract Standing Orders**

- 25.1 Approval of waiver of any of these Contract Standing Orders shall only be given in exceptional circumstances and only following a written report to the appropriate Cabinet Member, which includes the comments of the Chief Financial Officer, Monitoring Officer and Head of Service. All waivers will be reported to Audit Committee on at least a six monthly basis. There should be no delay in presenting a waiver report for consideration, which should be done as soon as the relevant circumstances present themselves.
- 25.2 The originator of the report requesting a waiver of Standing Orders is responsible and accountable for making sure that the contents of the report are factually correct. The originator of the report should ensure that all supporting documentation is retained on an easily accessible file for auditing purposes.