

General Purposes Committee / Full Council	
Meeting Date	16 December 2020
Report Title	Amendments to Contract Standing Orders
Cabinet Member	Cllr Roger Truelove, Leader and Cabinet Member for Finance
SMT Lead	Emma Wiggins, Director of Regeneration
Head of Service	Martyn Cassell, Head of Commissioning, Environment & Leisure
Lead Officer	Charlotte Knowles, Commissioning Manager
Key Decision	No
Classification	Open
Recommendations	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, 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>a) At least one quotation in advance</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>a) At least one quotation in advance</p> <p>b) One off, non-routine spend should be agreed by relevant Cabinet member.</p> <p>c) Commissioning & Procurement need to be made aware of any procurement where the whole life value is >£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>Procedure to be used £25,000 to £99,999</p>	<p>works, supplies and services</p>	<p>a) Request for quotation advertised on www.swale.gov.uk, the Council's E-procurement System and Contract Finder;</p> <p>b) Spend should be agreed by relevant Cabinet member;</p> <p>c) Consideration given to Purchasing Schemes to provide better value for money.</p> <p>d) Financial appraisals shall be carried out by Financial Services prior to award;</p> <p>e) Approved by the relevant Head of Service or authorised officer;</p> <p>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;</p> <p>g) Records maintained to demonstrate probity and V.F.M. obtained.</p> <p>h) Contract award details provided to procurement for publication on the contract register for transparency purposes at award stage.</p>
<p>Procedure to be used £100,000 to £189,330 / €214,000**</p>	<p>works, supplies and services</p>	<p>a) At least three electronic tenders;</p> <p>b) Spend should be agreed by relevant Cabinet member;</p> <p>c) Risk assessment conducted (in writing) and kept on the file.</p> <p>d) As a minimum to be advertised on www.swale.gov.uk, the Council's E-procurement System plus Contract Finder;</p> <p>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);</p> <p>f) Financial appraisals shall be carried out by Financial Services prior to award;</p> <p>g) Award of contract approved by Cabinet;</p> <p>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;</p> <p>i) Record to be entered on the Council's Contract Register at award stage.</p>
<p>Procedure to be used £189,330 ** plus **EU/ UK Threshold</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;</p> <p>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>

Procedure to be used £189,330 to £4,733,252 / €5,350,000**	Works	a) Points a – i as above for works, supplies and services for £100,000 to £189,330**
Procedure to be used £663,540 / €750,000** Plus **EU/UK Threshold	Light Touch Regime Services	a) Points a – i as above for works, supplies and services for £100,000 to £663,450**
Procedure to be used £4,733,252 / €5,350,000** plus	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