

## Part 4 Section 4

### Standing Orders on Procurement and Contracts

(changes shown in bold, italic text with deletions struck through)

#### Section 1: Authority to Contract and Responsibilities of Key Officers

##### 1. Scope of Standing Orders

1.1 These Standing Orders apply to all spend with external suppliers regardless of the source of funding (for example, revenue, capital, grants, ring-fenced government money and/or any third party funding). They apply to contracts let by the Council on its own behalf and when it is acting as a purchasing authority on behalf of others.

1.2 The purpose of these Standing Orders ~~and the supporting Guide to Standing Orders~~ is to set out and explain the Council's minimum requirements when contracting for goods, services and works. They are designed to:

- (a) make sure we spend public money **legally** and avoid undue criticism or allegation of wrongdoing;
- (b) secure Value for Money;
- (c) generate market competition (***where applicable***) through transparent, fair and consistent ways of working; and
- (d) support supplier diversity, sustainability objectives, and equality of treatment.

**1.3 These Standing Orders also set out and explain that, when procuring health care services, the Council must act with a view to:**

- (a) securing the needs of the people who use the services;**
- (b) improving the quality of the services;**
- (c) improving efficiency in the provision of the services; and**
- (d) acting transparently, fairly and proportionately.**

~~1.4~~ 1.3 These Standing Orders do not apply to the following instances, which are managed by separate policies and guidelines:

- (a) contracts for the acquisition or lease of land and/or real estate;
- (b) contracts for permanent or fixed term employment (but note rules on consultants' contracts);
- (c) works or orders placed with utility companies (for example, re-routing gas pipe work);
- (d) services to be delivered by a local authority's in-house service;

- (e) grants, however, contracts must not be artificially described as a grant to avoid the application of these Standing Orders or the PCR 2015;
- (f) placement of a child with Special Educational, Health or Social Care Needs where already directed following statutory assessment (Education and Health Care Plan) or where such assessment has identified the placement as the only provision reasonably capable of meeting the child's needs (relevant law/policy: s.37 Children and Families Act 2014 and ESFA guidance 2019-20 para 86). This includes services or interventions specifically named in an ECHP. Director approval is required for placements/services that fall under this exemption **unless the placement/services are valued at over £500,000, in which case a Key Decision will be required**;
- (g) direct payments to customers following care assessment, for example, payments provided under Self Directed Support, individual budgets, **direct payments or individual service funds**; and
- (h) non-trade payments to third parties, such as insurance claims, pension payments, statutory payments to public bodies.

~~1.51.4~~ Where the proposed contract falls within the Public Contracts Regulations 2015 (PCR 2015), ~~or Concession Contracts Regulations 2016 (CCR 2016)~~ ) **or Health Care Services (Provider Selection Regime) Regulations 2023 (PSR 2023) the relevant** these regulations **shall be complied with** apply in addition to these Standing Orders. ~~In the event of a conflict, the PCR 2015 or CCR 2016 (as applicable) take precedence.~~

~~1.61.5~~ The award of a grant is not subject to these Standing Orders. Officers must follow all internal guidance for grant making and take into account legal requirements concerning **Subsidy Control** ~~State Aid~~. Any grant agreement must be in a form approved by Legal Services. Award decisions must be in accordance with the Scheme of Delegation.

## **2. Principles of procurement contracting**

- 2.1 The Council and its officers must adhere to the following principles in carrying out all procurement activity:
- (a) procurement procedures shall be fair, transparent, and properly planned;
  - (b) all bidders and prospective bidders shall be treated equally;
  - (c) the objective of all procurement shall be to achieve Value for Money;
  - (d) officers shall seek and comply with any advice from Legal Services and Procurement and Contract Services; and
  - (e) officers shall keep appropriate records of all decisions taken and communications between the Council and bidders or prospective bidders.
- 2.2 It is a disciplinary offence to fail to adhere to these Standing Orders.

## **3. Authority to contract**

- 3.1 All directors and assistant directors are responsible for ensuring these Standing Orders are applied and understood across their directorates.

3.2 Directors and assistant directors must not commence or permit the commencement of a procurement process (including any variation or extension to a contract) without specific delegated authority to act under the Scheme of Delegation, or from the relevant cabinet member, through a published decision or other authorised decision in accordance with the Council's Constitution.

#### 4. Key responsibilities

4.1 Directors and/or assistant directors (as applicable under the Scheme of Delegation) shall:

- (a) be responsible and provide strategic direction for all procurement undertaken in their directorate;
- (b) ensure all procurement and delegated decision-making adheres to the Scheme of Delegation;
- (c) obtain cabinet member approval where required to do so by the Council's Scheme of Delegation before undertaking any procurement activity;
- (d) comply with the Financial Regulations, especially with regard to the adoption of vendors and creation of a valid purchase order;
- (e) engage with Procurement and Contract Services and Legal Services (Commercial Legal Team) and ensure they are both notified and instructed, in advance, for all proposed contracts with an estimated value of **£25,000** ~~£100,000~~ or more (including any variations to the contract terms and conditions and/or price of existing contracts where the original contract and/or the proposed variation itself has a value of **£25,000** ~~£100,000~~ or more);
- (f) comply with the Public Contracts Regulations 2015, ~~or~~ Concession Contracts Regulations 2016 **or Health Care Services (Provider Selection Regime) Regulations 2023** (as applicable) and these Standing Orders for all procurement and contract activity undertaken by their directorate;
- (g) nominate appropriately skilled and qualified Responsible Officers to undertake procurement activity;
- (h) ensure all sourcing decisions represent Value for Money and are within approved budgetary limits;
- (i) ensure Responsible Officers engage with Procurement and Contracts Services before procuring any contract with a value of **£25,000** or more in order for Procurement and Contracts Services to provide advice on the most appropriate sourcing route where required;
- (j) provide for appropriate and effective contract and supplier relationship management for all contracts under their responsibility; and
- (k) ensure sufficient funds are available for relevant procurement and contracting activity and allocate appropriate funds in their budget.

4.2 **Responsible Officers** shall:

- (a) manage the procurement process in compliance with these Standing Orders, the PCR 2015, ~~or the CCR 2016~~ **or the PSR 2023** (as applicable) and the Council's internal systems, policies and processes for commissioning and procurement, including any **electronic tendering systems or contract management processes** ~~sourcing processes~~ as advised by and available from Procurement and Contracts Services. **If the Responsible Officer wishes to use a method other than the advised process, approval should be obtained from the Director of Law and Assurance and the Director of Finance and Support Services;**
- (b) follow internal governance processes, including engagement with legal financial and procurement advisers as required and advised by Procurement and Contracts Services or as described in these Standing Orders;
- (c) ensure they have adequate information to support and justify all commissioning and procurement activity **and that this information is saved in a shared electronic folder;**
- (d) seek appropriate advice and support from their director and/or assistant director and Procurement and Contract Services, Financial Services and Legal Services and shall engage with these departments in respect of all contracts with a value of £100,000 or more prior to commencement of any procurement activity;
- (e) conduct all tendering activity in a fair, transparent and non-discriminatory manner;
- (f) devise a procurement plan that is efficient and suitable for the purchase and the market concerned, considering any other relevant sourcing options, such as the use of existing contracts and frameworks, taking into account any advice from Procurement and Contracts Services and Legal Services as necessary;
- (g) plan an appropriate and proportionate timetable for any procurement exercise in consultation with Procurement and Contracts Services and Legal Services, where the proposed contract has an estimated value of £100,000 or more, further guidance on timescales can be found in the Guide to Standing Orders;
- (h) ensure the award criteria for any procurement exercise adheres to the Council's internal guidance or is within the award criteria ranges set out in the Council's standard invitation to tender/request for quote template (available from Procurement and Contracts Services) and any deviations to this must be approved in advance by the Head of Procurement and Contracts Services in consultation with Legal Services and Finance as necessary;
- (i) maintain a full record and audit trail of all procurement activity (the 'Procurement File'), including decisions made and communications with suppliers; and

- (j) ensure all contracts with a value of £25,000 or more are recorded on the Council's corporate contracts register, maintained by Procurement and Contracts Services, in compliance with the Local Government Transparency Code 2015.

4.3 The **Responsible Officer** shall take advice from **Procurement and Contract Services** on the following aspects of public procurement:

***Pre-procurement Pre-procurement - options appraisal, market engagement and procurement strategy***

- (a) help in consideration of all sourcing options available and documenting **an** options appraisal;
- (b) ***producing public sector market insight reports;***
- (c) devising a suitable market engagement plan, ensuring the engagement process is properly planned, fair and transparent and captures meaningful feedback from the market that can be considered in preparation of the Procurement Documents;
- (d) advising and preparing an appropriate procurement strategy, including how this will ensure and promote a level playing field between potential Candidates;

**Strategic sourcing**

- (a) help in shaping commissioning outcomes and decisions, whether or not these result in procurement activities;
- (b) category management principles and strategic sourcing;

***Contract Management Supplier relationship management***

- (a) spend and supplier intelligence;
- (b) contract assurance and performance quality assurance services of strategic contracts (but not operational contract management); and
- (c) development and management of opportunities for innovation in supply chain;

**Procurement operations**

- (a) ***strategic and business critical contracts;***
- (b) transactional, operational and administrative procurement activity; and
- (c) the use and operation of an electronic tendering system.

4.4 The **Responsible Officer** shall take advice from **the Director of Law and Assurance or officer acting with delegated authority from that Assistant Director:**

- (a) on all legal, regulatory and constitutional aspects of the procurement process; and

- (b) concerning the content and form of any contract before it is made available to bidders (whether a competitive tender process, three quotes or single tender process is being carried out) and/or to be entered into on behalf of the Council.

## Section 2: Pre-procurement Activity

### 5. Options appraisal

- 5.1 The Responsible Officer shall ensure that the appropriate sourcing approach is adopted in each case taking into account the budget allocation, the needs of the Council and its services users and residents, the nature of the market, **the appropriate legislation (i.e. PCR or PSR)** and other commercial considerations.
- 5.2 In considering a sourcing approach for services **and works** contracts, the Responsible Officer shall consider and record on the Procurement File how the sourcing approach might improve the economic, social and environmental well-being of West Sussex in accordance with the Council's [Social Value Framework](#), as may be updated or amended from time to time and available on the Council's website.
- 5.3 The Responsible Officer shall ensure a report on the sourcing decision is included in the Procurement File and clearly referenced in any decision to approve commencement of the procurement.

### 6. Market testing and engagement

- 6.1 The Responsible Officer shall determine the sourcing approach based on:
- (a) any available views from service users and other stakeholders;
  - (b) consultation or testing with the relevant market;
  - (c) **producing public sector market insight reports;**
  - (d) current performance and future objectives for the product or service;
  - (e) budgetary limits;
  - (f) the existence of other public contracts, Framework Agreements or Dynamic Purchasing Systems which might be suitable for the Council to use; and
  - (g) advice from Procurement and Contracts Services
- 6.2 The Council's Procurement and Contract Services function shall advise on and provide professional support in carrying out all market engagement exercises and the Responsible Officer shall comply at all times with such guidance.

### **Section 3: Procurement Procedures, Provider Selection Regime, Advertising and Publication of Award Notices**

#### **7. Summary of requirements as to advertising, use of procedures and award notices**

7.1 The Council must advertise contract opportunities and publish details of contracts awarded in accordance with the PCR 2015, ~~or~~ CCR 2016 **or PSR 2023** (as applicable).

7.2 The PCR 2015 require the Council to:

- (a) advertise all contracts at or above the relevant Threshold on the UK e-notification service, Find a Tender Service ("FTS")<sup>1</sup>, and Contracts Finder;
- (b) advertise all contracts of £25,000 on Contracts Finder (see Guide to Standing Orders), where the Council has advertised them elsewhere.

7.3 The PCR 2015 also set out the procedures which must be used to award specific types of contract. They are:

| <b>Procedures</b>   | <b>Goods, services contracts and works contracts at or above the Threshold</b>          | <b>Schedule 3 (Light Touch) contracts at or above the Threshold</b>   | <b>All other contracts valued between £25,000 and the Threshold</b>  |
|---------------------|---|---|--|
| <b>Advertising</b>  | Mandatory - on FTS and Contracts Finder.  | Mandatory - on FTS and Contracts Finder.  | If the Council has advertised the contract elsewhere, it must also advertise on Contracts Finder.  |
| <b>Award notice</b> | Mandatory - on OJEU <del>or</del> FTS (as applicable) <sup>2</sup> and Contracts Finder | Mandatory - on OJEU <del>or</del> FTS (as applicable) and Contracts Finder  | Mandatory - on Contracts Finder  |
| <b>Procedures</b>   | One of the procedures mandated by PCR 2015.   | Procedure devised by the Director of Law and Assurance and the Head of Procurement and Contract Services in compliance with regulation 76 of PCR 2015 and detailed in the Guide to Standing Orders. | Procedure devised by the Director of Law and Assurance and the Head of Procurement and Contract Services in compliance with Part 4, Chapter 8 of the PCR 2015, the principles of transparency and equal treatment and these Standing Orders as further detailed in the Guide to Standing Orders. |

<sup>1</sup> ~~Effective from after 23:00 on 31<sup>st</sup> December 2020~~

<sup>2</sup> ~~Procurements advertised on OJEU that were commenced prior to the end of the transition period (23:00 on 31.12.20) must be concluded on OJEU.~~



- 7.4 Concession contracts with a total estimated value at or above the concession Threshold shall be advertised in accordance with the CCR 2016. Below Threshold concession contracts shall be advertised in accordance with these Standing Orders or as otherwise advised by Procurement and Contracts Services. The procurement procedure for any concession contract shall be as devised by the Director of Law and Assurance and the Head of Procurement and Contract Services taking into consideration the principles of transparency, equal treatment and best value.
- 7.5 If during the course of a procurement an issue arises upon which these SOPC are silent or incomplete, the Responsible Officer shall refer the matter to the Director of Law and Assurance for determination.

### ***Provider Selection Regime***

- 7.6 The Health Care Services (Provider Selection Regime) Regulations 2023 (PSR) apply to the commissioning of NHS and public health services provided to individuals in England as part of the health service. They must be followed when the Council is commissioning healthcare services for the purposes of the health service.***
- 7.7 When exercising functions to comply with the PSR, relevant authorities must continue to comply with other legal obligations. These include the NHS Act 2006 and the Local Government and Public Involvement in Health Act 2007.***
- 7.8 The 'health service' is defined as in section 1(1) of the National Health Service Act 2006 (NHS Act 2006):***
- 'comprehensive health service designed to secure improvement in the physical and mental health of the people of England, and in the prevention, diagnosis and treatment of physical and mental illness'.***
- 7.9 'Health Care Services' are defined in Schedule 1 of The Health Care Services (Provider Selection Regime) Regulations 2023 as well as the National Health Service Act 2006.***
- 7.10 The PSR allows relevant authorities to arrange a contract comprising a mixture of in-scope health care services and out of scope services or goods when the main subject matter of the procurement is health care service (>50% by lifetime value) and the relevant authority is of the view that the other goods or services could not reasonably be supplied under a separate contract. Before considering a Mixed Procurement, the Senior Responsible Officer must seek the advice of Procurement and Contract Services.***
- 7.11 The regime must be applied as part of the commissioning and procurement process whenever contracts for health care services are coming to an end, changing considerably, or being awarded for the first time. The Council can follow one of provider selection processes set out below to award contracts for health care services under the PSR (Direct Award Processes, Most Suitable Provider Process or the Competitive Process).***
- 7.12 Responsible Officers who consider that the Provider Selection Regime may apply to a contract should consult Procurement and Contract***

**Services and the Commercial Legal team before proceeding with a process decision or communicating any decision to a Service Provider.**

#### **Process 1: The Direct Award Processes**

**7.13 These processes apply when there is limited or no reason to seek to change from the existing provider; or to assess providers against one another, because:**

- (a) the existing Service Provider is the only provider that can deliver the health care services and there is no realistic alternative to the existing provider due to the nature of the health care services. This process cannot be used to award a contract for a newly established service and cannot be used to establish a framework agreement. (Direct Award Process A);**
- (b) patients have a choice of providers and the number of providers is not restricted by the Council and shall be used only to award contracts for existing and newly established services which meet these criteria (Direct Award Process B); or**
- (c) the existing Service Provider is satisfying its existing contract specification and KPI targets, will likely satisfy the new contract to a sufficient standard, and the proposed contracting arrangements are not changing considerably. This process cannot be used to award a contract for a newly established service and cannot be used to establish a framework agreement (Direct Award Process C).**

#### **Process 2: The Most Suitable Provider Process**

**7.14 This process involves awarding a contract for new or considerably changed services to a Service Provider without running a competitive process because the relevant authority can identify the most suitable provider.**

**7.15 This Most Suitable Provider process may be used when all of the following apply:**

- (a) the Council is not required to follow direct award processes A or B;**
- (b) the Council cannot or does not wish to follow direct award process C; or**
- (c) the Council is of the view, taking into account likely providers and all relevant information available at the time, that it is likely to be able to identify the most suitable provider without running a competitive process.**

**7.16 This process cannot be used to establish a framework agreement.**

**7.15 This process cannot be used until Procurement and Contract Services have approved the market research and soft market testing undertaken to evidence and justify the use of this process.**

### **Process 3: The Competitive Process**

**7.17 This process is for situations where officers cannot identify a single Service Provider or group of Service Providers that are most suitable without running a competitive process or identify a need to test the market. The Competitive Process should be carried out in accordance with these Standing Orders and PCR 2015 (if above Threshold).**

**7.18 The competitive process must be used if the intention is to establish a framework agreement.**

#### **Governance**

**7.19 Once the Responsible Officer has identified which of these processes applies, they will then need to follow the decision-making approach relevant to that process, and to adhere to the requirements around transparency and scrutiny for each process. For Direct award process C, the Most Suitable Provider Process and the Competitive Process the Responsible Officer must decide the weighting of the 5 key criteria in advance of the procurement process and observe a standstill period.**

**7.20 For all contracts valued above £500,000 and up to £5 million, the Responsible Officer will be required to obtain the advice of the Commercial Panel. For contracts valued above £5 million, the Responsible Officer will be required to obtain the advice of both Commercial Panel and Procurement Board.**

**7.21 Responsible Officers should adhere to the internal governance requirements for each process as follows:**

**(a) Direct Award Processes and Most Suitable Provider Process:**

- i. Contracts valued at over £500,000, the Key Decision process should be followed.**
- ii. For contracts between £25,000 and £499,999, with the prior written approval of the relevant Director or Assistant Director (as applicable per the Scheme of Delegation) and agreed with Procurement and Contracts Services and the Commercial Legal team to ensure that the use of this Process is appropriate.**

**(b) Competitive Process**

- i. Contracts valued at over £500,000, the Key Decision process should be followed alongside Section 4 of these Standing Orders.**
- ii. Contracts above £25,000 and the Thresholds set out in PCR 2015, one of the procurement routes set out in Standing Order 13 should be followed (save for the use of Dynamic Purchasing System).**
- iii. Above Threshold procurements should be conducted in accordance with Section 4 of these Standing Orders.**

## **Urgent Circumstances**

**7.22 In urgent situations, but only as advised by the Directors of Law and Assurance and of Finance and Support Services, the Council may make the following decisions without following the steps normally required under PSR:**

- (a) Re-award contracts with existing providers;**
- (b) Award contracts for new services;**
- (c) Award contracts for considerably changed services; or**
- (d) Make contract modifications (without limitation).**

**7.23 Responsible Officers seeking to use the Urgent circumstance provision must obtain advice from Procurement and Contracts Services and the Commercial Legal team in advance of seeking approval to ensure that the use of this provision is appropriate.**

**7.24 The Provider Selection Regime does not apply in the following circumstances:**

- (a) public health services not arranged by NHS bodies or local authorities;**
- (b) social care services when not procured alongside healthcare services in a single contract;**
- (c) essential and advanced pharmaceutical services arranged under the terms of the community pharmacy contract framework (CPCF);**
- (d) procurement of goods or medicines; or**
- (e) non-healthcare services (for example, business consultancy, catering, hospital bedding services, public health marketing campaigns).**

**7.25 Responsible Officers wishing to modify a contract let under PSR must consult Procurement and Contract Services and the Commercial Legal team before proceeding with a modification or entering into discussion with a provider to modify a contract.**

**7.26 Contracts that fall within the Provider Selection Regime must be compliant with 'Section 10: Form of Contract, Mandatory Clauses and Formalities' of these Standing Orders and in a form approved by the Commercial Legal team.**

**7.27 The Council must maintain a full record and audit trail of all procurement activity on the Procurement File, including decisions made and communications with suppliers. Should a Responsible Officer receive notice of a challenge from an aggrieved provider or potential supplier they must contact the Commercial Legal Team and Procurement and Contract Services immediately.**

## **Section 4: Procurements at or above the Thresholds**

### **8. Requirement to advertise**

- 8.1 ***A Key Decision must be obtained for all Procurements that exceed £500,000.***
- 8.2 ***For all contracts valued above £500,000 and up to £5 million, the Responsible Officer must obtain the advice of the Commercial Panel. For contracts valued above £5 million, the Responsible Officer must obtain the advice of both Commercial Panel and Procurement Board.***
- 8.3 Contracts which exceed the Thresholds set out in the PCR 2015 or CCR 2016 must be advertised on FTS by publishing a Contract Notice or, where advised by Procurement and Contracts Services, a Prior Information Notice (PIN) as a call for competition.
- 8.4 The Responsible Officer must take advice from Procurement and Contract Services before publishing any document on FTS.
- 8.5 All contracts which are advertised on FTS must also be advertised on Contracts Finder within 24 hours of the time the Council becomes entitled to post it, that is after either:
- (a) it appears on FTS;
  - (b) it has not appeared but 48 hours have elapsed from the time the FTS has confirmed receipt of the notice to the Council.
- 8.6 All Procurement Documentation must be available from the time the Contract Notice is published on FTS. Therefore, no advertisement should be placed until the Procurement Documentation is complete. The Responsible Officer must ensure the Contract Notice includes a specified location where interested parties can electronically access all Procurement Documentation.
- 8.7 The Council may use a Prior Information Notice (PIN) as a call for competition when using the restricted or competitive procedure with negotiation (see Guide to Standing Orders).
- 8.8 The Responsible Officer or Procurement and Contracts Services, as the case may be, is responsible for ensuring all Contract Notices and publications on Contracts Finder are published in accordance with these rules.

### **9. Procurement procedures**

- 9.1 For public contracts equal to or greater than the relevant Threshold, the Council shall:
- (a) advertise the contract on FTS using one of the procurement routes mandated by the PCR 2015 or CCR 2016 (as applicable); or
  - (b) where appropriate and lawful, use an existing contract, Framework Agreement or Dynamic Purchasing System which was procured in compliance with the PCR 2015 or CCR 2016 (as applicable).

## **10. Contracts subject to the 'light touch regime'**

- 10.1 Social care, education services and other services which are listed in Schedule 3 to the PCR 2015 are subject to the PCR 2015. However, the Council is not obliged to use one of the procedures listed in the PCR 2015 to award these contracts. Instead, the procurement procedure must comply with the principles of regulation 76 of the PCR 2015 (commonly referred to as the 'light touch regime' – see Guide to Standing Orders). The Responsible Officer shall take advice from Procurement and Contracts Services on the most appropriate approach.
- 10.2 Services listed in Schedule 3 to the PCR 2015 and which are at or above the concession Threshold are subject to the CCR 2016. The CCR 2016 does not mandate a specific procedure to award such contracts however regulation 19 of the CCR 2016 applies. The Responsible Officer shall take advice from Procurement and Contracts Services on the most appropriate approach.

## **11. Contracts Subject to the Provider Selection Regime (PSR)**

### **11.1 Contracts that are subject to the PSR are not governed by PCR 2015.**

**11.2 Detailed information about application of the PSR is set out in 'Section 3: Procurement Procedures, Provider Selection Regime, Advertising and Publication of Award Notices' above. The Responsible Officer shall take advice from Procurement and Contract Services and the Commercial Legal Team on the most appropriate approach.**

## **12.11. Reserved Contracts**

- 12.1** The Responsible Officer may reserve participation in procurement processes for limited types of services contracts to certain qualifying organisations from the employee ownership and voluntary sectors. The maximum duration of contracts awarded under this power is three years (see Guide to Standing Orders).
- 12.2** The Responsible Officer may, for below Threshold contracts only, reserve the procurement:
- (a) by supplier location - this means being able to run a competition and specify that only suppliers located in a geographical area can bid; and/or
  - (b) for Small and Medium sized Enterprises (SMEs)/Voluntary, Community and Social Enterprises (VCSEs) - this means being able to run a competition and specify that only SMEs and VCSEs can bid, taking advice from Procurement and Contracts Services, prior to commencing the procurement and providing that such reservation would elicit bids representing Value for Money.
- 12.3** The Responsible Officer must obtain written approval from the Head of Procurement and Contracts Services before commencing a procurement in reliance on this Standing Order.

## **13.12. Use of negotiated procedure without prior publication of an FTS notice for above Threshold contracts**

In the limited circumstances listed in regulation 32 of the PCR 2015 or regulation 31(6) of the CCR 2016 (see Guide to Standing Orders), the Council

may dispense with a Contract Notice and engage in negotiations with a single supplier under the negotiated procedure. The Responsible Officer must receive written authorisation from the Director of Law and Assurance before using this procedure. ***A Responsible Officer's failure to engage in a timely procurement exercise does not constitute grounds to support the use of this provision.***

## Section 5: Contracts below the Thresholds

### **14.13. Contracts valued between £100,000 and the Thresholds**

**14.1** The Responsible Officer shall use one of the following procurement routes to award a contract valued between £100,000 and the appropriate Threshold:

- (a) competitive procurement process advertised on FTS and Contracts Finder, and the Council's own website;
- ~~(b) competitive procurement process advertised on Contracts Finder and the Council's own website;~~
- ~~(b)~~(c) use of a contract, Framework Agreement or Dynamic Purchasing System procured by another contracting authority in compliance with the PCR 2015, CCR 2016 **or PSR 2023** (as applicable); or
- ~~(c)~~(d) only if all other routes at 14.1 (a) **and (b)** to ~~(c)~~ above are unavailable, without advertising the opportunity, obtain a minimum of three quotations from suppliers, where the Responsible Officer has sufficient knowledge of the market to be reasonably certain such an approach would elicit bids representing Value for Money and can evidence this.

**14.2** The Responsible Officer must devise a fair and transparent sourcing route based on sound commercial principles and designed to achieve Value for Money, taking advice from Procurement and Contract Services. The Responsible Officer shall ensure that any decision relating to the sourcing route for a particular contract or service shall include an assessment of risk attaching to that decision and that analysis shall be recorded in writing and stored on the Procurement File (see Guide to Standing Orders).

### **15.14. Contracts with a value between £25,000 £5,000 and £99,999**

**15.1** When awarding a contract valued between **£25,000** £5,000 and £99,999 the Responsible Officer must:

- (a) use one of the procurement routes set out in Standing Order **14**, having obtained initial advice from Procurement and Contracts Services; or
- (b) with the prior written approval of the relevant director or assistant director (as applicable per the Scheme of Delegation) and agreed with Procurement and Contracts Services, obtain a single tender or quote from reputable supplier where the Responsible Officer has sufficient knowledge of the market to be reasonably certain such an approach would elicit a quote representing Value for Money and can, if required, provide evidence this. The format for such request and written approval shall be in the Council's standard form available from Procurement and Contracts Services.

**15.2** The Responsible Officer must devise a fair and transparent sourcing route based on sound commercial principles and designed to achieve Value for Money, taking advice from Procurement and Contract Services where appropriate. The Responsible Officer shall ensure that any decision relating to the sourcing route for a particular contract or service shall include an assessment of risk attaching to that decision and that analysis shall be



recorded in writing and stored on the Procurement File (see Guide to Standing Orders).

## **Section 6: Contracts with a value of less than ~~£25,000~~ £5,000**

### **~~16.15.~~Contracts with a value of less than ~~£25,000~~ £5,000<sup>3</sup>**

**16.1** The Responsible Officer must, in relation to any contract with a value of less than ~~£25,000~~ £5,000, demonstrate and record on the Procurement File that the contract represents Value for Money.

**16.2** The Responsible Officer shall ensure that any decision relating to the sourcing route for a particular contract shall include an assessment of risk attaching to that decision and that analysis shall be recorded in writing and stored on the Procurement File or other retrievable storage location (see Guide to Standing Orders).

**16.3** The form of contract shall comply with Standing Order **31.1**.

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<sup>3</sup> Up to £25,000 - £24,999.99 and below

## **Section 7: Consultancy Contracts, Framework Agreements and Assessing Value**

### **17.16. Consultancy Contracts**

- 17.1** Before engaging a Consultant or other specialist professional, the Responsible Officer must refer to, and ensure compliance with, the Council's Procurement Policy on Buying Consultancy Services and the related documents: Guide to Buying Consultancy and the HR Policy on the Use of Self-Employed Consultants.
- 17.2** All such engagements of an aggregate value of £50,000 or more must be competitively tendered. Where any corporate contract or arrangement is approved and established for the buying of consultancy or specialist professional services, these must be used for sourcing all such contracts whatever the aggregate value of the contract.
- 17.3** Contracts for all other interim staff covering existing staff positions and all temporary or agency staff must be sourced through the Council's corporate temporary staffing contract, unless permitted otherwise in writing by the Director of Finance and Support Services and the Director of Law and Assurance.

### **18.17. Framework Agreements and Dynamic Purchasing Systems**

- 18.1** All Framework Agreements and Dynamic Purchasing Systems (**'DPS'**) for contracts with a value above relevant Thresholds set out in the PCR 2015 or CCR 2016 (as applicable) shall be awarded in accordance with the PCR 2015 or CCR 2016 (as applicable).
- 18.2** Framework Agreements and Dynamic Purchasing Systems valued at below the relevant Threshold shall be awarded in accordance with these Standing Orders.
- 18.3** ***There is no specific maximum duration of a DPS. The period of validity of a DPS must be stated on the original FTS notice but the period can be later amended (extended, shortened, terminated) subject to notification on FTS. Responsible Officers should consult Procurement and Contract Services and the Commercial Legal team if they wish to amend the period of validity of a DPS who will advise on the internal governance required.*** Responsible Officers must consult Procurement and Contract Services before using a Framework Agreement or Dynamic Purchasing System set up by another contracting authority and the validity of the Framework or Dynamic Purchasing System and its contractual terms must be approved by the Director of Law and Assurance in advance of the Council carrying out any "call-off" procedure or awarding any contract under such Framework Agreement or Dynamic Purchasing System.

### **19.18. Assessing value for the purpose of these rules**

- 19.1** The value or estimated value of all contracts to be procured must be properly assessed to determine whether or not they meet particular thresholds set out in these Standing Orders and under the PCR 2015 or CCR 2016.
- 19.2** The value of all contracts which may have a value which meets or exceeds the relevant Threshold shall be assessed in accordance with the PCR 2015 or CCR 2016 (as applicable) (~~see Guide to Standing Orders for details~~).

**19.3** The value of a concession contract shall be the total turnover of the supplier (referred to as a "concessionaire") to be generated over the duration of the contract, net of value added tax, as estimated by the Council using an objective methodology, in consideration for the works and services which are the object of the concession contract and for the supplies incidental to such works and services, in accordance with regulation 9 of the CCR 2016.

**19.4** The value of all other contracts shall be the value:

**19.4.1** *inclusive* net of VAT;

**19.4.2** including the maximum possible extensions and renewals;

**19.4.3** in the case of a framework agreement or dynamic purchasing system, the maximum estimated value of all the contracts to be awarded during the total term of the framework agreement or the dynamic purchasing system; and

**19.4.4** inclusive of any potential spend through the contract concerned by other contracting authorities.

**19.5** The value of a contract shall not be subdivided with the effect of preventing it from falling within the scope of these Standing Orders, the PCR 2015 or CCR 2016.

**19.6** *The Responsible Officer is under a duty to aggregate and in the case of public contracts without a fixed term, or public contracts where the term of which cannot be defined, the Key Decision value is the known monthly value multiplied by 48.*

**19.7** Where a supply or service contract is regular in nature or is intended to be renewed or re-procured on or shortly after its expiry, the calculation of the contract value shall be based on the total value of the successive contracts being planned **to include** including those of the same type awarded during the preceding 12 months or previous financial year. **In the case of public contracts without a fixed term, or public contracts where the term of which cannot be defined, the contract value is the known monthly value multiplied by 48.** The Responsible Officer shall follow advice from Procurement and Contracts Services.

## **20.19. Lots**

**20.1** For every procurement relating to a contract which exceeds the Threshold, the Responsible Officer must, in consultation with Procurement and Contracts Services:

**20.1.1** consider whether the contract should be sub-divided into and procured in **Lots** lots;

**20.1.2** provide reasons for any decision not to subdivide into **Lots** lots, which shall be included in the Procurement Report; and

**20.1.3** comply with the PCR 2015 in the manner in which it requires Tenderers to bid for **Lots** lots (see Guide to Standing Orders for full details).

## Section 8: Standing Orders in relation to Contract and Award Criteria

### 21.20. Use of Selection Questionnaires (SQs)

- 21.1** The Responsible Officer shall apply minimum standards of experience, reputation and economic standing to suppliers to test their suitability to bid for a Council contract. For contracts above the Thresholds suitability is usually tested by means of a SQ.
- 21.2** All the methods and criteria used for assessing the suitability of suppliers shall be transparent, objective and non-discriminatory.
- 21.3** The Responsible Officer must use the [Crown Commercial Services standard SQ](#) and adhere to its statutory guidance for all procurements of contracts above the relevant Threshold.
- 21.4** The Responsible Officer shall not use a SQ or pre-qualification stage for any contract with a value that is below the Threshold for supplies or services (currently this is £189,330).
- 21.5** The following table provides a summary of the rules on the use of SQs:

| Contract type and value   | Rules on use of SQ   |
|---|--|
| Contracts up to £25,000   | SQs must not be used   |
| Contracts valued between £25,000 and the supplies and services Threshold whether for goods, services or works   | Use of SQ prohibited. The Council may only ask Candidates suitability assessment questions which are relevant to the subject-matter of the procurement and proportionate having regard to any guidance issued by the Cabinet Office. For works contracts valued between the supplies and services threshold and the works threshold the Council may use the PAS91 questionnaire. |
| Contracts at or above the supplies and services Threshold for goods and services, or the Threshold for works  | The Council must adhere to the guidance issued by the Cabinet Office on qualitative selection (see Guide to Standing Orders). The Council shall adopt the standard SQ without deviation.   |
| Contracts above the Threshold for goods and services but:<br>For Schedule 3 services, below the relevant Threshold.<br>For works contracts, below the Threshold for works contracts | Responsible Officers shall either use the Standard SQ or an alternative means of assessing Tenderers' suitability which has been agreed by Procurement & Contract Services.  |
| Contracts for Schedule 3 services contracts at or above the Threshold for Schedule 3 contracts  | The Council must use the standard SQ, adhere to the government guidance to the extent that it is relevant to the procedure which the Responsible Officer has chosen to run in compliance with regulation 76.   |

- 21.6** The Responsible Officer shall ensure the necessary self-declarations are received as part of the selection stage evaluation and shall not accept any tender where the Candidate has not completed Part 1 and Part 2 of the SQ (**unless the contract is below the relevant Threshold**) declaring that they

have not breached any of the exclusion grounds of PCR 2015 or CCR 2016 (as applicable).

### **22.21. Eligibility to bid**

- 22.1** Suppliers who fail to meet all of the Council's minimum standards of reputation, technical ability, experience or economic and financial standing as specified in the SQ and accompanying documents shall be excluded from the procurement process.
- 22.2** Where the supplier is being excluded because one of the exclusion grounds in regulation 57 of the PCR 2015 or regulation 38 of the CCR 2016 (as applicable) applies (see Guide to Standing Orders), but provides evidence in support of its reliability despite the existence of a relevant ground of exclusion, the Responsible Officer must consider that evidence and determine whether to exclude that supplier.
- 22.3** The Responsible Officer shall consult with the Director of Law and Assurance before reaching any decision under Standing Order **22.2**.

### **23.22. Assessing past experience and financial standing**

- 23.1** The Responsible Officer shall ensure suppliers' past experience and technical ability are assessed, for all contracts.
- 23.2** When assessing the suppliers' financial standing, the Responsible Officer shall not require prospective tenderers to have an annual turnover of more than twice the estimated contract value, unless otherwise agreed with the Director of Law and Assurance.
- 23.3** Only those suppliers who meet the Council's minimum requirements of economic and financial standing and technical and professional ability shall be invited to participate in a tender process or awarded the contract.
- 23.4** All assessment of supplier's financial standing must be conducted by the Council's Commercial Finance team (or such other service unit designated from time to time to undertake this activity).

### **24.23. Award criteria**

- 24.1** The Responsible Officer shall adopt award criteria which are fair, transparent, proportionate and appropriate to the subject matter of the contract (see Guide to Standing Orders).
- 24.2** The Responsible Officer must follow the Council's internal guidance and policies (as advised by and available from Procurement and Contracts Services) on award criteria for all contracts, irrespective of value, unless otherwise approved in writing by Head of Procurement and Contracts Services.
- 24.3** For all contracts with a value of £100,000 or above, the Responsible Officer must follow advice from Procurement and Contracts Services, Commercial Finance and the Commercial Legal Team on appropriate award criteria for the contract.
- 24.4** The award criteria for any contract with a value at or above the relevant Threshold shall be in compliance with Reg. 67 of the PCR 2015, save for any

contract to which Reg. 74 applies (“light touch services”) in which case the award of the contract shall be in compliance with Reg. 76 of PCR 2015.

- 24.5** The Responsible Officer shall award the contract to the most economically advantageous tender, being the tender that represents best Value for Money applying the award criteria.
- 24.6** The Responsible Officer shall adopt evaluation methodologies that are robust, have been tested to ensure they are appropriate for the procurement in question, and transparent (see Guide to Standing Orders).
- 24.7** *The use of Relative scoring is only permitted when approved by the Senior Responsible Officer and the Commercial Panel or Procurement Board. Responsible Officers should seek the advice of Procurement and Contract Services in relation to using sequential, straight line and price per quality point evaluation methodologies.*
- 24.8** *When tendering a contract with a lifetime value of £5m or more a “Should cost” model must be developed for the purpose of assessing value for money and determining straight line evaluation scales.*

## Section 9: Tendering Procedure

### 25.24. Opening tenders

- 25.1** All tenders undertaken must be conducted through the Council's mandated e-tendering portal except as permitted in these Standing Orders or with the prior written approval of the Head of Procurement and Contract Services.
- 25.2** Tenders for contracts valued at less than £100,000 may be conducted outside the Council's e-tendering portal. Where the Responsible Officer invites tenders in hard copy, the Responsible Officer must ensure that all the tenders received are opened:
- 24.2.1 after the deadline for receipt of tenders has expired; and
  - 24.2.2 at the same time by two members of staff: one from the directorate seeking the tenders and one on behalf of the Director of Finance and Support Services;
  - 24.2.3 after they are opened, the tenders must be listed in the tender register and the list must be signed by both persons who witnessed the opening of the tenders.

### 26.25. Contract award

- 26.1** All contracts shall be awarded in accordance with the criteria set out in the Procurement Documents.
- 26.2** For contracts with a value at or above the Thresholds, the Responsible Officer shall adhere to the contract award procedures set out in the PCR 2015, ~~or CCR 2016~~ **or PSR 2023** (as applicable) and observe a standstill period before entering into the contract. The standstill period will normally end at midnight at the end of the tenth day after the date the Council sends notice to the Tenderers, electronically ~~or by fax~~, that it has made an award decision (***unless the relevant legislation states otherwise*** ~~see Guide to Standing Orders~~).

### 27.26. Correction of errors and late tenders

- 27.1** All tenders must comply with the conditions set out in the Procurement Documents. Tenderers should be advised that any failure to adhere to the specific rules applicable to the tender in question could result in their tender being rejected.
- 27.2** The Responsible Officer may reserve the right in the Procurement Documents to accept late submissions or documents forming part of the tender at the Council's discretion, for example, where:
- 27.2.1** the delay was caused by a mistake or failure of the Council; or
  - 27.2.2** the document or submission in question clearly pre-dated the deadline for receipt of tenders and the decision not to exclude the tenderer would not unduly favour any or disadvantage the other Candidates.
- 27.3** In all cases, the Council shall adhere to the rules it established in the Procurement Documents and document any decision to permit a late or corrected tender.



**27.4** The following authorisation must be obtained before a Responsible Officer can accept a late or corrected tender:

**27.4.1** for contracts valued at £100,000 or less: the director or assistant director (as per the Scheme of Delegation); and

**27.4.2** for contracts valued at £100,000 or more, the Head of Procurement and Contract Services as well as the director or assistant director (as per the Scheme of Delegation).

## **28.27. Clarifications raised by suppliers**

**28.1** The Responsible Officer shall maintain a clarification log containing a list of questions raised by suppliers during the course of a procurement process, with the Council's responses, to which all Candidates or Tenderers shall have unrestricted access (a "Clarification Log"). Where Procurement and Contract Services is involved with the conduct of a particular procurement process, it may maintain the Clarification Log itself and will notify the Responsible Officer of that approach.

**28.2** Where a clarification raises an issue which leads to the amendment of one of the Procurement Documents, the Council shall consider whether the deadline for submission of tender responses should be extended, or the procurement process otherwise revised to ensure equal treatment of suppliers, and take action accordingly.

## **29.28. Evaluation**

**29.1** The director or assistant director (as per the Scheme of Delegation) shall appoint evaluators who have the necessary skills, expertise and experience to undertake the role.

**29.2** Procurement and Contract Services shall provide appropriate guidance, advice and support on all aspects of tender evaluation and the Responsible Officer shall have regard to all such guidance.

## **30.29. Conflicts of interest**

**30.1** All directors shall ensure that officers involved in procurement processes in their directorates are familiar with the Guidance on Propriety and Official Conduct for Officers in the HR Zone on the intranet.

**30.2** Any officer involved in a procurement shall:

**30.1.1** comply with the Guidance on Propriety and Official Conduct for Officers (the Council's Code of Conduct for Employees); and

**30.1.2** disclose in writing to their director or the Director of Law and Assurance any direct or indirect, financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of a procurement procedure.

**30.3** Where an officer discloses such a conflict of interest the director shall, in consultation with the Director of Law and Assurance, make arrangements to allocate the role to another person and shall consider whether any changes to the procurement process should be made to address any issues arising from the conflict.

**30.4** Any officer involved in a procurement shall take appropriate measures to ensure competition is not distorted where a Candidate or Tenderer, or an undertaking related to that Candidate or Tenderer, has advised the Council on the procurement in question or been involved in the preparation of the procurement.

**30.5** Where the Responsible Officer engages any external party to evaluate any tenders on behalf of the Council, the Responsible Officer shall ensure:

- (a) compliance with this Standing Order;
- (b) the party has received appropriate training and guidance, following advice from Procurement and Contracts Services;
- (c) the invitation to tender includes relevant details of the party who will be involved in evaluation of tenders; **and**
- (d) the external party is required to sign a confidentiality/non-disclosure agreement and declaration confirming they do not have any conflict of interest and will notify the Council immediately should a potential or actual conflict arise at any time during the procurement process.

## **Section 10: Form of Contract, Mandatory Clauses and Formalities**

### **31.30. Form of contract**

- 31.1** For contracts valued at less than £25,000, the relevant director or assistant director (as per the Scheme of Delegation) can choose to accept the supplier's standard terms, provided that such terms are fair and reasonable in the circumstances and provide Value for Money. The form of contract must be recorded in its final agreed form and shall contain, as a minimum the items required by **Standing Orders 32.1, 34.1.1, 34.1.2 and 34.1.3**.
- 31.2** The Director of Law and Assurance is responsible for providing or approving all forms of contract with a value at or exceeding £25,000. The Responsible Officer shall follow any advice or guidance from the Commercial Legal Team on the appropriate form of contract.
- 31.3** All contracts with a value at or exceeding £25,000 must be written or in an electronic form capable of providing a permanent record of the intentions of the parties to the contract. Where the Council has an applicable standard form template contract, as advised by the Commercial Legal Team, the Responsible Officer shall use that standard form template contract, without amendment, unless otherwise advised by the Commercial Legal Team.
- 31.4** Where contract terms are to be published by the Council in connection with any competitive tender or single tender process, the Responsible Officer must ensure that the proposed form of contract has been approved by the Commercial Legal Team before it is made accessible to Tenderers or any other external interested party.
- 31.5** The Responsible Officer shall ensure there is a record of the contract kept in accordance with Standing Order **51.5**.
- 31.6** The director or assistant director (as per the Scheme of Delegation) must require the completion of a performance bond or parent company guarantee for all works contracts in excess of £250,000 in value or such other limit as may be specified by the Director of Law and Assurance in relation to a particular procurement.
- 31.7** With regard to the need for a performance bond for a contract which is not a works contract or for a works contract below the threshold of £250,000, the director or assistant director (as per the Scheme of Delegation) in consultation with the Director of Law and Assurance and the Director of Finance and Support Services shall determine, on a case by case basis, whether a performance bond shall be required.

### **32.31. Specifications**

- 32.1** The Responsible Officer shall ensure the specification for the contract:
- 32.1.1** clearly and effectively sets out the obligations on the supplier to deliver to the Council's requirements;
  - 32.1.2** contains suitable and appropriate service levels and/or key performance indicators;

**32.1.3** complies with the requirements of the PCR 2015 in respect of technical specifications and any internal guidance or Council policies; and

**32.1.4** is legally enforceable, taking advice from Legal Services where necessary.

### **33.32.Mandatory clauses**

The Responsible Officer shall be responsible for ensuring that every contract awarded by the Council with a value at or above £25,000 includes the mandatory requirements set out in this section 10.

### **34.33.General clauses**

**34.1** Every contract must clearly specify:

**34.1.1** the services, goods or works to be provided together with applicable standards and performance level;

**34.1.2** the price to be paid, with a statement of discounts and other deductions, including any Value Added Tax payable and any provisions for price variations, whether by indexation or other means;

**34.1.3** the duration of the contract including any specific dates by which any aspects are to be performed, together with any possible extensions of the contract term. Contracts should not normally exceed five years, or seven years with extensions, but contracts may be set for longer periods where the relevant industry practice, or partnership arrangements to be entered into, make it in the interests of the Council to do so. Contracts should not be for an ongoing rolling period. The Head of Procurement and Contract Services must be consulted on any business case for proposing a contract term longer than 7 years and the reasons for doing so must be recorded in the Procurement Document; and

**34.1.4** in the case of all building and engineering contracts exceeding £100,000 in value, the liquidated damages to be paid by the contractor if the contract is not completed on a specified date. A provision for liquidated damages may be included in contracts valued at £100,000 or less.

### **35.34.Insurance levels**

**35.1** *Subject to Standing Order 35.3*, every contract must clearly specify that the supplier shall hold and maintain for the duration of the term of the contract where the relevant type of cover is applicable the following levels of insurance cover for each single incident:

| <b>Type of insurance cover</b> | <b>Minimum insured for each</b> |
|--------------------------------|---------------------------------|
| Public liability               | £10 million                     |
| Employer's liability           | £5 million                      |
| Product liability              | £2 million                      |
| Professional indemnity         | £2 million                      |

**35.2** The Director of Law and Assurance may specify higher levels of insurance cover as he deems fit for particular contracts or types of contracts and may also agree to lower levels of insurance cover provided the Responsible Officer provides an account of the reasons for the lower level of cover and includes an assessment of risks associated with the contract.

**35.3** *Where the Responsible Officer agrees with the Head of IT Services (subject to any decision made in accordance with Standing Order 35.2), Public Liability insurance at a minimum level of £1 million shall be acceptable in relation to an IT/Software as a Services contract where the risk has been assessed and this level is considered appropriate in relation to the value of the contract and potential risk to third parties.*

**36.35. Prevention of bribery and exclusion grounds arising during the term of the contract**

**36.1** Every contract shall include provision for termination if the supplier, their employees or anyone acting on the supplier's behalf:

**36.1.1** corruptly offers, gives or agrees to give anyone an inducement or reward in respect of any contract with the Council;

**36.1.2** commits an offence under the Bribery Act 2010; or

**36.1.3** commits any of the offences listed in regulation 57(1) of the PCR 2015 or regulation 38(8) of CCR 2016 (as applicable).

**37.36. Termination for breach of regulation 73**

**37.1** For contracts above the Threshold, the contract shall provide that the Council shall have the right to terminate the contract if any of the provisions of regulation 73(1) of the PCR 2015 or regulation 44 of the CCR 2016 (as applicable) apply. These are where:

**37.1.1** the contract has been subject to a substantial modification which required a new procurement procedure to be started;

**37.1.2** at the time of contract award, one of the mandatory exclusion criteria in regulation 57 PCR 2015 or regulation 38(8) of CCR 2016 (as applicable) applied and the supplier should therefore have been excluded from the procurement procedure; or

**37.1.3** any competent court has held that the contract should not have been awarded to the contractor in view of a serious infringement of the obligations under the PCR 2015 and any retained EC Treaty.

**38.37. Prevent and Anti- Slavery**

**38.1** The contract shall make appropriate provision for information sharing between the supplier and the Council, and/or such other measures as are appropriate, such as staff training, to support the Council in meeting its duty under section 26 of the Counterterrorism and Security Act 2015 to have due regard to the need to prevent people from being drawn into terrorism (see Council's Prevent Policy).

**38.2** Where relevant, the contract shall make appropriate provision for compliance by the supplier in respect of the Modern Slavery Act 2015, including requirement for the supplier to have in place suitable anti-slavery and human trafficking policy or to comply with the Council's relevant policy and information sharing between the supplier and the Council to support the Council in meeting its duties under the Act.

### **39.38. Payment terms**

**39.1** Every contract shall provide that the Council shall pay its supplier, in arrears of the services/works/supplies being delivered to the Council, 30 days from receipt of a valid and undisputed invoice. Where the supplier is a [Small and Medium Enterprise](#), the Council may make payment to the supplier within 20 days of receipt of a valid and undisputed invoice.

**39.2** Every contract shall provide that the supplier shall be required to prepare and submit an electronic invoice to the Council for services/works/supplies delivered, in accordance with the Council's [purchase order and invoicing procedures](#) which can be found on the Council's website.

**39.3** The Responsible Officer must ensure that any purchase order raised makes reference to the specific and relevant Council contract (signed by the parties) that the purchase order relates to and that the purchase order clearly states that the terms and conditions in the contract take precedence/priority over any other terms and conditions stated on the purchase order and/or which the supplier may include on their invoice.

**39.4** The contract shall also provide that the Council's suppliers shall pay their sub-contractors within a maximum of 30 days of receipt of an undisputed invoice.

**39.5** The Responsible Officer must obtain the agreement of the Head of Procurement and Contract Services and the Director of Finance and Support Services for any deviation from the standard payment terms set out in this Standing Order **39**, such agreement to be recorded in writing as a "Payment Exception" and a copy provided to Procurement and Contracts Services and the Commercial Legal Team. ***A payment exception is not required for IT/software contracts valued at under £100,000 where the Council is required to pay annually in advance for a subscription or software licence. All such IT purchases shall be approved and/ or processed by IT Services.***

### **40.39. Execution of the contract**

**40.1** All contracts shall be signed but not sealed unless they must be signed under seal in accordance with this Standing Order **40**.

**40.2** The following contracts shall be signed under seal:

**40.2.1** certain contracts involving land transactions;

**40.2.2** contracts with a value of £500,000 or more; and

**40.2.3** any contract as advised by the Commercial Legal Team.

**40.3** The relevant director or assistant director (as per the Scheme of Delegation) shall be permitted to sign all contracts not required to be sealed.

**40.4** The Director of Law and Assurance shall execute all contracts which are required to be executed by the Council as a deed under seal and may execute all simple contracts not required to be sealed.

**40.5** The use or acceptance of any electronic or digital signatures shall be as determined by the Director of Law and Assurance. The Responsible Officer shall seek and follow advice from Legal Services in respect of acceptable and valid methods for signing and execution of contracts and contractual documents (e.g. variations or extensions) irrespective of value.

#### **41.40. Certification of the contract**

The Director of Law and Assurance shall be responsible for determining whether any contract should be certified under the Local Government (Contracts) Act 1997. This Act empowers local authorities to agree terms that will survive the main contract being set aside in the event of a finding that the Council has exceeded its statutory powers in entering into the contract. In these circumstances, the certification process ensures that the private sector party is compensated. All such certificates shall be in a form approved by and executed by the Director of Law and Assurance.

#### **42.41. Contract and supplier relationship management**

**42.1** The director or assistant director (as per the Scheme of Delegation) shall ensure that there are in place arrangements that will monitor and actively address any concerns with:

**42.1.1** the performance of the contract against the specification and any key performance indicators or other performance monitoring regime;

**42.1.2** costs and Value for Money; and

**42.1.3** service user or end user satisfaction.

**42.2** Where a contract is to be extended or re-tendered, the director or assistant director (as per the Scheme of Delegation) shall ensure that a report on the performance of the contract is prepared to inform any decision regarding the extension or re-tendering.

**42.3** The director or assistant director (as per the Scheme of Delegation) shall ensure Responsible Officers comply with guidance issued by the Council, including from Procurement and Contracts Services, from time to time on effective contract and supplier relationship management.

## Section 11: Varying and Extending Contracts

### 43.42. Variations permitted by law

- 43.1** Contracts which are subject to the PCR 2015, ~~or~~ CCR 2016 **or PSR 2023** shall not be varied other than in accordance with the provisions of the PCR 2015 ~~or~~ CCR 2016, **legislation** (as applicable). The Responsible Officer shall request advice from **Procurement and Contract Services and Legal Services** (~~the Commercial Legal Team~~) in relation to any variation which is subject to the PCR 2015, ~~or~~ CCR 2016 **or PSR 2023**.
- 43.2** All other proposals to vary contracts not subject to the PCR 2015, ~~or~~ CCR 2016 **or PSR 2023** shall be considered by the director or assistant director (as per the Scheme of Delegation) on a **case-by-case** ~~case-by-case~~ basis in accordance with the terms of the contract and the obligation to ensure Value for Money.
- 43.3** The Responsible Officer must engage with Procurement and Contracts Services and Legal Services (Commercial Legal Team) for any variation to an existing contract that has a value of **£25,000** ~~£100,000~~ or more.
- 43.4** Legal Services (Commercial Legal Team) shall, upon request, advise any officer as to whether a particular variation is subject to the PCR 2015, ~~or~~ CCR 2016 **or PSR 2023** and guidance is available in the Guide to Standing Orders.

### 44.43. Authority to vary or extend a contract

Subject to Standing Orders **43 and 45**, all contract variations and any contract extension (including where such extension is permitted by the contract) must be approved in accordance with Standing Order 3 (Authority to Contract).

### 45.44. Extensions and renewals

- 45.1** Contracts subject to the PCR 2015, ~~or~~ CCR 2016 **or PSR 2023** can only be extended where expressly provided for in their terms, or as otherwise permitted by the PCR 2015, ~~or~~ CCR 2016 **or PSR 2023** (as applicable).
- 45.2** Contracts with a value below the Threshold can be extended only where expressly provided for in their terms.
- 45.3** All contract extensions or renewals must be approved as follows:
- 45.3.1** if the value of the extension is less than £100,000, by the director or assistant director (as per the Scheme of Delegation); ~~or~~
  - 45.3.2** if the value of the extension is £100,000 **to £499,999** ~~or more~~, by the Director of Law and Assurance and the Director of Finance and Support Services; **or**
  - 45.3.3** **Contract extensions valued at £500,000 and above will require a Key Decision.**
- 45.4** In determining how a contract extension or renewal shall be approved in accordance with Standing Order **45.3**, the Responsible Officer shall not disaggregate or otherwise sub-divide any known spend during the period of



any such extension or renewal with a view to avoiding obtaining the approvals referred to in Standing Order **45.3.2**.

## Section 12: Disclosure, Transparency and Record Keeping

### 46.45. Electronic availability of documents

The Responsible Officer shall ensure that all Procurement Documents for contracts that are at or above the Thresholds are available online free of charge without restriction from the time the FTS Notice is published (or an ITCI is sent when a PIN is used as a call for competition).

### 47.46. Duty of confidentiality owed to suppliers

The Responsible Officer shall not disclose information which has been forwarded by a supplier and designated by that supplier as confidential or commercially sensitive, including technical or trade secrets and the confidential aspects of tenders, without express authorisation from the Director of Law and Assurance who shall balance the duty of confidentiality owed to suppliers against the Council's obligations under FOIA and any other disclosure obligations. The Procurement Documents should inform interested parties of the Council's duties of disclosure and invite Tenderers to designate information as confidential or commercially sensitive. However, the Council cannot guarantee that all information so designated will be withheld.

### 48.47. Publication of contract award notices on the Official Journal or Find a Tender Service

**48.1** The Responsible Officer shall ensure that a Contract Award Notice is published, in accordance with the PCR 2015, ~~or~~ CCR 2016, **PSR 2023** (as applicable) **on FTS (and subsequently Contracts Finder)**, and:

~~**48.1.1** where the procurement was launched before 23:00 on 31 December 2020 but not yet concluded at this date, on OJEU and FTS (such notice must be published first to OJEU before FTS and subsequently Contracts Finder);~~

~~**48.1.2** where the procurement is launched on or after 23:00 on 31 December 2020, on FTS (and subsequently Contracts Finder);~~

where the notice is in respect of a contract let under a framework agreement or dynamic purchasing system **on FTS (and subsequently Contracts Finder)**.

~~**48.3.1.1** if the procurement procedure for the framework agreement or dynamic purchasing system was launched and concluded or was launched but not yet concluded by 23:00 on 31 December 2020, on OJEU and FTS (such notice must be published first to OJEU before FTS and subsequently Contracts Finder); or~~

~~**48.3.2.1** if the procurement procedure commences after 23:00 on 31 December 2020, on FTS (and subsequently Contracts Finder).~~

### 49.48. Publication of contract award notices on Contracts Finder

**49.1** The Responsible Officer shall ensure that a Contract Award Notice is published on Contracts Finder for all contracts with a value of £25,000 or more.

**49.2** Where a Contract Award Notice is required to be published on OJEU and/or FTS (as applicable), such notice must be published on OJEU and/or FTS before appearing elsewhere. OJEU/FTS notices must be published on Contracts Finder within 24 hours of them appearing **on** in OJEU/FTS.

**49.3** This Standing Order **49** applies to all contracts including contracts let under Framework Agreements, whether or not that Framework Agreement was itself advertised on Contracts Finder or anywhere else. In respect of contracts let under a DPS which have a value of £25,000 or more, publication of a Contract Award Notice on Contracts Finder shall be within no more than 90 days.

#### **50.49. Debriefing Tenderers**

For contracts valued at or above the Threshold, the Responsible Officer shall ensure that all Candidates and Tenderers are offered debrief information during the procurement process, in accordance with regulation 55 of the PCR 2015 or regulation 40 of CCR 2016 **or Schedule 9 of the PSR 2023** (as applicable), and at contract award, in accordance with regulation 86 of PCR 2015 or regulation 47 of CCR 2016 **or Schedules 2, 3, 4, 6, 7, 10 and 13 of PSR 2023** (as applicable).

#### **51.50. Procurement Report**

**51.1** The Responsible Officer shall keep a copy of all Procurement Documents in accordance with the Council's records retention policy.

**51.2** The Responsible Officer shall prepare a written report in relation to each procurement with a value at or above the relevant Threshold containing the following information (unless such information is contained in the Contract Award Notice):

**51.2.1** the subject-matter and value of the contract, Framework Agreement or Dynamic Purchasing System;

**51.2.2** where applicable, the results of the qualitative selection and reduction of numbers under regulations 65 and 66 of PCR 2015<sup>4</sup>, namely:

- (a) the names of the selected Candidates or Tenderers and the reasons for their selection;
- (b) the names of the rejected Candidates or Tenderers and the reasons for their rejection;
- (c) the reasons for the rejection of tenders found to be abnormally low;
- (d) the name of the successful Tenderer and the reasons why its tender was selected and, where known the share (if any) of the contract or Framework Agreement which the successful

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<sup>4</sup> There are no specific equivalent provisions in CCR 2016 regarding the reduction of Candidates or Tenderers during the procedure, this will be as determined by the Council and set out in the Procurement Documents and comply with Reg. 8 of CCR 2016.

Tenderer intends to subcontract to third parties, and the names of the main contractor's subcontractors (if any);

- (e) for competitive procedures with negotiation and competitive dialogues, the circumstances as laid down in regulation 26 of PCR 2015 which justify the use of those procedures;
- (f) for negotiated procedures without prior publication, the circumstances referred to in regulation 32 of PCR 2015 or regulation 31(6) of CCR 2016 (as applicable) which justify the use of this procedure;
- (g) where applicable, the reasons why the Council has decided not to award a contract or Framework Agreement or to establish a Dynamic Purchasing System;
- (h) where applicable, the reasons why means of communication other than electronic means have been used for the submission of tenders; and
- (i) where applicable, conflicts of interests detected and subsequent measures taken.

**51.3** The Responsible Officer shall maintain a Procurement File containing sufficient information to justify decisions taken at all stages of the procurement such as documentation on:

**51.3.1** communications with suppliers and internal deliberations;

**51.3.2** preparation of the procurement documents;

**51.3.3** dialogue or negotiations, if any; and

**51.3.4** selection and award of the contract.

**51.4** The Procurement File shall be kept for a period of at least three years from the date of award of the contract.

**51.5** The Responsible Officer shall prepare a report containing such information as the Cabinet Office may request in respect of procurements at or above the relevant Threshold.

## **52.51. Contracts Register and storage of original contract documents**

**52.1** The Responsible Officer shall ensure that an electronic copy of every concluded contract is provided to Procurement and Contracts Services for entry onto the Council's Contract Register in order to ensure compliance with the Local Government Transparency Code 2015.

**52.2** The Responsible Officer shall be responsible for ensuring appropriate arrangements are made for the safe storage of the original contract documents with the Council's Modern Records team. The Responsible Officer may seek advice from Legal Services on the storage of original contract documents if required.

## **Section 13: Waiver of Standing Orders**

### **53.52. Authority to waive Standing Orders**

- 53.1** The Director of Law and Assurance and Director of Finance and Support Services shall, jointly, be responsible for determining any requests to waive these Standing Orders.
- 53.2** Any request to waive Standing Orders shall be set out in writing with clear reasons why the waiver is necessary and proportionate. The format for the Responsible Officer's request for a waiver shall be in the standard form, as may be amended from time to time, as available **on the Commercial Legal Team intranet pages** from ~~Procurement and Contracts Services~~.
- 53.3** No waiver of Standing Orders can be made if it would contravene the PCR 2015, **the PSR 2023**, the CCR 2016 or any other applicable legislation.
- 53.4** No waiver of the Standing Orders can be granted retrospectively.
- 53.5** All waivers to these Standing Orders must be reported in writing to Procurement and Contract Services for logging in the register maintained for this purpose and available on the Procurement Services SharePoint site. Procurement and Contracts Services shall provide quarterly summary reports of all requested waivers to these Standing Orders, whether approved or not, to all directors and assistant directors of the Council.

## Annex A: Glossary

|                               |  |
|-------------------------------|--|
| Candidate                     | means an economic operator that has sought an invitation or has been invited to take part in a restricted procedure, a competitive procedure with negotiation, a negotiated procedure without prior publication, a competitive dialogue or an innovation partnership.  |
| CCR 2016                      | means the Concession Contracts Regulations 2016 as amended and in force from time to time.   |
| Clarification Log             | means the record of questions and answers between Candidates and the Council in respect of a procurement exercise as described in Standing Order <b>28.1</b> .   |
| <b>Commercial Panel</b>       | <b>means the Council's officer panel that advises on and approves the proposed procurement route for contracts valued over £500,000 up to £5 million.</b>  |
| Constitution                  | means the Council's rules and processes on how it will operate and make decisions and can be found on the Council's <a href="#">Constitution library</a> on the website.   |
| Consultant                    | means an individual or company commissioned to do a short term, and clearly defined piece of specialised work, with clear outcomes where the work is project based, outside business as usual and there is a defined end point for the Consultant's involvement.   |
| Contract Award Notice         | means a notice containing the information set out in regulation 86 of the PCR 2015, for above Threshold contracts, and regulation 112 for below Threshold contracts or regulation 47 of CCR 2016.  |
| Contract Notice               | means a notice advertising a public contract on OJEU or FTS as applicable.   |
| Contracts Finder              | means a government website on which all public contracts over a minimum threshold must be advertised, found at: <a href="https://www.gov.uk/contracts-finder">https://www.gov.uk/contracts-finder</a> .  |
| Dynamic Purchasing System/DPS | means a system referred to in Regulation 34 of PCR 2015 and can be described as an electronic system which allows pre-qualified suppliers to participate in mini competitions for in scope services, similar to a framework agreement except that suppliers can join the DPS at any time and it is to be run as a completely electronic process.   |
| Financial Regulations         | means those financial rules of the Council as contained in Part 4, Section 3 of the Council's Constitution in the <a href="#">Constitution library</a> on the website.   |
| Find a Tender Service/FTS     | means the new UK e-notification service, Find a Tender (FTS): <a href="https://www.find-tender.service.gov.uk">https://www.find-tender.service.gov.uk</a> where notices for new procurements (for contracts valued at or above the Threshold) launched after 23:00 on 31 December 2020 are required to be published. in place of the Official Journal of the European Union's Tenders Electronic Daily (OJEU/TED); |
| Framework Agreement           | means an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded in a given period, in particular with regard to price and, where appropriate, the quality envisaged (regulation 33(2), PCR 2015).  |

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| FOIA                     | means the Freedom of Information Act 2000.   |
| ITCI                     | means an invitation to confirm interest.   |
| Key Decision             | <p>means an executive decision, which is likely:</p> <ul style="list-style-type: none"> <li>• to result in the Council incurring expenditure which is greater than £500,000 or which is otherwise significant having regard to the Council's budget for the service or function to which the decision relates; or</li> <li>• to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in West Sussex.</li> </ul> <p>Key Decisions may be taken by either the relevant cabinet member or an officer depending on the functions delegated to the officer in the Scheme of Delegation.</p> |
| OJEU                     | <del>means the Official Journal of the European Union, where prior to 23:00 on 31 December 2020 all public contracts which exceed the EU Thresholds were required to be advertised and where a procurement has been launched but not yet concluded at this time, the Contract Award Notice is to be published</del>  |
| PCR 2015                 | means the Public Contract Regulations 2015 as amended and in force from time to time.  |
| <b>PSR 2023</b>          | <b><i>means The Health Care Services (Provider Selection Regime) Regulations 2023.</i></b>   |
| <b>Procurement Board</b> | <b><i>means the Council's internal officer board that (following Commercial Panel) advises on and approves the proposed procurement route for contracts valued over £5 million.</i></b>  |
| Procurement Documents    | <p>means any document produced or referred to by the Council to describe or determine elements of the procurement or the procedure, including the:</p> <ul style="list-style-type: none"> <li>• Contract Notice (or PIN where it has been used as a call for competition)</li> <li>• Technical specifications</li> <li>• Descriptive document</li> <li>• Proposed conditions of contract</li> <li>• Formats for the presentation of documents by Candidates and Tenderers</li> <li>• Information on generally applicable obligations</li> <li>• Any additional documents.</li> </ul>   |
| Procurement File         | means the record of each procurement that the Council must maintain in accordance with regulation 84(7)-(9) of the PCR 2015 <b><i>also known as the Commercial Stage Gate Record</i></b>   |
| Procurement Report       | means the report that the Council is obliged to maintain in respect of each procurement of a contract valued at or above the relevant Threshold under regulation 84(1) of the PCR 2015 (see Standing Order <b>50.5</b> ).  |
| Responsible Officer      | means the person or persons charged by the director or assistant director to conduct a procurement process, or to participate in or lead a team of officers assembled for that purpose or dealing with a variation to a contract as the context requires.  |

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|--|---|
| Scheme of Delegation                                 | means the Council's formal written scheme of delegation in force and as amended from time to time and can be found in Part 3 of the Council's constitution in the <a href="#">Constitution library</a> on the website.  |
| Small and Medium Enterprise or "SME"                 | means, as set out on the Council's website: companies that fulfil two of the following criteria: <ul style="list-style-type: none"> <li>• a turnover of not more than £11.2 million</li> <li>• a balance sheet total of no more than £5.6 million</li> <li>• no more than 250 employees.</li> </ul>   |
| SQ   | means a selection questionnaire.  |
| Tenderer   | means an economic operator that has submitted a tender to the Council.  |
| Threshold  | means the total estimated financial value of a contract which determines which rules of PCR 2015 or CCR 2016 apply to the procurement of the contract, as is provided for in the PCR 2015 or CCR 2016 and set by the Cabinet Office.<br><br>The Thresholds ( <i>inclusive</i> net of VAT) applicable from 1 January <del>2020</del> <b>2024</b> to 31 December 2021:<br><br>PCR 2015<br>Services/supplies - <del>£189,330</del> <b>£214,904</b><br>Light touch services - £663,540<br>Works - <del>£4,733,252</del> <b>£5,372,609</b><br><br>CCR 2016<br>Concession contracts - <del>£4,733,252</del> <b>£5,372,609</b> |
| Value for Money                                      | means the optimal use of resources to achieve the intended outcomes taking into account: <ol style="list-style-type: none"> <li>(a) Economy: minimising the cost of resources used or required (inputs), i.e. spending less;</li> <li>(b) Efficiency: the relationship between the output from goods or services and the resources to produce them, i.e. spending well; and</li> <li>(c) Effectiveness: the relationship between the intended and actual results of public spending (outcomes), i.e. spending wisely.</li> </ol>  |
| Voluntary, Community and Social Enterprises (VCSEs): | means, as defined by the Cabinet Office in "Procurement Policy Note 11/20: Reserving below threshold procurements" as any organization (incorporated or not) working with a social purpose. This ranges from small community-based groups / schemes, through to larger registered charities and social enterprises, public service mutuals and cooperatives that operate locally, regionally and nationally. This term is often interchangeable with the terms 'third sector' or 'civil society' organisations.   |



## Annex B: Standing Orders at a Glance

### Contract Value/Type – ~~new procurements after 23:00 on 31/12/20~~

| <b>Process</b>                                 | <b>Contracts at or above the Threshold</b> | <b>Schedule 3 Light Touch services contract at or above the Threshold of £663,540</b> | <b>Contracts valued between £100,000 and the Threshold</b>  | <b>Contracts with a value between £25,000 and £99,999</b>  |
|--|--|---|---|--|
| <b>Advertising requirements/sourcing route</b> | FTS and Contracts Finder                   | FTS and Contracts Finder  | Either of:<br>Advert on FTS/Contracts Finder.<br>Advert on Contracts Finder/WSCC site.<br>Call off from framework.<br>Three quotes* | Either of:<br>Advert on Contracts Finder/WSCC site.<br>Three quotes*.<br>Call off from framework or DPS.<br>One quote* |
| <b>Procedures</b>                              | In accordance with PCR 2015                | In accordance with regulation 76, PCR 2015  | Fair and transparent process representing Best Value  | Fair and transparent process representing Best Value   |
| <b>Contract Award Notice</b>                   | Mandatory on FTS and Contracts Finder**    | Mandatory on FTS and Contracts Finder**   | Mandatory on Contracts Finder   | Mandatory on Contracts Finder  |
| <b>Use of SQ</b>                               | Use of Government standard SQ mandatory    | Use of Government standard SQ mandatory   | Prohibited up to EU supplies/services Threshold   | Prohibited   |

\* All consultancy contracts with a value of £50,000 or more must be competitively tendered.

\*\* ~~if the procurement was launched prior to 23:00 on 31 December 2020 the Contract Award Notice must be published in OJEU and is recommended it is also published in FTS. If the contract is a call off under a framework agreement or dynamic purchasing system that was launched and concluded or was launched but is not yet finalised before 23:00 on 31 December 2020 the same rules apply.~~