

## AGENDA

### GENERAL PURPOSES COMMITTEE MEETING

Date: Wednesday, 16 December 2020

Time: 5.00pm

Venue: Virtual Meeting Via Skype\*

Membership:

Councillors Mike Baldock (Vice-Chairman), Angela Harrison, Ken Ingleton, Denise Knights, Richard Palmer, David Simmons, Roger Truelove (Chairman), Mike Whiting and Corrie Woodford.

Quorum = 3

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Pages

#### Information for the Public

\*Members of the press and public can listen to this meeting live. Details of how to join the meeting will be added to the website after 4pm on Tuesday 15 December 2020.

#### Privacy Statement

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1. Apologies for Absence and Confirmation of Substitutes
2. Minutes

To approve the [Minutes](#) of the Meeting held on 28 October 2020 (Minute Nos. 204 - 206) as a correct record.

### 3. Declarations of Interest

Councillors should not act or take decisions in order to gain financial or other material benefits for themselves or their spouse, civil partner or person with whom they are living with as a spouse or civil partner. They must declare and resolve any interests and relationships.

The Chairman will ask Members if they have any interests to declare in respect of items on this agenda, under the following headings:

(a) Disclosable Pecuniary Interests (DPI) under the Localism Act 2011. The nature as well as the existence of any such interest must be declared. After declaring a DPI, the Member must leave the meeting and not take part in the discussion or vote. This applies even if there is provision for public speaking.

(b) Disclosable Non Pecuniary (DNPI) under the Code of Conduct adopted by the Council in May 2012. The nature as well as the existence of any such interest must be declared. After declaring a DNPI interest, the Member may stay, speak and vote on the matter.

(c) Where it is possible that a fair-minded and informed observer, having considered the facts would conclude that there was a real possibility that the Member might be predetermined or biased the Member should declare their predetermination or bias and then leave the meeting while that item is considered.

**Advice to Members:** If any Councillor has any doubt about the existence or nature of any DPI or DNPI which he/she may have in any item on this agenda, he/she should seek advice from the Monitoring Officer, the Head of Legal or from other Solicitors in Legal Services as early as possible, and in advance of the Meeting.

#### **Part A Reports for Recommendation to Council**

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| 4. | Amendments to Contract Standing Orders     | 3 - 32  |
| 5. | Electronic Signatures and Document Sealing | 33 - 36 |

### **Issued on Tuesday, 8 December 2020**

The reports included in Part I of this agenda can be made available in **alternative formats**. For further information about this service, or to arrange for special facilities to be provided at the meeting, **please contact DEMOCRATIC SERVICES on 01795 417330**. To find out more about the work of this Committee, please visit [www.swale.gov.uk](http://www.swale.gov.uk)

**Chief Executive, Swale Borough Council,  
Swale House, East Street, Sittingbourne, Kent, ME10 3HT**

# Agenda Item 4

<b>General Purposes Committee / Full Council</b>	
<b>Meeting Date</b>	16 December 2020
<b>Report Title</b>	Amendments to Contract Standing Orders
<b>Cabinet Member</b>	Cllr Roger Truelove, Leader and Cabinet Member for Finance
<b>SMT Lead</b>	Emma Wiggins, Director of Regeneration
<b>Head of Service</b>	Martyn Cassell, Head of Commissioning, Environment & Leisure
<b>Lead Officer</b>	Charlotte Knowles, Commissioning Manager
<b>Key Decision</b>	No
<b>Classification</b>	<b>Open</b>
<b>Recommendations</b>	1. To approve the proposed amendments to Contract Standing Orders.

## **1 Purpose of Report and Executive Summary**

- 1.1 This report seeks approval of the proposed amendments to Contract Standing Orders (CSOs).

## **2 Background**

- 2.1 The Council's Contract Standing Orders are contained within the Council's Constitution, their purpose is to provide a structure within which purchasing decisions are made and implemented.
- 2.2 A member Commissioning Working Group was held on 12 October where it was discussed that the quotation and tender thresholds should be increased as soon as possible and that a revised Commissioning and Procurement Strategy will be drafted by the end of the financial year.

## **3 Proposals**

- 3.1 A number of amendments are proposed to CSOs to correct inaccuracies, ensure that the processes are proportionate to the level of spend and to simplify the process for lead officers and local businesses to encourage them to bid for more contracts.
- 3.2 The changes include the increase in the threshold for one quotation from £999 to £24,999 and the increase in the tender threshold from £25,000 to £100,000. Other proposed changes include one off or non-routine expenditure over £5000, and all consultancy appointments, should be in agreement with the relevant Cabinet Member.
- 3.3 The following changes are proposed. At 1.4 of CSOs, amend the wording as follows:

“These Contract Standing Orders do not provide guidelines on **what is** the best way to purchase works, supplies (goods) and services **but 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, Local First Policy, Safeguarding Policy, Commissioning Framework, Protected Disclosure Policy (Whistleblowing) and Data Quality Standard.”

3.4 Under section 2.3, add an exemption for election expenditure. **However, it is important to note that the exemption will apply to CSOs only and that Public Contracts Regulations should still be adhered to and particular care should be taken to monitor cumulative spend.**

3.5 At 2.3.5, amend wording as follows:

“Contractual arrangements with other local **authority’sies** or similar **body’sies** where the Council is not the lead authority in which case the lead authority’s Standing Orders shall prevail. **For cContracts** involving shared services, the CSO of the lead authority in the partnership shall apply even if different from the Council’s”

3.6 At 2.3.6, amend as follows:

“Framework Agreements providing that **the head of Mid Kent Legal Services** and **Ffinance haves** agreed the terms of the Framework Agreement.”

3.7 At 3.2 of CSOs replace:

“Standard contract clauses shall be used in all contracts of a value of £25,000 or more. The standard contract clauses are issued by Legal Services and can be found on the intranet;” with:

“**The Council’s** standard contract clauses **or other terms and conditions approved in advance by Legal and Finance**, shall be used in all contracts of a value of £25,000 or more. The standard contract clauses are issued by Legal Services and can be found on the intranet”

3.8 At 3.3.4, amend as follows:

“Requirements on the contractor to hold and maintain appropriate insurance/s / **licensces**”

3.9 At 3.3.9, amend as follows:

~~“All contract conditions and form of tender and declarations must contain reference to the Bribery Act 2010”~~

- 3.10 At 3.3.10, amend as follows:  
“All contracts above the relevant EU/UK threshold must contain reference to the Social Value Act, consideration of the Act should also ~~will always~~ be ~~given for~~ made in relation to contracts below the relevant EU/UK threshold.”
- 3.11 At 3.3.11, amend as follows. This is because GDPR has been absorbed into the Data Protection Act.  
  
“~~All contract conditions must contain~~ reference to the Data Protection Act 2018 ~~and the emerging GDPR.~~”
- 3.12 Add the following:  
  
“3.3.13 Reference to the Freedom of Information Act 2000”
- 3.13 Add the following:  
  
“3.3.14 Reference to the Modern Slavery Act 2015”
- 3.14 Add the following:  
  
“3.3.15 Reference to the Government’s Prevent requirements.”
- 3.13 At 3.6, amend as follows:  
  
“All contracts of a value of ~~£25,000~~ £100,000 or more or which involve a substantial risk to the Council ~~must be~~ are subject to a written risk assessment, which should be kept on the contract file and updated when required. ~~or annually whichever occurs first.~~”
- 3.14 At 4.2 of CSOs, amend as follows:  
  
“In the event of conflict in legislation, E.U. Rules will take precedence (~~at the time of writing~~), followed by UK legislation, then the Council’s Constitution, the Council’s Purchasing Guide, ~~the Council’s and~~ guidelines, policies and procedures.”
- 3.15 At section 5, add ‘Heads of Service’ as follows:  
  
“**Responsibilities of Directors / Heads of Service and Responsible Officers**”;  
  
“Each Director / **Head of Service** shall:  
  
5.1.1 be responsible for the purchasing undertaken by his / her Directorate or **Service**”; and
- 3.16 Delete 5.1.4:

~~“appoint a Responsible / Lead Officer in writing who shall be an authorised signatory;”~~

3.17 At 5.4, add Heads of Service as follows:

“In considering how best to procure works, supplies and services, Directors / **Heads of Service** 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.”

3.18 At 5.3.8, amend as follows:

“All Contracts over £25,000 will be:

1. In the form approved by Legal Services;
2. executed;
3. a minimum of three copies of this contract are required; one to be stored in the Council’s strong room; the second to **be sent to** the winning bidder/s and **a copy for the third to be sent to** the lead officer or their staff. An electronic copy of the signed / sealed contract is to be emailed to **P**procurement.”

3.19 At 6.1 and 6.2, add ‘Head of Service’ as follows:

“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 **or Head of Service.**”

“Officers shall, where appropriate, be informed by their Director **or Head of Service** of the extent of any delegated authority and applicable financial thresholds.”

3.20 At 7.2, amend as follows:

“There is a general presumption in favour of competition. Wherever possible, contract opportunities should be advertised by way of a public notice. **At the time of writing, T**he 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./UK Threshold levels outlined below.

3.21 At 7.3, amend as follows:

“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 (“OJEU”)~~ Find a Tender Service (from 1 January 2021), (as appropriate). The Responsible / Lead Officer may choose to place one or more public notices in different media. As a minimum any Request for Quotation or tender valued at £25,000 or above will be advertised on [www.swale.gov.uk](http://www.swale.gov.uk), the ~~Kent Portal~~ the Council’s E-procurement System and Contracts Finder.”

3.22 At 7.4 of the CSOs “Table setting out financial thresholds and procedures”, amend to the following:

Total net value (£)	Type of contract	Procedure to be used
£0 - £4999	works, supplies and services	<p><b>a) At least one quotation in advance</b></p> <p>b) All purchases however small to be in writing, on an official order;</p> <p>c) Approved by the relevant Head of Service or authorised officer;</p> <p>d) Officer should be able to provide a rationale for why they selected the provider used.</p> <p>e) All consultancy spend should be in agreement with the relevant Cabinet member.</p>
£5000 - £24,999	works, supplies and services	<p><b>a) At least one quotation in advance</b></p> <p>b) One off, non-routine spend should be agreed by relevant Cabinet member.</p> <p>c) Commissioning &amp; Procurement need to be made aware of any procurement where the whole life value is &gt;£5,000.</p> <p>d) All purchases to be in writing, on an official order;</p> <p>e) Approved by the relevant Head of Service or authorised officer;</p> <p>f) Officer should be able to provide a rationale for why they selected the provider used;</p> <p>g) Contract award details provided to procurement for publication on the Contract Register for transparency purposes at award stage.</p>

<p><b>Procedure to be used</b>  <b>£25,000 to £99,999</b></p>	<p>works, supplies and services</p>	<p>a) <b>Request for quotation advertised on <a href="http://www.swale.gov.uk">www.swale.gov.uk</a>, the Council's E-procurement System and Contract Finder;</b>  b) Spend should be agreed by relevant Cabinet member;  c) Consideration given to Purchasing Schemes to provide better value for money.  d) Financial appraisals shall be carried out by Financial Services prior to award;  e) Approved by the relevant Head of Service or authorised officer;  f) Contracts in writing using the standard clauses and to include the core clauses as set out within the CSOs document or other terms and conditions approved in advance by Legal and Finance;  g) Records maintained to demonstrate probity and V.F.M. obtained.  h) Contract award details provided to procurement for publication on the contract register for transparency purposes at award stage.</p>
<p><b>Procedure to be used</b>  <b>£100,000 to £189,330 / £214,000**</b></p>	<p>works, supplies and services</p>	<p>a) <b>At least three electronic tenders;</b>  b) Spend should be agreed by relevant Cabinet member;  c) Risk assessment conducted (in writing) and kept on the file.  d) As a minimum to be advertised on <a href="http://www.swale.gov.uk">www.swale.gov.uk</a>, the Council's E-procurement System plus Contract Finder;  e) 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 a suitable person from Legal Services (or Nominee);  f) Financial appraisals shall be carried out by Financial Services prior to award;  g) Award of contract approved by Cabinet;  h) Contracts in writing using the standard clauses and to include the core clauses as set out within the CSOs document or other terms and conditions approved in advance by Legal and Finance;  i) Record to be entered on the Council's Contract Register at award stage.</p>
<p><b>Procedure to be used</b>  <b>£189,330 ** plus</b>  <b>**EU/ UK Threshold</b></p>	<p>Supplies and services</p>	<p>a) EU Rules / Public Contract Regs apply – full competitive process with tenders following advertisement in Find a Tender Service for supplies and services, there is a presumption in favour of advertising and a competitive process. This will also be advertised on the Swale website, The Council's e-procurement system and Contract Finder;  b) Points a; c; d; e; f; g; h and i as above for works, supplies and services for £100,000 to £189,330**</p>

<b>Procedure to be used £189,330 to £4,733,252 / €5,350,000**</b>	Works	a) Points a – i as above for works, supplies and services for £100,000 to £189,330**
<b>Procedure to be used £663,540 / €750,000** Plus **EU/UK Threshold</b>	Light Touch Regime Services	a) Points a – i as above for works, supplies and services for £100,000 to £663,450**
<b>Procedure to be used £4,733,252 / €5,350,000** plus</b>	Works	a) EU Rules / Public Contract Regs apply – full competitive process with tenders following advertisement in Find a Tender Service. b) Points a; c; d; e; f; g; h; and i as above for works, supplies and services for £100,000 to £189,330**

\*\* or relevant threshold in force at the time under the EU Rules / Public Contracts Regs.

3.23 At 7.5, amend as follows:

“Where contracts are of a type and value which means that they are subject to the EU Rules / **Public Contracts Regs** 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.”

3.24 At 7.6 of CSOs replace:

“Financial appraisals shall be carried out by Financial Services on all Tenderers submitting a bid of £30,000 and above. Contracts with a whole life value > £100,000 shall have a financial appraisal undertaken by financial services on or near the anniversary date of the contract award date.” with:

**“Financial appraisals shall be carried out by Financial Services on all contracts over £25,000 prior to award. They shall also have a financial appraisal undertaken by financial services annually on or near the anniversary date of the contract award date.”**

3.25 At 7.7, add ‘Head of Service’ as follows:

**“Contracts with a high degree of complexity or where there is a lack of knowledge in house may require the assistance of a consultant ~~W~~with Director or Head of Service approval., ~~the Lead Officer may need to compile a pre-inception document, (PID) and a Performance Fund Bid to SMT prior to any procurement.~~”**

3.26 At 8.1, add 'UK' and 'Head of Service as follows:

“For contracts over the relevant EU/UK 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 or Head of Service in advance.”

3.27 At 8.2.2, amend as follows:

“where appropriate, a standstill period complying with the EU Rules / Public Contracts Regs is incorporated into the final award process.”

3.28 At 8.3, add 'by Legal Services' as follows:

“All contracts valued at £100,000 or above must be reported to the Cabinet for approval and shall be executed as a deed by Legal Services, there is a 5 calendar day call in period post Cabinet, once the Minutes have been published, (usually the following Monday). All other contracts may be signed by officers with appropriate delegated authority. £99,999 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.”

3.29 At 8.4, reword as follows:

“Electronic signatures may be used by both the Council and the supplier in accordance with the Electronic Signature Regulations 2002. provided the sufficiency of security arrangements has been approved by the Director of Corporate Services. The Council shall use suitable, free software, such as Adobe, to create electronic signatures.”

3.30 At 9.1, amend as follows:

“The starting point for calculating the contract value for the purposes of these Contract Standing Orders is that ~~it 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).”

3.31 At 9.2 of CSOs, add the following:

“Contracts may be split into lots where it is practical to do so. However, the aggregated cost of the lots shall determine the contract's whole of life value and the procurement process to be followed. Artificial splitting of a contract to avoid the application of the procurement rules or these CSOs

is not permitted. However, should lots not be used **for tenders over the EU/UK threshold**, then Reg. 84 applies i.e. individual report as to why lots were not used.”

3.32 At 9.3, amend as follows:

“The EU Rules / **Public Contracts Regs** cover contracts which are below the stated EU/UK 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.R** rules where they envisage that they may require repeat purchases and / or purchases of a similar type.

3.33 At 11.1, amend as follows:

“An Invitation to Tender shall be issued by the Council for all contracts over ~~£25,000~~ **£100,000** using the Council’s e-procurement system and tenders shall be submitted in accordance with the requirements of the Invitation to Tender.”

3.34 At 11.2.2, amend as follows:

“in a sealed envelope marked “Tender” followed by the subject matter to which it relates **and not displaying the name of the tenderer**;

3.35 At 11.3, replace:

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

“Where the Council has indicated in the Invitation to Tender that a tender can or must be submitted electronically, then those tenders shall be **submitted via the Council’s E-procurement System or:**”

3.36 At 11.4, amend as follows:

“No tender received after the time and date specified for its opening shall be accepted or considered by the Council unless the relevant Director **or Head of Service, having consulted Procurement and Legal Services**, 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.”

3.37 At 11.5, amend as follows:

“**All tenders of £25,000 £100,000 and above are to be opened in the presence of the Democratic and Electoral Services Manager (or**

**nominee**), and a suitable person from Legal Services (or Nominee).”

“An immediate record shall ~~to~~ be made of the tenders received including names and addresses and the date and time of opening, this record to be retained by the Democratic and Electoral Services Manager and Procurement.

3.38 At 12.2, amend as follows:

“Tenders subject to the EU Rules / **Public Contracts Regs** shall be evaluated in accordance with the EU Rules / **Public Contracts Regs**.”

3.39 At 12.4, amend as follows:

“Post tender negotiations will only be used in special circumstances and after approval from the relevant Director **or Head of Service, having consulted Procurement and Legal Services. (Seek guidance from the procurement team first).**

3.40 At 13.1, amend as follows:

“The requirement for the Council to conduct a competitive purchasing process for contracts in excess of ~~£5,001~~ **£25,000** may be waived in the following circumstances.”

3.41 At 13.1.1, amend as follows:

“For contracts which are not subject to the EU Rules / **Public Contracts Regs**, 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”

3.42 At 13.1.2, amend as follows:

“the circumstances set out in EU / **Public Contracts** Regulation 14 apply (whether or not the contract is of a type which is subject to the application of the EU Rules); or”

3.43 At 13.3.3 amend as follows:

“Subject to agreement in advance by the Head of **Commissioning and Customer Contact and, Environment and Leisure** in consultation with ~~the Heads of~~ Mid Kent Legal Services and ~~the Chief Financial Officer~~ as appropriate, who shall, for contracts exceeding £25,000 but not exceeding £99,999, record that they have considered the reasons for the waiver and that they are satisfied **that with** the circumstances justifying the waiver. ~~The Contracts and Procurement Manager and Contracts and Procurement Support Manager have delegated authority to consider and approve Waivers valued between £1,000 up to £24,999 and record that~~

~~they have considered the reasons for the waiver and that they are satisfied that the circumstances justifying the waiver are genuinely exceptional.~~ Waivers from competitive purchasing processes for contracts of £100,000 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, Environment and Leisure~~ be authorised to complete the necessary documentation”. Prior to Cabinet, the waiver should still be considered by the ~~h~~Heads of Mid Kent Legal Services and ~~the~~ Chief Financial ~~e~~Officer. In the absence of the Head of Commissioning, ~~Environment and Leisure and Customer Contact,~~ the ~~Contracts and Procurement Manager~~ Commissioning Manager has the delegated authority to record that they have considered the reasons for the waiver and that they are satisfied that the circumstances justifying the waiver and sign off ~~over~~ waivers over £25,000 in consultation with ~~the~~ Heads of Mid-Kent Legal Services and ~~the~~ Chief Financial Officer ~~e~~, waivers above £100,000 ~~are~~ subject to Cabinet approval;

3.44 At 13.5, amend as follows:

“For contracts subject to the EU Rules / ~~Public Contracts Regs~~, any waiver from the requirement for competition must meet the conditions set out in the EU Rules / ~~Public Contracts Regs~~ in addition to the general requirements above.”

3.45 At 14.2.2, add ‘Head of Service’ as follows:

“Subject to a written report in an approved format, form ~~P.24~~. For contracts where **the extension** value is not exceeding £99,999, the report shall be submitted in advance to the relevant Director ~~or~~ ~~Head of Service~~ and include the reasons why the extension is required For contracts where the **extension value** is £100,000 and above the report shall be submitted to the Cabinet;”

3.46 And at 14.2.3:

“Subject to approval in advance by the relevant Director ~~or~~ ~~Head of Service~~ who shall, for contracts where the **extension value** is not exceeding £99,999, record that they have considered the reasons for the extension, ~~there is an extension option on the contract and that they are satisfied with the performance of the contract.~~ Extensions for contracts where the extension value is £100,000 and above must be approved in advance by the Cabinet.”

3.47 At 14.4, amend as follows:

“For contracts subject to EU Rules / ~~Public Contracts Regs~~, any extension must meet the conditions set out in the EU Rules / ~~Public Contracts Regs~~ in addition to the more general requirements set out

above.”

3.48 At 15.2.3, amend as follows:

“The establishment and operation of each Purchasing Scheme is in compliance with the EU Rules / **Public Contracts Regs** (where they apply) and meets the Council's own requirements”

3.49 Under 15.3, remove 15.3.1:

“A “Purchasing Scheme” may include:

15.3.1 ~~Contractor prequalification lists / select lists;~~

3.50 At 15.5, replace:

“Prior to using any purchasing scheme / framework, the Responsible Officer / Lead Officer should check with Economic Development to ensure that the works, good or services required are unable to be procured locally.” with:

“Prior to using any purchasing scheme / framework, the Responsible Officer / Lead Officer should **consider whether** the works, goods or services required can be procured locally.”

3.51 At 16.1, amend as follows:

“These Contract Standing Orders shall be reviewed and updated on a regular basis. Save in the case of revisions to the **EU/UK** Thresholds amended Contract Standing Orders shall be agreed and adopted by the Council. Revisions to the **EU/UK** Thresholds shall be dealt with in accordance with the Constitution - Scheme of Delegation to the Head of Legal Partnership. Any other modifications to C.S.O.s outside of the scope above will need to be presented to SMT, General Purposes Committee and then to Full Council for approval. Any changes in legislation C.S.O.s will be updated automatically however these C.S.O.s will be reviewed every three years to ensure that these C.S.O.s evolve with the Council’s requirements.”

#### **4 Alternative Options**

4.1 The alternative is to not approve the proposed amendments. This option is not recommended as these amendments will simply the procurement process and make the process of bidding for work simpler for suppliers.

#### **5 Consultation Undertaken or Proposed**

- 5.1 Consultation has been undertaken with Mid Kent Legal Services, the Commissioning Member Working Group and the Procurement Board were informed that the procurement thresholds would be reviewed.

## 6 Implications

Issue	Implications
Corporate Plan	Contributes towards the corporate priority “Renewing local democracy and making the Council fit for the future”.
Financial, Resource and Property	None identified at this stage.
Legal, Statutory and Procurement	The Public Contracts Regulations 2015 apply to contracts above the EU/UK threshold.
Crime and Disorder	None identified at this stage.
Environment and Climate/Ecological Emergency	None identified at this stage.
Health and Wellbeing	None identified at this stage.
Risk Management and Health and Safety	None identified at this stage.
Equality and Diversity	There are no differential equality issues raised by the proposals in this report.
Privacy and Data Protection	None identified at this stage.

## 7 Appendices

- 7.1 The following documents are to be published with this report and form part of the report:
- Appendix I: Contract Standing Orders

## 8 Background Papers

None

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## **Part 4.12 - CONTRACT STANDING ORDERS (CSOs)**

Approved 12 January 2011

Revised 22 October 2014 – PCR 2015

January 2016 New EU thresholds

Approved Minute 904(e) comes into force 1/1/2017

January 2018 New EU thresholds

Draft March 2018 subject to HOS / Legal / Procurement Board / SMT / GPC / Full Council

Approved Minute 558 comes into force 1/4/2018

January 2020 New EU thresholds

January 2021

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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 the best way to purchase works, supplies (goods) and services but 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, Local First Policy, Safeguarding Policy, Commissioning Framework, 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 authorities or similar bodies

where the Council is not the lead authority in which case the lead authority's Standing Orders shall prevail. For contracts involving shared services, the CSO of the lead authority in the partnership shall apply even if different from the Council's;

2.3.6 Framework Agreements providing that the Head of Mid Kent Legal Services and Finance has agreed the terms of the Framework Agreement.

2.3.7 Election expenditure under the EU/UK threshold.

### **3 General Principles Applying to All Contracts**

3.1 All orders used in connection with Contracts shall be on the Council's official order template;

3.2 The Council's standard contract clauses or other terms and conditions approved in advance by Legal and Finance, shall be used in all contracts of a value of £25,000 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 £25,000 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 Reference to the Bribery Act 2010;

3.3.10 All contracts above the relevant EU/UK threshold must contain reference to the Social Value Act, consideration of the Act should also be made in relation

to contracts below the relevant EU/UK threshold.

3.3.11 Reference to the Data Protection Act 2018.

3.3.12 All contracts with a bronze, silver or gold level of safeguarding assurance must have adequate provision to ensure that appropriate safeguarding measures are in place throughout the life of the contract.

3.3.13 Reference to the Freedom of Information Act 2000

3.3.14 Reference to the Modern Slavery Act 2015

3.3.15 Reference to the Government's Prevent requirements.

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. All procurement documentation including specifications and / or briefs / technical requirements and relevant contractual documentation need to be advertised all at the same time regardless of the procurement procedure.

3.6 All contracts of a value of £100,000 or more or which involve a substantial risk to the Council are subject to a written risk assessment, which should be kept on the contract file and updated when required.

#### **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 Council's Constitution including these Contract Standing Orders, the Council's Financial Regulations and Scheme of Delegation;

4.1.3 The Council's Purchasing Guide and other policies and procedures of the Council as appropriate;

4.2 In the event of conflict in legislation, E.U. Rules will take precedence (at the time of writing), followed by UK legislation, then the Council's Constitution, the Council's Purchasing Guide, guidelines, policies and procedures.

#### **5 Responsibilities of Directors and Responsible Officers**

5.1 Each Director / Head of Service shall:

5.1.1 be responsible for the purchasing undertaken by his / her Directorate or Service;

- 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 take immediate action in the event of breach of these Contract Standing Orders.
- 5.2 A Responsible / Lead 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 / Lead 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 £5,000 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 £25,000 or more;
  - 5.3.8 All Contracts over £25,000 will be:
    - 1. In the form approved by Legal Services;
    - 2. executed;
    - 3. a minimum of three copies of this contract are required; one to be stored in the Council's strong room; the second to be sent to the winning bidder/s and the third to be sent to the lead officer or their staff. An electronic copy of the signed / sealed contract is to be emailed to Procurement.
  - 5.3.9 that value for money is achieved;
  - 5.3.10 that a risk assessment is carried out to ascertain whether a bond or guarantee is required to protect the Council in the event of non-performance.

- 5.4 In considering how best to procure works, supplies and services, Directors / Heads of Service 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 Chief Financial Officer.
- 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 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 or Head of Service.
- 6.2 Officers shall, where appropriate, be informed by their Director or Head of Service 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. All Figures quoted in this document are exclusive of VAT.
- 7.2 There is a general presumption in favour of competition. Wherever possible, contract opportunities should be advertised by way of a public notice. At the time of writing, 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./UK 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 Find a Tender Service ( from 1 January 2021), as appropriate. The Responsible / Lead Officer may choose to place one or more public notices in different media. As a minimum any Request for Quotation or tender valued at £25,000 or above will be advertised on [www.swale.gov.uk](http://www.swale.gov.uk), the Council's E-procurement System and Contracts Finder.

7.4 Table setting out financial thresholds and procedures

Total net value (£)	Type of contract	Procedure to be used
£0 - £4999	works, supplies and services	<p><b>a) At least one quotation in advance</b>            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.            e) All consultancy spend should be in agreement with the relevant Cabinet member.</p>
£5000 - £24,999	works, supplies and services	<p><b>a) At least one quotation in advance</b>            b) One off, non-routine spend should be agreed by relevant Cabinet member.            c) Commissioning &amp; Procurement need to be made aware of any procurement where the whole life value is &gt;£5,000.            d) All purchases however small to be in writing, on an official order;            e) Approved by the relevant Head of Service or authorised officer;            f) Officer should be able to provide a rationale for why they selected the provider used;            g) Contract award details provided to procurement for publication on the contract register for transparency purposes at award stage.</p>
<p><b>Procedure to be used</b>  <b>£25,000 to</b>  <b>£99,999</b></p>	works, supplies and services	<p><b>a) Request for quotation advertised on <a href="http://www.swale.gov.uk">www.swale.gov.uk</a>, the Council's <a href="#">E-procurement System</a> and <a href="#">Contract Finder</a>;</b>            b) Spend should be agreed by relevant Cabinet member;            c) Consideration given to Purchasing Scheme's e.g. to provide better V.F.M.;            d) Financial appraisals shall be carried out by Financial Services prior to award;            e) Approved by the relevant Head of Service or authorised officer;            f) Contracts in writing using the standard clauses and to include the core clauses as set out within the CSOs document or other terms and conditions approved in advance by Legal and Finance;            g) Records maintained to demonstrate probity and V.F.M. obtained.            h) Contract award details provided to procurement for publication on the contract register for transparency purposes at award stage.</p>

<b>Procedure to be used</b> <b>£100,000 to £189,330 / €214,000**</b>	works, supplies and services	a) <b>At least three electronic tenders;</b> b) Spend should be agreed by relevant Cabinet member; c) Risk assessment conducted (in writing) and kept on the file. d) As a minimum to be advertised on <a href="http://www.swale.gov.uk">www.swale.gov.uk</a> , the Council's <a href="#">E-procurement System</a> plus <a href="#">Contract Finder</a> ; e) 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 a suitable person from Legal Services (or Nominee); f) Financial appraisals shall be carried out by Financial Services prior to award; g) Award of contract approved by the Responsible Officer plus signed by another officer; h) Contracts in writing using the standard clauses and to include the core clauses as set out within the CSOs document or other terms and conditions approved in advance by Legal and Finance; i) Record to be entered on the Council's Contract Register at award stage.
<b>Procedure to be used</b> <b>£189,330 ** plus **EU/ UK Threshold</b>	Supplies and services	a) EU Rules / Public Contract Regs apply – full competitive process with tenders following advertisement in Find a Tender Service for supplies and services, there is a presumption in favour of advertising and a competitive process. This will also be advertised on the Swale website, The Council's e-procurement system and Contract Finder; b) Points a; c; d; e; f; g; h and i as above for works, supplies and services for £100,000 to £189,330**
<b>Procedure to be used</b> <b>£189,330 to £4,733,252 / €5,350,000**</b>	Works	a) Points a – i as above for works, supplies and services for £100,000 to £189,330**
<b>Procedure to be used</b> <b>£663,540 / €750,000** Plus **EU/UK Threshold</b>	Light Touch Regime Services	a) Points a – i as above for works, supplies and services for £100,000 to £663,450**
<b>Procedure to be used</b> <b>£4,733,252 / €5,350,000** plus</b>	Works	a) EU Rules / Public Contract Regs apply – full competitive process with tenders following advertisement in Find a Tender Service. b) Points a; c; d; e; f; g; h; and i as above for works, supplies and services for £100,000 to £189,330**

\*\* or relevant threshold in force at the time under the EU Rules / Public Contracts Regs.

7.5 Where contracts are of a type and value which means that they are subject to the EU Rules / Public Contracts Regs then there are four main types of 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 procedure should be sought from Legal Services or the Procurement team.

- 7.6 Financial appraisals shall be carried out by Financial Services on all contracts over £25,000 prior to award. They shall also have a financial appraisal undertaken by financial services annually on or near the anniversary date of the contract award date
- 7.7 Contracts with a high degree of complexity or where there is a lack of knowledge in house may require the assistance of a consultant with Director or Head of Service approval.

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

- 8.1 For contracts over the relevant EU/UK 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 or Head of Service 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 / Public Contracts Regs is incorporated into the final award process.
- 8.3 All contracts valued at £100,000 or above must be reported to the Cabinet for approval and shall be executed as a deed by Legal Services, there is a 5 calendar day call in period post Cabinet, once the Minutes have been published, (usually the following Monday). All other contracts may be signed by officers with appropriate delegated authority. £99,999 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 by both the Council and the supplier in accordance with the Electronic Signature Regulations 2002. provided the sufficiency of security arrangements has been approved by the Director of Corporate Services. The Council shall use suitable, free software, such as Adobe, to create electronic signatures.

## **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 it 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 Contracts may be split into lots where it is practical to do so. However, the aggregated cost of the lots shall determine the contract's whole of life value and the procurement process to be followed. Artificial splitting of a contract to avoid the application of the procurement rules or these CSOs is not permitted. However,

should lots not be used for tenders over the EU/UK threshold, then Reg. 84 applies i.e. individual report as to why lots were not used.

- 9.3 The EU Rules / Public Contracts Regs cover contracts which are below the stated EU/UK 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 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 £100,000 using the Council's e-procurement system 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 and not displaying the name of the tenderer;
  - 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 submitted via the Council's [E-procurement System](#) or:
- 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 or Head of Service, having consulted Procurement and Legal Services, 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 £100,000 and above are to be opened in the presence of the Democratic and Electoral Services Manager (or nominee), and a suitable person from Legal Services (or Nominee).
- 11.6 An immediate record shall be made of the tenders received including names and addresses and the date and time of opening, this record to be retained by the Democratic and Electoral Services Manager and Procurement.

## **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. Evaluations shall be undertaken in accordance with the Council's evaluation procedure, P.16.
- 12.2 Tenders subject to the EU Rules / Public Contracts Regs shall be evaluated in accordance with the EU Rules / Public Contracts Regs.
- 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 the Most Economical and Advantageous Tender 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 or Head of Service, having consulted Procurement and Legal Services.

## **13 Waivers**

- 13.1 The requirement for the Council to conduct a competitive purchasing process for contracts in excess of £25,000 may be waived in the following circumstances.
- 13.1.1 For contracts which are not subject to the EU Rules / Public Contracts Regs, 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 / Public Contracts 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 Head of Service who may for contracts exceeding £25,000 but not exceeding £99,999 proceed in a manner most expedient to the efficient management of the service / Council with reasons recorded in writing.
- 13.2 A Responsible / Lead 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 £99,999 the report shall be submitted in advance to Procurement and include the reasons why the waiver is genuinely required. For contracts of £100,000 and above the report shall be submitted to the Cabinet;
- 13.3.3 Subject to agreement in advance by the Head of Commissioning, Environment and Leisure in consultation with the Head of Mid Kent Legal Services and the Chief Financial Officer as appropriate, who shall, for contracts exceeding £25,000 but not exceeding £99,999, record that they have considered the reasons for the waiver and that they are satisfied with the circumstances justifying the waiver. Waivers from competitive purchasing processes for contracts of £100,000 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, Environment and Leisure be authorised to complete the necessary documentation". Prior to Cabinet, the waiver should still be considered by the Head of Mid Kent Legal Services and the Chief Financial Officer. In the absence of the Head of Commissioning, Environment and, the Commissioning Manager has the delegated authority to record that they have considered the reasons for the waiver and that they are satisfied that the circumstances justifying the waiver and sign off waivers over £25,000 in consultation with the Head of Mid-Kent Legal Services and the Chief Financial Officer, waivers above £100,000 are subject to Cabinet approval;
- 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 / Public Contracts Regs, any waiver from the requirement for competition must meet the conditions set out in the EU Rules / Public Contracts Regs in addition to the general requirements above.
- 13.6 A waiver shall not be applied for reasons of poor contract planning.
- 13.7 A waiver may only apply to the omission/s of certain item/s therefore, the Responsible / Lead Officer will be required to follow all other criteria in CSOs other

than what has been approved and agreed in the submitted waiver.

## **14 Extensions to Existing Contracts**

- 14.1 Where extensions to existing contracts are made the extensions must be determined in accordance with the advertisement / 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, form P.24. For contracts where the extension value is not exceeding £99,999, the report shall be submitted in advance to the relevant Director or Head of Service and include the reasons why the extension is required. For contracts where the extension value is £100,000 and above the report shall be submitted to the Cabinet;
  - 14.2.3 Subject to approval in advance by the relevant Director or Head of Service who shall, for contracts where the extension value is not exceeding £99,999, record that they have considered the reasons for the extension, there is an extension option on the contract and that they are satisfied with the performance of the contract. Extensions for contracts where the extension value is £100,000 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 / Public Contracts Regs, any extension must meet the conditions set out in the EU Rules / Public Contracts Regs 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 / Public Contracts Regs (where they apply) and meets the Council's own requirements.

- 15.3 A "Purchasing Scheme" may include:
- 15.3.1 Framework arrangements (including those set up by the Cabinet Office);
  - 15.3.2 Purchasing arrangements set up by central purchasing bodies and commercial organisations;
  - 15.3.3 Consortium purchasing;
  - 15.3.4 Collaborative working arrangements;
  - 15.3.5 Formal agency arrangements;
  - 15.3.6 E-procurement / purchasing schemes and methods;
  - 15.3.7 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.
- 15.5 Prior to using any purchasing scheme / framework, the Responsible Officer / Lead Officer should consider whether the works, goods or services required can be procured locally.

## **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/UK Thresholds amended Contract Standing Orders shall be agreed and adopted by the Council. Revisions to the EU/UK Thresholds shall be dealt with in accordance with the Constitution - Scheme of Delegation to the Head of Legal Partnership. Any other modifications to C.S.O.s outside of the scope above will need to be presented to SMT, General Purposes Committee and then to Full Council for approval. Any changes in legislation C.S.O.s will be updated automatically however these C.S.O.s will be reviewed every three years to ensure that these C.S.O.s evolve with the Council's requirements.

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<b>General Purposes Committee</b>	
<b>Meeting Date</b>	16 December 2020
<b>Report Title</b>	Electronic Signatures and Document Sealing
<b>Cabinet Member</b>	Cllr Roger Truelove, Leader and Cabinet Member for Finance
<b>SMT Lead</b>	David Clifford, Head of Policy, Communications and Customer Services and Monitoring Officer
<b>Head of Service</b>	Patricia Narebor, Head of Legal Partnership
<b>Lead Officer</b>	Gina Clarke, Team Leader (Corporate Governance), Mid Kent Legal Services
<b>Key Decision</b>	No
<b>Classification</b>	<b>Open</b>
<b>Recommendations</b>	1. General purposes committee to recommend the minor amendments to the Constitution as set out in paragraph 3.1 of the report.

## 1 Purpose of Report and Executive Summary

- 1.1 To consider changes to the Council's Constitution to enable the use of mobile seals and electronic signatures.

## 2 Background

- 2.1 In recent times there has been a mounting trend towards developing a paperless working environment by making more use of electronic means of communication and document retention. As a result the use of electronic signatures became more common. The Electronic Communication Act 2000 and the Electronic Signature Regulations 2002 deal with the admissibility and authenticity of electronic signatures.
- 2.2 The current pandemic has led to further changes in working practices with a significant increase in remote working with an even greater reliance on electronic practices. In consequence it's necessary to accept and formally recognise the validity of electronic signatures on documents such as contracts, agreements, leases, deeds, minutes and resolutions when used by both the Council and those with whom it enters into a contract or other legally binding deeds and documents. HM Land Registry will, for the time being, accept for the purposes of registration the certain deeds that have been electronically signed in accordance with the Land Registry requirements.

- 2.3 In addition remote working has caused significant difficulties in affixing the Council's common seal to contracts and other deeds and documents. The Common Seal is currently located at the Legal office in Swale House in the custody of the Head of Legal Partnership in accordance with the Constitution. In the present circumstances it is necessary for two officers to physically attend the Legal office to affix and witness the affixing of the common seal. It is proposed to purchase mobile sealing devices which would be held remotely and securely in order to obviate the need for officers to attend Swale House.
- 2.4 It will not be the new practice to merely apply a JPG or PDF file of a signature to the document as this offers insufficient security. The requirements for the new software are that it is secure, reputable and effective in allowing both the council and other parties to easily sign documents with a strong audit trail to confirm who has performed the signature. Marketplace research has been conducted and there is at least one supplier who meets these requirements.

### 3 Proposals

- 3.1 Some minor amendments to the Constitution will be required in order to facilitate these changes, namely –

#### Part 4.11 Contract Standing Orders

- a) The addition of the words in italics to paragraph 8.4 of the Contract Standing Orders:

*Electronic signatures may be used by both the Council and the Supplier in accordance with the Electronic Signature Regulations 2002 provided the sufficiency of security arrangements has been approved by the Head of Policy, Communications and Customer Services and Monitoring Officer*

- b) The addition of the following additional paragraph 8.5 to the Contract Standing Orders:

*Electronic signatures will, in line with the Electronic Communication Act 2000, be accepted as a fair representation of a willingness to enter into a contract by and with the Council, insofar as the e-signature is a true representation of the authorised person's written signature and (a) and (b) below apply (to the supplier), in which case an e-signature and a signature will be referred to as the same.*

*(a) the Contract will be entered into in relation to being either under seal or under hand; and*

*(b) is supported with a contemporaneous document of authenticity and authorisation from the Supplier.*

## Part 2 – Articles of the Constitution

- c) That the additional words in italics be added at:

Article 13.5 - The Common Seal of the Council *and the mobile seals for remote use* will be kept in a safe place in the custody of the Head of Legal. A decision of the Authority, or any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal *or the mobile seal for remote use* will be affixed to those documents which in the opinion of the Head of Legal Partnership should be sealed. The affixing of the Common Seal *or the mobile seal for remote use* will be attested by the Head of Legal Partnership or some other person authorised by him/her.

## PART 3.4 – SCHEME OF OFFICER DELEGATIONS

### DELEGATIONS TO THE HEAD OF LEGAL PARTNERSHIP

These delegations are subject to the Law Society practice procedures and requirements of the Solicitors Regulation Authority.

#### General

1. Authority to sign, or, where necessary, seal, any document needed to implement a decision taken by, or in the name of, the Council, and to authorise other officers to do so and to keep a record. *Electronic signatures may be used where permitted by law and any other requirements. Electronic signatures may only be affixed using the Council's chosen electronic system or an approved alternative as agreed by the Head of Legal Partnership.*

## 4 Alternative Options

- 4.1 Leaving the Constitution unchanged which would result in the Council falling behind in the use of electronic practices and result in the continuation of the difficulties outlined in paragraph 2.3.
- 4.2 Amending the Constitution to recognise 1) the validity of electronic signatures and to allow documents to be sealed remotely without the need for attendance at the Council offices and 2) the use of mobile seals for remote use at the other MKLS offices.
- 4.3 The option at 4.2 is the preferred option as it will enable the Council to follow evolving working practices, reduce travelling by authorised signatories and aid remote working.

## 5 Consultation Undertaken or Proposed

5.1 The Senior Management Team has been consulted and support the proposals set out in this report.

## 6 Implications

Issue	Implications
Corporate Plan	None identified at this stage.
Financial, Resource and Property	None identified at this stage.
Legal, Statutory and Procurement	The Council is required by law have a Constitution and keep it up to date. A clear and effective Constitution supports the corporate priorities and reviewing the Constitution regularly ensures that it most effectively meets the needs of the Council and the public. The Constitution requires the Monitoring Officer to monitor and review the operation of the Constitution.
Crime and Disorder	There are no crime and disorder implications.
Environment and Climate/Ecological Emergency	There are no environmental, climate or ecological implications.
Health and Wellbeing	There are no health and wellbeing implications.
Risk Management and Health and Safety	There are no risk management or health and safety implications.
Equality and Diversity	There are no equality or diversity implications.
Privacy and Data Protection	There are no privacy or data protection implications.