



Part 4.12 - Contract Standing Orders (CSOs)

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1 Introduction – Purpose of the Contract Standing Orders

- 1.1 Purchasing decisions and processes are important because the money involved is public money. The purpose of these Contract Standing Orders is to provide a structure within which purchasing decisions are made and implemented and which ensure that the Council:
 - 1.1.1 Furthers its corporate objectives.
 - 1.1.2 Uses its resources efficiently.
 - 1.1.3 Purchases quality goods, services and works.
 - 1.1.4 Safeguards its reputation from any implication of dishonesty or corruption.
- 1.2 Purchasing by the Council, from planning to delivery, shall incorporate (where appropriate) principles of sustainability, efficiency, whole life costings and cost savings.
- 1.3 These Contract Standing Orders are made in accordance with the requirements of Section 135 of the Local Government Act 1972.
- 1.4 These Contract Standing Orders do not provide guidelines on what is the best way to purchase works, supplies (goods) and services. They set out minimum requirements to be followed. Further information and guidelines are set out in the Council's Purchasing Guide, Procurement Strategy, Code of Conduct, Safety Policy, Equal Opportunities Policy, Protected Disclosure Policy (Whistleblowing) and Data Quality Standard.

2 General Principles – Application and Compliance with Contract Standing Orders

- 2.1 These Contract Standing Orders apply to the purchase by or on behalf of the Council of works, supplies (goods) and services.
- 2.2 These Contract Standing Orders apply to all contracts including all purchase orders, concessions and contractual arrangements entered into by or on behalf of the Council, except for the specific types of contracts and purchasing methods which are listed in 2.3.
- 2.3 These Contract Standing Orders do not apply to:
 - 2.3.1 Employment contracts.
 - 2.3.2 Contracts relating solely to the purchase or sale of interests in land.
 - 2.3.3 Contracts for retention of legal counsel and the appointment of expert witnesses in legal proceedings

- 2.3.4 Service level agreements setting out the conditions which the Council applies to its funding of particular voluntary sector bodies.
- 2.3.5 Contractual arrangements with other local authority's or similar body's where the Council is not the lead authority in which case the lead authority's Standing Orders shall prevail.

3 General Principles Applying to All Contracts

- 3.1 All purchases however small shall be in writing and on an official order or appropriate contract document approved by the Head of Finance. The price to be paid must be specified together with a statement as to the amount of any discount(s) or other deduction(s). All committed expenditure must be entered by the relevant Service Unit onto the Council's accounting system including, at the commencement of each financial year the estimated annual contract sums for on-going contracts.
- 3.2 Standard contract clauses shall be used in all contracts of a value of £15,000 or more. The standard contract clauses are issued by Legal Services and can be found on the intranet.
- 3.3 As a minimum, all contracts of a value of £15,000 or more shall include clauses which set out:
 - 3.3.1 The works, supplies (goods), services, material, matters or things to be carried out or supplied.
 - 3.3.2 The time within which the contract is to be performed.
 - 3.3.3 Quality requirements and/or standards which must be met. Including arrangements for securing good data quality.
 - 3.3.4 Requirements on the contractor to hold and maintain appropriate insurance/s / licences
 - 3.3.5 What happens in the event that the contractor fails to comply with its contractual obligations (in whole or in part).
 - 3.3.6 Requirements on the contractor and sub-contractors to comply with all relevant equalities and health and safety legislation.
 - 3.3.7 That the Council shall be entitled to cancel the contract and recover losses in the event that the contractor does anything improper to influence the Council to give the contractor any contract or commits an offence under the Prevention of Corruption Acts 1889 to 1916 or s117(2) Local Government Act 1972.

- 3.3.8 Arrangements required to address Public Interest Disclosure (Whistleblowing) issues that arise.
 - 3.3.9 All contract conditions and form of tender and declarations must contain reference to the Bribery Act 2010
 - 3.3.10 All contracts above the relevant EU threshold must contain reference to the Social Value Act, consideration will always be given for contracts below the relevant EU threshold.
- 3.4 Written contracts shall not include non commercial terms unless these are necessary to achieve best value for the Council. In this context, “non commercial” means requirements unrelated to the actual performance of the contract.
 - 3.5 All contracts shall include relevant specifications and/or briefs/technical requirements which are prepared taking into account the need for effectiveness of delivery, quality, sustainability and efficiency (as appropriate) and the information set out in the Council’s Purchasing Guide.
 - 3.6 All contracts of a value of £15,000 or more or which involve a substantial risk to the Council must be subject to a written risk assessment, which should be kept on the contract file.

4 Regulatory Context

- 4.1 All purchasing shall be conducted in accordance with Regulatory Provisions which are:
 - 4.1.1 All relevant statutory provisions.
 - 4.1.2 The relevant E.U. Rules and E.C. Treaty Principles which are defined in the Council’s Purchasing Guide.
 - 4.1.3 The Council’s Constitution including these Contract Standing Orders, the Council’s Financial Regulations and Scheme of Delegation.
 - 4.1.4 The Council’s Purchasing Guide and other policies and procedures of the Council as appropriate.
- 4.2 In the event of conflict between the above, the E.U. Rules will take precedence, followed by UK legislation, then the Council’s Constitution, the Council’s Purchasing Guide and guidelines, policies and procedures.

5 Responsibilities of Directors and Responsible Officers

- 5.1 Each Director shall:
- 5.1.1 be responsible for the purchasing undertaken by his / her Directorate.
 - 5.1.2 be accountable to the Cabinet for the performance of his/her duties in relation to purchasing
 - 5.1.3 comply with the Council's decision making processes including, where appropriate, implementing and operating a Scheme of Delegation
 - 5.1.4 appoint a Responsible Officer in writing who shall be an authorised signatory
 - 5.1.5 take immediate action in the event of breach of these Contract Standing Orders.
- 5.2 A Responsible Officer is an officer with responsibility for conducting purchasing processes for the purchase of works, supplies (goods) or services on behalf of the Council.
- 5.3 A Responsible Officer's duties in respect of purchasing are to ensure:
- 5.3.1 compliance with all Regulatory Provisions and integrity of the tender process
 - 5.3.2 compliance with the relevant statutory provisions and the Council's requirements relating to declarations of interest affecting any purchasing process
 - 5.3.3 that there is an appropriate analysis of the requirement, timescales, procedure and documentation to be used
 - 5.3.4 the purchasing process, from planning to delivery incorporates (where appropriate) principles of sustainability, efficiency, whole life costings and cost savings
 - 5.3.5 compliance with the Council's decision making processes
 - 5.3.6 that all contracts of a value of £15,000 or more are included on the Council's Contract Register
 - 5.3.7 that proper records of all contract award procedures, waivers, exemptions and extensions are maintained, with separate files for each purchase of a value of £15,000 or more
 - 5.3.8 that value for money is achieved

- 5.3.9 that consideration is given to providing adequate and appropriate security (such as a bond or guarantee) to protect the Council in the event of non-performance.
- 5.4 In considering how best to procure works, supplies and services, Directors and/or Responsible Officers (as appropriate in the context), shall take into account wider contractual delivery opportunities and purchasing methods including the use of Purchasing Schemes and e-procurement/purchasing methods, and the availability of local authority charging and trading powers under the Local Government Act 2003.
- 5.5 It is a disciplinary offence to fail to comply with these Contract Standing Orders and the Council's Purchasing Guide. All employees have a duty to report breaches of Contract Standing Orders to the Corporate Services Director.
- 5.6 Any officer or Member who suspects any misconduct or corruption in relation to the purchase by or on behalf of the Council of works, supplies (goods) and services must immediately report that suspicion to the Council's Head of Internal Audit.

6 Scheme of Delegation

- 6.1 Council purchasing may only be undertaken by officers with the appropriate delegated authority to carry out such tasks as set out in the Council's Scheme(s) of Delegation. Officers with delegated authority may only delegate to other officers who have the appropriate skills and knowledge for the task and such delegation shall be recorded in writing by the officer delegating the task and notified to the relevant Director.
- 6.2 Officers shall, where appropriate, be informed by their Director of the extent of any delegated authority and applicable financial thresholds.

7 Financial Thresholds and Procedures

- 7.1 The table below sets out the general rules applying to the choice of purchasing procedure for contracts at the stated threshold values.
- 7.2 **There is a general presumption in favour of competition.** Wherever possible contract opportunities should be advertised by way of a public notice. The Council must consider the potential effect of a contract on interstate trade (at a European level). If a contract may be of interest to contractors from other member states then this may result in a need to advertise in a manner which ensures that potential contractors from other member states are aware of the opportunity, **even for small value contracts or contracts under the E.U. Threshold levels outlined below.**
- 7.3 The public notice referred to at 7.2 may take the form of a notice or advertisement in an electronic or paper format, on an easily accessible website or other electronic media and / or in the press, trade journals or Official Journal of the European Union ("OJUE") (as appropriate).

The Responsible Officer may choose to place one or more public notices in different media. As a minimum any tender valued at £15,000 or above will be advertised on Swale.gov.uk, Kent Portal, South East Business Portal and Contract Finder. Any tender as a minimum between £5,001 & £14,999 will be advertised on Swale.gov.uk.

7.4 Table setting out financial thresholds and procedures

Total value £	Type of contract	Procedure to be used
0 - 1000	works, supplies and services	<ul style="list-style-type: none"> a) At least one quotation in advance b) All purchases however small to be in writing, on an official order c) Approved by the relevant Head of Service or authorised officer. d) Officer should be able to provide a rationale for why they selected the provider used.
Procedure to be used 1001 to 5000	works, supplies and services	<ul style="list-style-type: none"> a) At least two quotes in advance b) All purchases however small to be in writing, on an official order c) Consideration given to Purchasing Scheme's e.g. to provide better V.F.M. d) Approved by the relevant Head of Service or authorised officer e) Records maintained to demonstrate probity and V.F.M. obtained
Procedure to be used 5001 to 15,000	works, supplies and services	<ul style="list-style-type: none"> a) At least two quotes in advance b) As a minimum to be advertised on www.swale.gov.uk c) All purchases however small to be in writing, on an official order d) Consideration given to Purchasing Scheme's e.g. to provide better V.F.M. e) Approved by the relevant Head of Service or authorised officer f) Records maintained to demonstrate probity and VFM obtained g) Record to be entered on the Council's Contract Register
15,000 to 74,999	works, supplies and services	<ul style="list-style-type: none"> a) At least three written tenders in advance b) As a minimum to be advertised on www.swale.gov.uk and the Kent, South East Business Portals plus Contract Finder c) Tenders opened at the same time by the Democratic and Electoral Services Manager (or nominee), in the presence of the Responsible Officer (or nominee) and an independent senior officer and also where required or requested in the presence of the cabinet portfolio holder (or nominee) d) Record to be entered on the Council's Contract Register e) Contracts in writing using the standard clauses and to include the core clauses as set out within the CSOs document f) Award of contract approved by the Responsible Officer plus signed by another officer g) Risk assessment conducted (in writing) and kept on the file

75,000 to 173,934**	works, supplies and services	<p>a) At least three written tenders in advance.</p> <p>b) As a minimum to be advertised www.swale.gov.uk the Kent, and South East Business Portals plus Contract Finder.</p> <p>c) List of contractors invited to tender approved by the Responsible Officer.</p> <p>d) Tenders opened at the same time by the Democratic and Electoral Services Manager (or nominee), in the presence of the Responsible Officer (or nominee) and an independent senior officer and also where required or requested in the presence of the cabinet portfolio holder (or nominee).</p> <p>e) Tenderers subjected to Financial Appraisal prior to invitation to tender.</p> <p>f) Approval required from the Cabinet for award of contract, waiver from CSOs and extensions to contracts.</p> <p>g) Contract executed as a deed.</p> <p>h) Record of the contract entered on the Councils Contract Register</p> <p>i) Standard contract clauses to be used and to include the core clauses as set out within the CSOs document.</p> <p>j) Risk assessment conducted (in writing) and kept on the file.</p>
173,934** plus **EU Threshold	Supplies and services	<p>a) EU Rules apply – full competitive process with tenders following advertisement in the O.J.U.E. for supplies and Part A* services. For Part B* services reduced requirements apply but there is a presumption in favour of advertising and a competitive process. This will also be advertised on the Swale website the Kent and the South East Business Portals and Contract Finder.</p> <p>b) Points a; c; d; e; f; g; h; I and j as above for works, supplies and services for</p>
173,934to 4,348,350**	Works	a) Points a – j as above for works, supplies and services for £75,000 to £173,934**
4,348,350** plus **EU Threshold	Works	<p>a) EU Rules apply – full competitive process with tenders following advertisement in the O.J.U.E.</p> <p>b) Points a; c; d; e; f; g; h; I and j as above for works, supplies and services for £75,000 to £173,934**</p>

* For the purposes of the EU Rules services are divided into two types and the EU Rules apply to a different degree. Responsible Officers should act cautiously and seek advice when considering the procedure to be used and application of the EU Rules to services contracts. ** or relevant threshold in force at the time under the EU Rules

7.5 Where contracts are of a type and value which means that they are subject to the EU Rules then there are four main types of EU procedures available. These are the open, restricted, competitive dialogue and competitive negotiated procedures. Care must be taken to ensure that the correct and most appropriate procedure is used and assistance on the choice and use of EU procedure should be sought from Legal Services or the Procurement team.

7.6 Financial appraisals shall be carried out by Financial Services on all Contractors tendering for contracts of £75,000 and above, prior to invitation to tender. For contracts above £30,000 but not exceeding £74,999, prior to award of contract the proposed successful contractor shall be subject to financial appraisal by Financial Services.

8 Financial Thresholds and Processes Applying to Approval and Execution of Contracts

8.1 For contracts over the relevant EU Threshold (in force at the time), the choice of purchasing procedure to be used and the decision to proceed to advertisement must be authorised in writing by the relevant Director in advance.

8.2 When a decision is made to award a contract then the Responsible Officer must, in addition to complying with his/her general obligations under these Contract Standing Orders ensure, in particular, that:

8.2.1 the appropriate approvals have been obtained to authorise that decision; and

8.2.2 where appropriate, a standstill period complying with the EU Rules is incorporated into the final award process.

8.3 All contracts valued at £75,000 or above must be reported to the Cabinet for approval and shall be executed as a deed. All other contracts may be signed by officers with appropriate delegated authority. £15,000 shall be the threshold for the purposes of Regulation 8 of the Local Authority (Executive Arrangements) (Modification of Enactments and Further Provisions) (England) Order 2001.

8.4 Electronic signatures may be used in accordance with the Electronic Signature Regulations 2002 provided the sufficiency of security arrangements has been approved by the Director of Corporate Services.

9 Calculating the Contract Value

9.1 The starting point for calculating the contract value for the purposes of these Contract Standing Orders is that the contract value shall be the genuine pre-estimate of the value of the entire contract (whole life value) excluding Value Added Tax. This includes all payments to be made, or potentially to be made, under the entirety of the contract and for the whole of the predicted contract period (including proposed extensions and options).

9.2 There shall be no artificial splitting of a contract to avoid the application of the provisions of the EU Rules and/or these Contract Standing Orders.

9.3 The EU Rules can cover contracts which are below the stated EU threshold where they constitute repeat purchases and/or purchases of a similar type in a specified period. Responsible Officers should therefore seek advice on the application of the E.U. Rules where they envisage that they may

require repeat purchases and/or purchases of a similar type.

10 Principles Underlying Tendering Processes and Tender Evaluation

10.1 All tendering procedures (including obtaining quotes), from planning to contract award and signature, shall be undertaken in a manner so as to ensure:

- 10.1.1 Sufficient time is given to plan and run the process**
- 10.1.2 Equal opportunity and equal treatment**
- 10.1.3 Openness and transparency**
- 10.1.4 Probity**
- 10.1.5 Outcomes which deliver sustainability, efficiency and cost savings (where appropriate).**

11 Submission and Opening of tenders

11.1 An Invitation to Tender shall be issued by the Council for all contracts over £15,000 and tenders shall be submitted in accordance with the requirements of the Invitation to Tender.

11.2 Any tenders received (other than those received electronically, to which 11.3 shall apply) shall be:

- 11.2.1 addressed to the Democratic and Electoral Services Manager
- 11.2.2 in a sealed envelope marked "Tender" followed by the subject matter to which it relates
- 11.2.3 kept in a safe place by the Democratic and Electoral Services Manager
- 11.2.4 retained unopened until the date and time specified for its opening.

11.3 Where the Council has indicated in the Invitation to Tender that a tender can or must be submitted electronically, then those tenders shall be:

- 11.3.1 addressed to the e-mail address as notified in the Invitation to Tender
- 11.3.2 in the format specified in the Invitation to Tender
- 11.3.3 stored in a secure mailbox, which requires a code or other appropriate security measure, to open it

11.3.4 retained unopened until the date and time specified for its opening

11.4 No tender received after the time and date specified for its opening shall be accepted or considered by the Council unless the relevant Director is satisfied that there is sufficient evidence of the tender having been dispatched in time for it to have arrived before the closing date and time, or other exceptional circumstances apply and the other tenders have not been opened.

11.5 **All tenders of £15,000 and above to be opened by the Democratic and Electoral Services Manager (or nominee)**, in the presence of the Responsible Officer (or nominee) and an independent senior officer and also where required or requested in the presence of the Cabinet portfolio holder (or nominee).

An immediate record to be made of the tenders received including names and addresses and the date and time of opening.
The record to be retained by the Democratic and Electoral Services Manager.

12 Evaluation of Quotes and Tenders

12.1 **All quotes and tenders shall be evaluated in accordance with evaluation criteria notified in advance to those submitting quotes/tenderers.**

12.2 Tenders subject to the EU Rules shall be evaluated in accordance with the EU Rules.

12.3 **Save in exceptional circumstances approved in advance by the relevant Director all contracts shall be awarded on the basis of the quote or tender which represents best value for money to the Council and not on the basis of lowest price.**

12.4 Post tender negotiations will only be used in special circumstances and after approval from the relevant Director. (Seek guidance from the procurement team first)

13 Waivers

13.1 The requirement for the Council to conduct a competitive purchasing process for contracts in excess of £5,001 may be waived in the following circumstances.

13.1.1 For contracts which are not subject to the EU Rules, the work, supply or service is required as a matter of urgency and a delay would be likely to lead to financial loss, personal injury or damage to property; or

13.1.2 the circumstances set out in EU Regulation 14 apply (whether or not the contract is of a type which is subject to the application of the EU Rules); or

- 13.1.3 the contract is awarded under a Purchasing Scheme of a type where a competition has already been undertaken on behalf of the Council; or
 - 13.1.4 at the discretion of the relevant Director, who may for contracts exceeding £15,000 but not exceeding £74,999 proceed in a manner most expedient to the efficient management of the service/Council with reasons recorded in writing.
- 13.2 A Responsible Officer who seeks a waiver of Contract Standing Orders, shall do so only in advance and **only in exceptional circumstances**. Further guidance on what may constitute exceptional circumstances permitting waiver of these Contract Standing Orders is set out in the Council's Purchasing Guide.
- 13.3 All waivers from these Contract Standing Orders must be:
- 13.3.1 Fully documented
 - 13.3.2 Subject to a written report in an approved format. For contracts not exceeding £74,999 the report shall be submitted in advance to the Head of Commissioning and Customer Contact and include the reasons why the waiver is genuinely required. For contracts of £75,000 and above the report shall be submitted to the Cabinet.
 - 13.3.3 Subject to approval in advance by the Head of Commissioning and Customer Contact, in consultation with the Heads of Legal and Audit Services as appropriate, who shall, for contracts exceeding £15,000 but not exceeding £74,999, record that they have considered the reasons for the waiver and that they are satisfied that the circumstances justifying the waiver are genuinely exceptional. Waiver from competitive purchasing process for contracts of £75,000 and above must be approved in advance by the Cabinet. In the report to Cabinet a recommendation; "Cabinet agree to the waiver requested in relation to the [works, goods / services] contract and that the Head of Commissioning and Customer Services be authorised to complete the necessary documentation". Prior to Cabinet, the waiver should still be considered by the heads of Legal and Internal Audit Services.
 - 13.3.4 Subject to approval in advance by the Head of Commissioning and Customer Contact, or representative in consultation with the Procurement Team or the Heads of Legal and Audit Services as appropriate for contracts exceeding £5,001 but not exceeding £15,000. For contracts exceeding £15,000 refer to 13.3.3.
- 13.4 All decisions on waivers must take into account:

- 13.4.1 Probity
- 13.4.2 Best value/value for money principles.

13.5 For contracts subject to the EU Rules, any waiver from the requirement for competition must meet the conditions set out in the EU Rules in addition to the general requirements above.

13.6 A waiver shall not be applied for reasons of poor contract planning.

14 Extensions to Existing Contracts

14.1 Where extensions to existing contracts are made the extensions must be determined in accordance with the contract terms, for a specified period and made in accordance with the principles set out in the Council's Purchasing Guide.

14.2 Any extension must be:

14.2.1 Fully documented

14.2.2 Subject to a written report in an approved format. For contracts not exceeding £74,999 the report shall be submitted in advance to the relevant Director and include the reasons why the extension is required and is genuinely exceptional. For contracts of £75,000 and above the report shall be submitted to the Cabinet.

14.2.3 Subject to approval in advance by the relevant Director who shall, for contracts not exceeding £74,999, record that they have considered the reasons for the extension and that they are satisfied that the circumstances justifying the extension are genuinely exceptional. Extensions for contracts of £75,000 and above must be approved in advance by the Cabinet.

14.3 Any extension must take into account:

14.3.1 Probity

14.3.2 Best value/value for money principles.

14.4 For contracts subject to EU Rules, any extension must meet the conditions set out in the EU Rules in addition to the more general requirements set out above.

15 Purchasing Schemes

15.1 A Responsible Officer may use Purchasing Schemes subject to the following conditions and the Council's Purchasing Guide.

- 15.2 Responsible Officers must check in advance that
- 15.2.1 The Council is legally entitled to use the Purchasing Scheme
 - 15.2.2 The purchases to be made do properly fall within the coverage of the Purchasing Scheme
 - 15.2.3 The establishment and operation of each Purchasing Scheme is in compliance with the EU Rules (where they apply) and meets the Council's own requirements.
- 15.3 A "Purchasing Scheme" may include:
- 15.3.1 Contractor prequalification lists / select lists
 - 15.3.2 Framework arrangements (including those set up by the Cabinet Office; <http://www.cabinetoffice.gov.uk/>)
 - 15.3.3 Purchasing arrangements set up by central purchasing bodies and commercial organisations
 - 15.3.4 Consortium purchasing
 - 15.3.5 Collaborative working arrangements
 - 15.3.6 Formal agency arrangements
 - 15.3.7 E-procurement / purchasing schemes and methods
 - 15.3.8 Other similar arrangements such as the IDeA Marketplace
- 15.4 Where a Purchasing Scheme is used then there shall be a whole or partial exemption from the obligations under these Contract Standing Orders in respect of the choice and conduct of procedures to the extent permitted and indicated in the Council's Purchasing Guide.

16 Review and Changes to these Contract Standing Orders

- 16.1 These Contract Standing Orders shall be reviewed and updated on a regular basis. Save in the case of revisions to the EU Thresholds amended Contract Standing Orders shall be agreed and adopted by the Council. Revisions to the EU Thresholds shall be dealt with in accordance with the Constitution - Scheme of Delegation to the Borough Solicitor.