

# Agenda Item 8

## Proposed Change to the Constitution

Please fill in the following form with details of any proposed changes to the Constitution. If the change is minor, it may be possible to incorporate the amendment under delegated powers. All other changes to the Constitution have to be considered by the Audit and Governance Committee and, if recommended, approved by full Council. Requests for changes will be required at least ten working days before an Audit and Governance Committee date.

All changes must be presented, preferably electronically as a word document, in arial font, size 11 and showing the tracked changes.

Once completed please pass this form to Cheryl Clark in Democratic Services.

<b>Relevant section of the Constitution (including page/paragraph number):</b>
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Part 4 Rules of Procedure: Contract Procedure Rules page 68
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<b>Description of proposed change:</b>
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<i>(please show the tracked changes here or attach as a separate word document)</i>
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See attached replacement section entitled: Appendix A - Standing Orders on Procurement and Contracts
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<b>Reason, including referenced documents/acts, for proposed change:</b>
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The current Contract Procedure Rules are to be deleted from the Constitution and replaced to reflect current legislation: the Public Contract Regulations 2015 and the Concession Contracts Regulations 2016.
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<b>Timescale:</b>
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<i>(The proposed changes will be considered at the next meeting of the Committee, if not approved under delegated powers)</i>
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CRWP 2 June 2017 Audit & Governance 27 June 2017 Full Council 26 July 2017
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Proposed by – Name: Jane Fineman, Head of Finance, Procurement & Parking  
Date: 11/05/2017

<b>Approval</b>
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<b>Proposed major changes to be submitted to Audit and Governance Committee for approval</b>
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<b>Signature of Monitoring Officer:</b>
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<b>Date:</b> 11/05/2017
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Amendment No:
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Date incorporated:
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# **Standing Orders on Procurement and Contracts**

## Standing Orders on Procurement and Contracts

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

#### 1. Scope of Standing Orders

- 1.1 These Standing Orders apply to all spend with external suppliers regardless of the source of funding (for example, revenue, capital, grants, ring-fenced government money and/or any third party funding). They apply to contracts let by the Council on its own behalf and when it is acting as a purchasing authority on behalf of others.
- 1.2 The purpose of these Standing Orders and the supporting Guide to Standing Orders is to set out and explain the Council's minimum requirements when contracting for goods, services and works. They are designed to:
  - (a) make sure we spend public money **legally** and avoid undue criticism or allegation of wrongdoing;
  - (b) secure Value for Money;
  - (c) generate market competition through transparent, fair and consistent ways of working; and
  - (d) support supplier diversity, sustainability objectives, and equality of treatment.
- 1.3 These Standing Orders do not apply to the following instances, which are managed by separate policies and guidelines:
  - (a) contracts for the acquisition or lease of land and/or real estate;
  - (b) contracts for permanent or fixed term employment (but note rules on consultants contracts);
  - (c) works or orders placed with utility companies (for example, re-routing gas pipe work);
  - (d) services to be delivered by a local authority's in-house service;
  - (e) direct payments to customers following care assessment, for example, payments provided under Self Directed Support or individual budgets; and
  - (f) non-trade payments to third parties, such as insurance claims, pension payments, statutory payments to public bodies.
- 1.4 Where the proposed contract falls within the Public Contracts Regulations 2015 (PCR 2015), those regulations apply in addition to these Standing Orders. In the event of a conflict, Legal Services shall determine which takes precedence. More detailed information on how officers can comply with Standing Orders in relation to contracts whose value exceeds the relevant PCR 2015 thresholds and therefore fall within the PCR 2015, and those whose

value is below the relevant PCR thresholds is contained in the Guide to Standing Orders.

## **2. Principles of contracting**

2.1 The Council and its officers must adhere to the following principles in carrying out all procurement activity:

- (a) procurement procedures shall be fair, transparent, and properly planned;
- (b) all bidders and prospective bidders shall be treated equally;
- (c) the objective of all procurement shall be to achieve Value for Money;
- (d) officers shall seek and comply with any advice from Legal Services and Procurement Services; and
- (e) officers shall keep appropriate records of all decisions taken and communications between the Council and bidders or prospective bidders.

2.2 It is a disciplinary offence to fail to adhere to these Standing Orders.

## **3. Authority to contract**

3.1 All Executive Directors are responsible for ensuring these Standing Orders are applied and understood across their directorates.

3.2 Executive directors must not commence or permit the commencement of a procurement process without specific delegated authority to act under the scheme of delegation, or from the relevant Cabinet Member, through a published decision or other authorised decision in accordance with the Council's Constitution.

## **4. Key responsibilities**

4.1 Executive directors shall:

- (a) be responsible and provide strategic direction for all procurement undertaken in their directorate;
- (b) ensure all procurement and delegated decision-making adheres to the Scheme of Delegation;
- (c) obtain Cabinet Member approval where required to do so by the Council's scheme of delegation before undertaking any procurement activity;

- (d) comply with the Financial Procedure rules, especially with regard to the adoption of vendors and creation of a valid purchase order;
- (e) notify and engage with Procurement and Legal Services for all proposed contracts with an estimated total value of £25,000 or more (annual value x number of years including extensions) by completing the necessary form;
- (f) nominate appropriately skilled and qualified Officers to undertake procurement activity;
- (g) ensure all sourcing decisions represent Value for Money and are within approved budgetary limits;
- (h) provide for appropriate and effective contract and supplier relationship management for all contracts under their responsibility; and
- (i) ensure sufficient funds are available/approved for relevant procurement and contracting activity and allocate appropriate funds in their budget.

### 4.2 **Officers** shall:

- (a) manage the procurement process in compliance with these Standing Orders, the PCR 2015 and the Council's internal systems and processes for commissioning and procurement;
- (b) ensure they have adequate information to support and justify all commissioning and procurement activity;
- (c) seek appropriate advice and support from their Executive Director, Procurement and Legal Services and Financial Services;
- (d) conduct all tendering activity in a fair, transparent and non-discriminatory manner;
- (e) devise a procurement plan that is efficient and suitable for the purchase and the market concerned, taking into account any other relevant sourcing options, such as the use of existing contracts and frameworks; and
- (f) maintain a full record and audit trail of all procurement activity (the 'Procurement File'), including decisions made and communication with suppliers.

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

### **Strategic sourcing**

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

### **Supplier relationship management**

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

### **Procurement operations**

- (a) transactional, operational and administrative procurement activity; and
- (b) the use and operation of an electronic tendering system.

- 4.4 **The Officer** shall take advice from Legal Services:

- (a) on all legal, regulatory and constitutional aspects of the procurement process; and
- (b) concerning the content and form of any contract before it is made available to bidders and/or to be entered into on behalf of the Council.

## **Section 2: Pre-procurement Activity**

### **5. Options appraisal**

- 5.1 The Officer shall ensure that the appropriate sourcing approach is adopted in each case taking into account the budget allocation, the needs of the Council and its services users and residents, the nature of the market and other commercial considerations.
- 5.2 In considering a sourcing approach for services contracts, the Officer shall consider and record on the Procurement File how the sourcing approach might improve the economic, social and environmental well-being of the Borough of Tunbridge Wells.
- 5.3 The Officer shall ensure a report on the sourcing decision is included in the Procurement File and clearly referenced in any decision to approve commencement of the procurement.

### **6. Market testing and engagement**

- 6.1 The Officer shall determine the sourcing approach based on:
  - (a) any available views from service users and other stakeholders;
  - (b) consultation or testing with the relevant market;
  - (c) current performance and future objectives for the product or service;
  - (d) budgetary limits; and
  - (e) the existence of other public contracts and Framework Agreements which might be suitable for the Council to use.
- 6.2 The Council's Procurement and Legal Services functions shall provide professional support in carrying out all market engagement exercises and the Officer shall comply at all times with such guidance.
- 6.3 Where the nature of the services could fall into a Concession arrangement, please consult Procurement or Legal Services for additional advice on the most appropriate process to follow.



### Section 3: Procurement Procedures, Advertising, Publication of Award Notices

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

7.1 The procedures which must be used to award specific types of contract are set out below.

	Goods, services contracts valued at or above the EU Threshold* (Section 4, rule 8 & 9 below)	Goods, services contracts valued between £100,000 and the EU Threshold* (Section 5, Rule 13)	Goods, services and works contracts valued between £15,000 and £99,999 (Section 5, Rule 14)	Contracts valued below £15,000 (Rule 15)	Schedule 3 (Light Touch) contracts at or above the EU Threshold* (Section 4, Rule 10)
<b>Advertising</b>	Mandatory - on OJEU, Contracts Finder and Kent Business Portal	Publish on Contracts Finder and Kent Business Portal.	If the Council has advertised the contract on the Kent Business Portal, it must also be advertised on Contracts Finder.	n/a unless KBP used	Mandatory – on OJEU, Contracts Finder and Kent Business Portal
<b>Award notice</b>	Mandatory - on OJEU and Contracts Finder	Mandatory – on Contracts Finder	Mandatory - on Contracts Finder	n/a unless KBP used	Mandatory - on OJEU and Contracts Finder
<b>Procedures</b>	One of the procedures mandated by PCR 2015; or use a framework agreement	OJEU; or Contracts Finder; or use a framework agreement	Three quotations required, one of which should be from a suitable local company, where feasible; or use a framework agreement, if suitable	Two quotations required, one of which should be from a suitable local company, where feasible; or use a framework agreement, if suitable	Procedure devised by the Legal department and the Procurement department in compliance with regulation 76, PCR 2015 and detailed in the Guide to Standing Orders

\*Thresholds are amended every two years. Current thresholds are available from Procurement, Legal Services or found in the Guide to Standing Orders

- 7.2 If during the course of a procurement an issue arises upon which these Standing Orders are silent or incomplete, the Officer shall refer the matter to Legal and Procurement Services.

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

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

- 8.1 Contracts which exceed the EU Thresholds set out in the PCR 2015 must be advertised on the OJEU by publishing a Contract Notice or, where advised, a Prior Information Notice (PIN) as a call for competition.
- 8.2 The Officer must take advice from Procurement and Legal Services before publishing any document on OJEU.
- 8.3 All contracts which are advertised on OJEU must also be advertised on Contracts Finder within 24 hours of the time the Council becomes entitled to post it, that is after either:
- (a) it appears on OJEU;
  - (b) it has not appeared but 48 hours have elapsed from the time the EU Publications Office confirmed receipt of the notice to the Council.
- 8.4 All Procurement Documentation must be available from the time the Contract Notice is published on OJEU. Therefore, no advertisement should be placed until the Procurement Documentation is complete. The Officer must ensure the Contract Notice includes a specified location where interested parties can electronically access all Procurement Documentation.
- 8.5 The Council may use a Prior Information Notice (PIN) as a call for competition when using the restricted or competitive procedure with negotiation (see Guide to Standing Orders).
- 8.6 The Officer is responsible for ensuring all Contract Notices and publications on Contracts Finder are published in accordance with these rules.

### **9. Procurement procedures**

- 9.1 For public contracts equal to or greater than the EU threshold, the Council shall:
- (a) advertise the contract on OJEU using one of the procurement routes mandated by the PCR 2015; or
  - (b) where appropriate and lawful, use an existing contract or Framework Agreement which was procured in compliance with the PCR 2015.

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

Social care, education services and other services which are listed in

Schedule 3 to the PCR 2015 are subject to the PCR 2015. However, the Council is not obliged to use one of the procedures listed in the PCR 2015 to award these contracts. Instead, the procurement procedure must comply with the principles of regulation 76 of the PCR 2015 (commonly referred to as the 'light touch regime' – see Guide to Standing Orders). The Officer shall take advice from Procurement and Legal Services on the most appropriate approach.

## **11. Contracts reserved for social enterprises and the employee-owned sector**

11.1 The Officer may reserve participation in procurement processes for limited types of services contracts to certain qualifying organisations from the employee ownership and voluntary sectors. The maximum duration of contracts awarded under this power is three years (see Guide to Standing Orders).

11.2 The Officer must obtain written approval from the Legal services before commencing a procurement in reliance on this Standing Order.

## **12. Use of negotiated procedure without prior publication of an OJEU notice for above EU threshold contracts**

In the limited circumstances listed in regulation 32 of the PCR 2015 (see Guide to Standing Orders), the Council may dispense with a Contract Notice and engage in negotiations with a single supplier under the negotiated procedure. The Officer must receive written authorisation from the Legal services before using this procedure.

\*Thresholds are amended approximately every two years. Current thresholds are available from Procurement, Legal Services or found in the Guide to Standing Order.

## **Section 5: Contracts below the EU Thresholds**

### **13. Contracts valued between £100,000 and EU thresholds**

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

- (a) competitive procurement process advertised on OJEU and Contracts Finder, and the Kent Business Portal;
- (b) competitive procurement process advertised on Contracts Finder and The Kent Business Portal; or
- (c) use of contract or Framework Agreement procured by another contracting authority.

13.2 The Responsible Officer must devise a fair and transparent sourcing route

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

### **14. Contracts with a value between £15,000 and £99,999**

14.1 When awarding a contract valued between £15,000 and £99,999 the Officer must:

- (a) use one of the procurement routes set out in Standing Order 13; or
- (b) with the prior written approval to tender of the relevant Executive Director, obtain 3 written tenders or quotes from reputable suppliers where the Officer can demonstrate sufficient knowledge of the market to be reasonably certain that such an approach would elicit submissions representing Value for Money. At least one of these submissions should be from a local supplier where feasible.

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

## **Section 6: Contracts with a value of less than £15,000**

### **15. Contracts with a value of less than £15,000**

When awarding a contract with a value of less than £15,000 the Officer must:

- (a) use one of the procurement routes set out in Standing Order 13; or
- (b) with the prior written approval to tender of the relevant Executive Director, obtain 2 written tenders or quotations from reputable suppliers where the Officer can demonstrate sufficient knowledge of the market to be reasonably certain that such an approach would elicit submissions representing Value for Money. At least one of these submissions should be from a local supplier where feasible.

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

### **16. Consultancy contracts**

- 16.1 Before engaging a Consultant or for other specialist professional, the Officer must refer to, and ensure compliance with, the Council's Procurement Policy on Buying Consultancy Services and the related documents: Guide to Buying Consultancy and the HR Policy on the Use of Self-Employed Consultants.
- 16.2 All such engagements of an aggregate value of £100,000 or more must be competitively tendered. Where any corporate contract or arrangement is approved and established for the buying of consultancy or specialist professional services, these must be used for sourcing all such contracts whatever the aggregate value of the contract.
- 16.3 Contracts for all other interim staff covering existing staff positions and all temporary or agency staff must be sourced through the Council's corporate temporary staffing contract, unless permitted otherwise in writing by the Head of Human Resources.

### **17. Framework agreements**

- 17.1 All Framework Agreements for contracts with a value above relevant thresholds set out in the PCR 2015 shall be awarded in accordance with the PCR 2015.
- 17.2 Framework agreements valued at below the relevant EU Threshold shall be awarded in accordance with these Standing Orders.
- 17.3 Officers shall consult Procurement and Legal Services before using a framework agreement set up by another contracting authority and the validity of the framework and its contractual terms must be approved by Legal Services.

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

- 18.1 The value or estimated value of all contracts to be procured must be properly assessed to determine whether or not they meet particular thresholds set out in these Standing Orders and under the PCR 2015.
- 18.2 The value of all contracts which may have a value which meets or exceeds the relevant EU Threshold shall be assessed in accordance with the PCR 2015 (see Guide to Standing Orders for details).
- 18.3 The value of all other contracts shall be the value:
  - 18.3.1 net of VAT;
  - 18.3.2 including the maximum possible extensions and renewals;

- 18.3.3 in the case of a framework agreement, the maximum estimated value of all the contracts to be awarded during the term; and
- 18.3.4 inclusive of any potential spend through the contract concerned by other contracting authorities.

### **19. Lots**

- 19.1 For every procurement relating to a contract which exceeds the EU Threshold, the Responsible Officer must:
  - 19.1.1 consider whether the contract should be sub-divided into and procured in lots;
  - 19.1.2 provide reasons for any decision not to subdivide into lots, which shall be included in the Procurement Report; and
  - 19.1.3 comply with the PCR 2015 in the manner in which it requires tenderers to bid for lots (see Guide to Standing Orders for full details).

## **Section 8: Standing to Contract and Award Criteria**

### **20. Use of Selection Questionnaires (SQ)**

- 20.1 The Officer shall apply minimum standards of experience, reputation and economic standing to suppliers to test their suitability to bid for a Council contract. For contracts above EU thresholds suitability is usually tested by means of a SQ.
- 20.2 All the methods and criteria used for assessing the suitability of suppliers shall be transparent, objective and non-discriminatory.
- 20.3 The Officer must use the SQ provided by the Government and adhere to its statutory guidance for all procurements of contracts above the relevant EU Threshold.
- 20.4 The Officer shall not use a SQ for contracts with a value less than the OJEU threshold.

20.5 The following table provides a summary of the rules on the use of SQs:

<b>Contract type and value</b>	<b>Rules on use of SQs</b>
Contracts up to £25,000	SQs must not be used
Contracts valued between £25,000 and the EU Goods and Services Threshold whether for goods, services or works	Use of SQ prohibited. The Council may only ask Candidates suitability assessment questions which are relevant to the subject-matter of the procurement and proportionate having regard to any guidance issued by the Cabinet Office
Contracts at or above the EU goods and services Threshold for goods and services, or the EU Threshold for works	The Council must adhere to the guidance issued by the Cabinet Office on qualitative selection (see Guide to Standing Orders). The Council shall adopt the standard SQ without deviation
Contracts above the EU Threshold for goods and services but: For works contracts, below the EU Threshold for works contracts	Officers shall either use the Standard SQ or an alternative means of assessing tenderers' suitability which has been agreed by Procurement & Legal Services

## 21. Eligibility to bid

- 21.1 Suppliers who fail to meet all of the Council's minimum standards of reputation, technical ability, experience or economic and financial standing as specified in the SQ and accompanying documents shall be excluded from the procurement process.
- 21.2 Where the supplier is being excluded because one of the exclusion grounds in regulation 57 of the PCR 2015 applies (see Guide to Standing Orders), but provides evidence in support of its reliability despite the existence of a relevant ground of exclusion, the Officer must consider that evidence and determine whether to exclude that supplier.
- 21.3 The Officer shall consult with Legal Services before reaching any decision under Standing Order 21.2.

## 22. Assessing past experience and financial standing

- 22.1 The Officer shall ensure suppliers' past experience and technical ability are assessed, for all contracts.
- 22.2 When assessing the suppliers' financial standing, the Officer shall not require prospective tenderers to have an annual turnover of more than twice the estimated contract value, unless otherwise agreed with Legal Services.

- 22.3 Only those suppliers who meet the Council's minimum requirements of economic and financial standing and technical and professional ability shall be invited to participate in a tender process or awarded the contract.
- 22.4 All assessment of supplier's financial standing must be conducted by the Council's Finance team (or such other service unit designated from time to time to undertake this activity).

### **23. Award criteria**

- 23.1 The Officer shall adopt award criteria which are fair, transparent, proportionate and appropriate to the subject matter of the contract (see Guide to Standing Orders).
- 23.2 The Officer shall award the contract to the most economically advantageous tender, being the tender that represents best Value for Money applying the award criteria.
- 23.3 The Officer shall adopt evaluation methodologies that are robust, have been tested to ensure they are appropriate for the procurement in question, and transparent (see Guide to Standing Orders).

## **Section 9: Tendering Procedure**

### **24. Opening tenders**

- 24.1 All tenders undertaken must be conducted through the Council's mandated e-tendering portal except as permitted in these Standing Orders or with the prior written approval of the Head of Finance & Procurement and Legal Services.
- 24.2 Where the Officer permits the receipt of tenders outside of the Council's mandated e-tendering portal, the Officer must ensure that all the tenders received are opened:
  - 24.2.1 after the deadline for receipt of tenders has expired; and
  - 24.2.2 at the same time by two members of staff: one from the directorate seeking the tenders and one on behalf of Legal Services;
  - 24.2.3 after they are opened, the tenders must be listed in the tender register and the list must be signed by both persons who witnessed the opening of the tenders.

### **25. Contract award**

- 25.1 All contracts shall be awarded in accordance with the criteria set out in the Procurement Documents.
- 25.2 For contracts with a value at or above the EU Thresholds, the Officer shall



adhere to the contract award procedures set out in the PCR 2015 and observe a standstill period before entering into the contract. The standstill period will normally end at midnight at the end of the tenth day after the date the Council sends notice to the tenderers, electronically or by fax, that it has made an award decision (see Guide to Standing Orders).

## **26. Correction of errors and late tenders**

26.1 All tenders must comply with the conditions set out in the Procurement Documents. Tenderers should be advised that any failure to adhere to the specific rules applicable to the tender in question could result in their tender being rejected.

26.2 The Officer may reserve the right in the Procurement Documents to accept late submissions or documents forming part of the tender at the Council's discretion, for example, where:

26.2.1 the delay was caused by a mistake or failure of the Council; or

26.2.2 the submission in question is affected by external factors which could not have been foreseen or avoided.

26.3 The Tender Response Policy of Tunbridge Wells Borough Council should be adhered to for the avoidance of doubt in these circumstances.

26.4 In all cases, the Council shall adhere to the rules it established in the Procurement Documents and document any decision to permit a late or corrected tender.

26.5 The following authorisation must be obtained before a Officer can accept a late or corrected tender from Procurement and Legal.

## **27. Clarifications raised by suppliers**

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

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

## **28. Evaluation**

28.1 The Executive Director shall appoint evaluators who have the necessary skills and experience to undertake the role.

28.2 Procurement and Legal Services shall provide appropriate guidance, advice

and support on all aspects of tender evaluation and the Officer shall have regard to all such guidance.

## **29. Conflicts of interest**

- 29.1 All Executive Directors shall ensure that officers involved in procurement processes in their directorates are familiar with the Guidance on Propriety and Official Conduct for Officers
- 29.2 Any officer involved in a procurement shall:
  - 29.1.2 comply with the all relevant policies and codes of conduct provided by the Council for Officers; and
  - 29.2.2 disclose in writing to their Executive Director or Legal Services any direct or indirect, financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of a procurement procedure.
- 29.3 Where an officer discloses such a conflict of interest the Executive Director shall, in consultation with Legal Services make arrangements to allocate the role to another person and shall consider whether any changes to the procurement process should be made to address any issues arising from the conflict.
- 29.4 Any officer involved in a procurement shall take appropriate measures to ensure competition is not distorted where a Candidate or Tenderer, or an undertaking related to that Candidate or Tenderer, has advised the Council on the procurement in question or been involved in the preparation of the procurement.

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

### **30. Form of contract**

- 30.1 For contracts valued at £15,000 or less, the relevant Executive Director can choose to accept the supplier's standard terms, provided that such terms are fair and reasonable in the circumstances and provide Value for Money. The form of contract must be recorded in its final agreed form and shall contain, as a minimum the items required by Standing Order 31.1.
- 30.2 Legal Services are responsible for providing or approving all forms of contract with a value exceeding £15,000, unless agreed in writing from the relevant Executive Director.
- 30.3 All contracts with a value exceeding £5,000 must be written or in an electronic form capable of providing a permanent record of the intentions of the parties to the contract.
- 30.4 Where contract terms are to be published by the Council in connection with

any competitive tender or single tender process, the Officer must ensure that the proposed form of contract has been approved by Legal Services before it is made accessible to Tenderers or any other external interested party.

- 30.5 The Officer shall ensure that an electronic copy of every concluded contract shall be provided to Procurement and Legal Services for entry onto the Council's Contract Register and shall ensure that appropriate arrangements are made for the safe storage of original contract documents. With regard to the options available for the safe storage of original contract documents the Officer shall seek advice from Legal Services, if required.
- 30.6 The Council may require the completion of a performance bond or parent company guarantee for any contracts as may be specified by Legal Services in relation to a particular procurement.

### **31. Specifications**

- 31.1 The Officer shall ensure the specification for the contract:
- 31.1.1 clearly and effectively sets out the obligations on the supplier to deliver to the Council's requirements;
  - 31.1.2 complies with the requirements of the PCR 2015 in respect of technical specifications; and
  - 31.1.3 is legally enforceable, taking advice from Legal Services where necessary.

### **32. Mandatory clauses**

The Officer or Legal Services, as the case may be, shall be responsible for ensuring that every contract awarded by the Council with a value over £5,000 includes the mandatory requirements set out in this section 10.

### **33. General clauses**

- 33.1 Every contract must clearly specify:
- 33.1.1 the services, goods or works to be provided together with applicable standards and performance level;
  - 33.1.2 the price to be paid, with a statement of discounts and other deductions, including any Value Added Tax payable and any provisions for price variations, whether by indexation or other means;
  - 33.1.3 the duration of the contract including any specific dates by which any aspects are to be performed, together with any possible extensions of the contract term. Contracts should not normally exceed five years, or seven years with extensions, but contracts may be set for longer periods where the relevant industry practice, or partnership arrangements to be entered into, make it in the

interests of the Council to do so. The Head of Procurement and Legal Services must be consulted on any business case for proposing a contract term longer than 7 years and the reasons for doing so must be recorded in the Procurement Document; and

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

## **34. Insurance levels**

- 34.1 Every contract must clearly specify that the supplier shall hold and maintain for the duration of the term of the contract where the relevant type of cover is applicable the following levels of insurance cover for each single incident:

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

- 34.2 Legal Services may specify higher levels of insurance cover as they deem fit for particular contracts or types of contracts and may also agree to lower levels of insurance cover provided the Officer provides an account of the reasons for the lower level of cover and includes an assessment of risks associated with the contract.

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

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

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

35.1.2 commits an offence under the Bribery Act 2010; or

35.1.3 commits any of the offences listed in regulation 57(1) of the PCR 2015.

## **36. Termination for breach of regulation 73**

- 36.1 For contracts above the EU Threshold, the contract shall provide that the Council shall have the right to terminate the contract if any of the provisions

of regulation 73(1) of the PCR 2015 apply. These are where:

- 36.1.1 the contract has been subject to a substantial modification which required a new procurement procedure to be started;
- 36.1.2 at the time of contract award, one of the mandatory exclusion criteria in regulation 57 applied and the supplier should therefore have been excluded from the procurement procedure; or
- 36.1.3 the ECJ or any competent court has held that the contract should not have been awarded to the contractor in view of a serious infringement of the obligations under the EC Treaty and the PCR 2015.

## **37. Prevent**

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

## **38. Payment terms**

- 38.1 Every contract shall provide that the Council shall pay its supplier 30 days from receipt of an undisputed invoice.
- 38.2 The contract shall also provide that the Council's that the Council's suppliers shall pay their sub-contractors within a maximum of 30 days of receipt of an undisputed invoice.
- 38.3 The Officer must obtain the agreement of the Head of Procurement and Legal Services for any deviation from the 30 day standard payment terms set out in this paragraph 38, such agreement to be recorded in writing as a Payment Exception.

## **39. Execution of the contract**

- 39.1 All contracts shall be signed but not sealed unless they must be signed under seal in accordance with this Standing Order 39.
- 39.2 The following contracts shall be signed under seal:
  - 39.2.1 certain contracts involving land transactions; and
  - 39.2.2 contracts with a value of £75,000 or more.
- 39.3 The relevant Executive Director shall be permitted to sign all contracts not required to be sealed.
- 39.4 Legal Services shall execute all contracts which are required to be executed by the Council as a deed under seal and may execute all simple contracts not

required to be sealed.

## **40. Certification of the contract**

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

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

41.1 The Executive Director shall ensure that there are in place arrangements that will monitor and actively address any concerns with:

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

41.1.2 costs and Value for Money; and

41.1.3 service user or end user satisfaction.

41.2 Where a contract is to be extended or re-tendered, the Executive Director shall ensure that a report on the performance of the contract is prepared to inform any decision regarding the extension or lessons learnt for re-tendering.

41.3 The Executive Director shall ensure Officers comply with guidance updated by the Council from time to time on effective contract and supplier relationship management.

## **Section 11: Varying and Extending Contracts**

### **42. Variations to contracts**

Legal Services shall advise any officer as to whether a particular variation is subject to the PCR 2015 and can be entered into.

### **43. Authority to vary a contract**

Subject to Standing Order 42, all contract variations must be approved in accordance with Standing Order 3 (Authority to Contract).

### **44. Extensions and renewals**

44.1 Contracts subject to the PCR 2015 can only be extended where expressly provided for in their terms, or as otherwise permitted by the PCR 2015.

44.2 Contracts with a value below the EU Threshold can be extended only where

expressly provided for in their terms.

44.3 All contract extensions or renewals must be approved as follows:

44.3.1 if the value of the extension is less than £100,000, by the Executive Director; or

44.3.2 if the value of the extension is £100,000 or more, by Legal Services and the Director of Finance.

44.4 In determining how a contract extension or renewal shall be approved in accordance with paragraph 44.3, the Officer shall not disaggregate or otherwise sub-divide any known spend during the period of any such extension or renewal with a view to avoiding obtaining the approvals referred to in paragraph 44.3.2.

44.5 The Extension of Contracts Policy of Tunbridge Wells Borough Council should be adhered to for the avoidance of doubt in these circumstances.

## **Section 12: Disclosure, Transparency and Record Keeping**

### **45. Electronic availability of documents**

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

### **46. Duty of confidentiality owed to suppliers**

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

### **47. Publication of contract award notices in the Official Journal**

The Officer shall ensure that a Contract Award Notice is published on OJEU for all procurements subject to the PCR 2015 in accordance with those regulations.

### **48. Publication of contract award notices on Contracts Finder**

The Officer shall ensure that a Contract Award Notice is published on

Contracts Finder for all contracts with a value of £25,000 or more. This Standing Order 48 applies to all contracts including contracts let under Framework Agreements, whether or not that Framework Agreement was itself advertised on Contracts Finder or anywhere else.

## **49. Debriefing tenderers**

For contracts valued at or above the EU Threshold, the Officer shall ensure that all Candidates and Tenderers are offered debrief information during the procurement process, in accordance with regulation 55 of the PCR 2015, and at contract award, in accordance with regulation 86 of those regulations.

## **50. Procurement Report**

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

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

50.2.1 the subject-matter and value of the contract, Framework Agreement or dynamic purchasing system;

50.2.2 where applicable, the results of the qualitative selection and reduction of numbers under regulations 65 and 66, namely:

- (a) the names of the selected Candidates or Tenderers and the reasons for their selection;
- (b) the names of the rejected Candidates or Tenderers and the reasons for their rejection;
- (c) the reasons for the rejection of tenders found to be abnormally low;
- (d) the name of the successful tenderer and the reasons why its tender was selected and, where known the share (if any) of the contract or Framework Agreement which the successful tenderer intends to subcontract to third parties, and the names of the main contractor's subcontractors (if any);
- (e) for competitive procedures with negotiation and competitive dialogues, the circumstances as laid down in regulation 26 which justify the use of those procedures;
- (f) for negotiated procedures without prior publication, the circumstances referred to in regulation 32 which justify the use of this procedure;
- (g) where applicable, the reasons why the contracting authority



has decided not to award a contract or Framework Agreement or to establish a dynamic purchasing system;

(h) where applicable, the reasons why means of communication other than electronic means have been used for the submission of tenders; and

(i) where applicable, conflicts of interests detected and subsequent measures taken.

50.3 The Officer shall maintain an electronic Procurement File containing sufficient information to justify decisions taken at all stages of the procurement such as documentation on:

50.3.1 communications with suppliers and internal deliberations;

50.3.2 preparation of the procurement documents;

50.3.3 dialogue or negotiations, if any; and

50.3.4 selection and award of the contract.

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

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

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

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

51.1 Procurement and Legal Services shall, jointly, be responsible for determining any requests to waive these Standing Orders on behalf of the Section 151 Officer and Monitoring Officer.

51.2 Any request to waive Standing Orders shall be set out in writing with clear reasons why the waiver is necessary and proportionate.

51.3 No waiver of Standing Orders can be made if it would contravene the PCR 2015 or any other applicable legislation.

51.4 No waiver can be granted retrospectively.

51.5 All waivers to these Standing Orders must be reported in writing to Procurement and Legal Services for logging in the register maintained for this purpose.

51.6 For contracts valued at less than the relevant EU Threshold, the procuring officer may obtain a tender from a single contractor:

- 51.6.1 where the reasons provided to the Procurement and Legal Services explain why the services, goods or works can only, or most satisfactorily be provided by that contractor; or
- 51.6.2 where a statutory undertaker has an exclusive statutory right to provide the relevant goods, services or works.
- 51.7 The procuring officer must ensure that any contractors invited to submit a tender under Standing Order 51.6 meet the Council's minimum requirements under Standing Order 22.

## Annex A: Glossary

Candidate	An economic operator that has sought an invitation or has been invited to take part in a restricted procedure, a competitive procedure with negotiation, a negotiated procedure without prior publication, a competitive dialogue or an innovation partnership.
Consultant	An individual or company commissioned to do a short term, and clearly defined piece of specialised work, with clear outcomes where the work is project based, outside business as usual and there is a defined end point for the Consultant's involvement.
Contract Award Notice	A notice containing the information set out in regulation 86 of the PCR 2015, for above EU Threshold contracts, and regulation 112 for below EU Threshold contracts.
Contract Notice	A notice advertising a public contract on OJEU.
Contracts Finder	A Government website on which all public contracts over a minimum threshold must be advertised.
ERDF	Means the European Regional Development Fund.
Framework Agreement	An agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded in a given period, in particular with regard to price and, where appropriate, the quality envisaged (regulation 33(2), PCR 2015).
FOIA	The Freedom of Information Act 2000.
ITCI	Invitation to confirm interest.

## Appendix A

Key Decision	An executive decision, which is likely: <ul style="list-style-type: none"> <li>to result in the Council incurring expenditure which is greater than £500,000 or which is otherwise significant having regard to the Council's budget for the service or function to which the decision relates; or</li> <li>to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in West Sussex.</li> </ul>
OJEU	Official Journal of the European Union, where all public contracts which exceed the EU Thresholds must be advertised.
PCR 2015	Means the Public Contract Regulations 2015 as amended and in force from time to time.
PQQ	Means a pre-qualification questionnaire.
Procurement Documents	Any document produced or referred to by the Council to describe or determine elements of the procurement or the procedure, including the: <ul style="list-style-type: none"> <li>Contract Notice (or PIN where it has been used as a call for competition)</li> <li>Technical specifications</li> <li>Descriptive document</li> <li>Proposed conditions of contract</li> <li>Formats for the presentation of documents by candidates and tenderers</li> <li>Information on generally applicable obligations</li> <li>Any additional documents.</li> </ul>
Procurement File	The record of each procurement that the Council must maintain in accordance with regulation 84(7)-(9) of the PCR 2015.
Procurement Report	The report that the Council is obliged to maintain in respect of each procurement of a contract valued at or above the relevant EU Threshold under regulation 84(1) of the PCR 2015 (see Standing Order 13.5).
Officer	The person or persons charged by the Executive Director to conduct a procurement process, or to participate in or lead a team of officers assembled for that purpose or dealing with a variation to a contract as the context requires.
Scheme of Delegation	The Council's formal written scheme of delegation in force and as amended from time to time.

## Appendix A

Value for Money	<p>The optimal use of resources to achieve the intended outcomes taking into account:</p> <ul style="list-style-type: none"><li>(a) Economy: minimising the cost of resources used or required (inputs), i.e. spending less;</li><li>(b) Efficiency: the relationship between the output from goods or services and the resources to produce them, i.e. spending well; and</li><li>(c) Effectiveness: the relationship between the intended and actual results of public spending (outcomes), i.e. spending wisely.</li></ul>
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