

## **PART 3G     Contracts Standing Orders 2019/20**

### **Definitions**

- 'Aggregation' is the combining together of the total spend from separate contracts where they meet a single requirement for works, goods or services.
- 'Appropriate Officer' is the Chief Executive, Strategic Directors, Director, City Solicitor, the Chief Financial Officer (S151 Officer) or any other officer designated by resolution of the Executive.
- 'Authorised Officer' is any officer permitted by an Appropriate Officer to authorise orders and contracts as per clause 2.5.
- 'Best Value for Money' is the optimum combination of whole life costs, quality and benefits, including economic, environmental and social value to meet the customer's requirement.
- 'Bradford District' is the geographical area administered by the Council.
- 'Call Off' is a separate purchase from an existing framework agreement that creates a binding contract.
- 'Contract' means a formal agreement between the Council and any Supplier for:
  - the supply of works, goods or services including consultants
  - a call-off from a framework agreement
  - an arrangement where no payment is made but there is financial value to the Supplier e.g. a catering concession

For the purposes of these Contracts Standing Orders this definition does not include employment and property contracts or grant agreements.

- 'Contracts Finder' is the government portal for information on public sector contracts
- 'Contract Value' is, for goods, supplies or services the total monetary value over the full duration, including any extension options (not the annual value), for concession contracts, or other contracts with low, or nil cost to the Council the total pecuniary value must be considered.
- 'Contracts and Grants Register' the Council's database of all contracts, commissioned activity, purchase orders, framework agreements, and other legally enforceable agreements with a value exceeding £5,000 and grants of any value.
- 'Controlled Entities' a subsidiary company of the Council where the Council exercises control similar to that over its own departments, the subsidiary carries

out at least 80% of its activity for the Council and there is no direct participation of private capital.

- 'Corporate Contract' is an agreement procured in consultation and for the benefit of more than one Council department. More details can be found on Bradnet <http://intranet.bradford.gov.uk/working-day/corporate-contracts>.
- 'Council' means the City of Bradford Metropolitan District Council.
- 'DPS or Dynamic Purchasing System' is an electronic process for commonly used purchases that are generally available and is open throughout the contract period to any new supplier that meets the selection criteria.
- 'Electronic Auction' is a process whereby suppliers who have submitted admissible tenders can revise their original prices or values during the period of the auction.
- 'EU Procurement Rules' are the Directives and Regulations implemented in the UK to set out the law on public procurement.
- 'EU Thresholds' the financial threshold at which the EU Procurement rules are applicable.
  - As of 1<sup>st</sup> January 2018 these are: Works (maintenance and construction) £4,551,413 and Services and Supplies £181,302.
  - Social, Health and some other services have a threshold of £615,278.
- 'Exception to Competition Log' a record held by the Director of Finance of all contracts over £25,000 in value awarded without competition because the contract meets one or more of the requirements listed in CSO 9.1.
- 'Framework Agreement' an agreement which sets out the terms and conditions under which the Council can make specific purchases ("call-off") from a Supplier(s) to provide services, goods or works at agreed standards and prices. If the Council calls off services, goods or works from the Supplier then a binding contract comes into place.
- 'Grant' for the purposes of these Contracts Standing Orders means a formal agreement giving financial assistance to an individual or organisation to assist in meeting its general purpose or objectives but where the specific supply of goods, works or services is not required in return. There may be award criteria, performance targets and conditions on how the money is spent and Officers should monitor these in accordance with the terms of the grant agreement.
- 'Light touch regime' applies to social, health and some other services as listed in Schedule 3 of the Public Contracts Regulations.

- 'Local Supplier' is any supplier that provides works, goods or services from a location within the Bradford District or where a substantial number of any employees working directly on the contract are resident in the Bradford District.
- 'Officer' means employee(s) of the Council.
- 'OJEU' is the Official Journal of the European Union which is the publication in which all tenders from the public sector above relevant financial thresholds must be published.
- 'Public Service Mutual' an organisation which has left the Council parent body but continues to deliver public services. Mutuals are organisations in which employee control plays a significant role in their operation.
- 'Purchasing Card' the business equivalent of personal credit card that can be used for in store, on line or over the phone for legitimate Council purchases. Purchasing Cards are issued to and registered to individual Officers.
- 'Quotation' a formal written offer to execute works, or provide services or supplies at a stated price.
- 'Sheltered workshop' an organisation that employs a proportion of disadvantaged or disabled workers which allows the supplier to be eligible to bid for certain types of contracts which can be specifically reserved to organisations meeting the criteria.
- 'SIRO' Senior Information Risk Owner is the person with overall accountability and responsibility for information governance.
- 'Supplier' an individual or organisation that contracts with the Council to provide works, goods or services.
- 'Tender' a formal written offer to execute works, or provide services or supplies at a stated price
- 'TUPE' means the Transfer of Undertakings (Protection of Employment) Regulations 2006.
- 'Whole Life-Cycle Costs' is an estimate of the total costs of works, goods or services over their life. It is a combination of the purchase price, implementation and operating costs, procurement and contract management costs, disposal costs less any residual value.
- 'YORtender' is the procurement portal used by the Council ([www.yortender.co.uk](http://www.yortender.co.uk))

## **1 Introduction**

- 1.1 The purpose of Contract Standing Orders is to set clear rules by which the Council spends money on works, goods and services. The rules apply to any contract or grant that results in payment being made by the Council.
- 1.2 Public procurement must be undertaken in accordance with principles enshrined in EU and national legislation. The Council must always act to promote competition and to ensure that each procurement is conducted as an open, transparent and fair competition. The Council must avoid practices which may restrict or distort competition.
- 1.3 All amounts quoted in these Standing Orders are exclusive of recoverable VAT.
- 1.4 Any dispute or difference as to the interpretation of these Standing Orders shall be resolved by the City Solicitor.
- 1.5 The Director of Finance shall undertake a formal review of Contract Standing Orders on an annual basis which will be reported to the Governance and Audit Committee.

## **2 Compliance**

- 2.1 Failure to comply with these Contract Standing Orders can result in disciplinary action against the officers concerned.
- 2.2 Every contract made by or on behalf of the Council for works, goods and services and all Council employees engaged to act in any capacity to manage or supervise a contract must comply with;-
  - EU Procurement Directives
  - All relevant statutory provisions including the Public Contracts Regulations 2015, competition law and Public Services Acts (e.g. Social Value, Care Act 2014)
  - The Council's Constitution including these Contracts Standing Orders, the Council's Financial Regulations and the Council's Procurement policies
  - The Council's strategic objectives and policies
- 2.3 All Council Officers and organisations engaged on the Council's behalf shall ensure that all procurement activity is undertaken with regard to high standards of probity and in a manner which avoids any conflicts of interest. The Council's Employee Code of Conduct must be followed at all times.
- 2.4 In applying these Contracts Standing Orders, all officers shall have regard to the duty of Best Value under the Local Government Act 1999.
- 2.5 Within limits specified by him/her, an Appropriate Officer may permit other officers to authorise orders and contracts in their own names on behalf of the

Council. Any orders or contracts made shall remain the responsibility of an Appropriate Officer. Appropriate Officers must maintain an up to date record of authorised officers and submit a copy of the list of the Director of Finance on an annual basis at the commencement of the financial year.

- 2.6 The Director of Finance may delegate some, or part of their responsibilities set out in these Contracts Standing Orders to Officers in their service area.
- 2.7 All orders for works, goods or services must be placed using the Council's approved systems in advance of the invoice being received and coded to the appropriate account codes.
- 2.8 Miscellaneous payments must only be used where the payment is not as a result of a purchase (for example a refund or grant payment). Miscellaneous Payments must not be used to:
- Pay suppliers for goods, works or services (including fees in relation to consultancy work and training), or
  - To reimburse employee expense claims or petty cash purchases
- 2.9 Non-compliance with Council's procedures and processes for the use of its requisition, ordering and payment systems may result in the Director of Finance removing Officer access.
- 2.10 These Contracts Standing Orders must be used, other than in exceptional circumstances and following authorisation by either:
- 2.10.1 The Executive after considering a report by an Appropriate Officer; or
- 2.10.2 An Appropriate Officer obtains the agreement of the Chief Financial Officer and the City Solicitor. The Appropriate Officer must retain written reasons of the decision.
- 2.11 Authorisation under Standing Order 2.10.2 will be reported to Governance and Audit Committee on a quarterly basis.
- 2.12 All Appropriate Officers are responsible for ensuring compliance by their staff and shall report all breaches to the Director of Finance.

### **3 Social, Economic, Environmental and Ethical Considerations**

- 3.1 In formulating proposals for a contract, the Authorised Officer must consider the Public Services (Social Value) Act and follow requirements set out in the Council's Social Value and Inclusive Growth Policy.
- 3.2 Where appropriate and always subject to EU law and Public Contract Regulations, the Authorised Officer should ensure tenders or quotes are framed in such a way to encourage local suppliers, small and medium sized companies (SME's) and third sector organisations such as social enterprises to bid. This may include dividing the contract into lots.

## **4 Pre-Contract Requirements for all Contracts**

- 4.1 After Council has agreed the Council's budget and before commencement of the financial year the Authorised Officer must prepare and maintain an annual procurement plan for all contracts with an estimated value greater than the EU Threshold for supplies and services, and then consult the Director of Finance.
- 4.2 The procurement of works, goods or services should be done through existing approved arrangements where they exist. These include:
- In-house provision
  - Corporate contracts, framework agreements or DPS
- 4.3 Other arrangements should be considered and used where it can be evidenced that they provide best value for money:
- Contracts, framework agreements or DPS established by central purchasing bodies (Crown Commercial Services, YPO etc.) or other public body
  - Collaborative or shared service arrangements with another public body
  - Alternative delivery vehicles such as Controlled Entities (Teckal) or Public Service Mutuals
  - Sheltered workshops
  - Other approved e-procurement solutions (e.g. purchasing cards)
- 4.4 Where the Council has an in-house provision and the estimated contract value is less than the EU Threshold for supplies and services external suppliers can only be used when the Appropriate Officer providing such in-house provision confirms that they are unable to meet the requirements on that occasion due to insufficient resources, skills or capacity.
- 4.5 If the estimated contract value is more than the EU Threshold for supplies and services the Appropriate Officer providing such in-house service may also be required to clearly demonstrate that they provide best value for money.
- 4.6 All procurement processes will be proportionate to the total value of the contract (see Table 1), the nature of the works, goods or services and the Council will produce clear accessible documentation which must be available in electronic format.
- 4.7 Before inviting tenders or quotations, the Authorised Officer must:
- 4.7.1 for contracts with a total estimated contract value in excess of £2m report details to the relevant Overview and Scrutiny Committee using the standard Committee report template. Reports are to be taken at an early stage once officers have a draft procurement strategy and specification to allow members to consider the matters in 4.7.2, 4.7.7, 4.7.8 and 4.7.10. For clarity, details of call-off contracts from a framework or DPS do not need to be separately reported providing the

original framework has been reported except where the relevant Overview and Scrutiny Committee request a separate report.

- 4.7.2 have carried out, where appropriate pre-procurement engagement with the market (including talking to suppliers, clients and other stakeholders) to understand the availability, strengths and weaknesses of markets and to develop the specification and the best value for money procurement and contractual approach. Pre-engagement with the market must be done in such a way that ensures the subsequent procurement process remains open, fair and transparent with no supplier gaining an unfair advantage which would distort competition.
- 4.7.3 Before commencing any process for procuring contracts with an estimated value in excess of the EU Threshold for supplies and services or any process which involves a proposed service transfer or the development of a strategic partnership, the Authorised Officer must consult the Director of Finance.
- 4.7.4 consider whether a framework agreement, DPS or electronic auction is appropriate and would deliver best value for money seeking advice from the Director of Finance where necessary.
- 4.7.5 be satisfied that a written and clear specification has been prepared which will form the basis of the contract.
- 4.7.6 for all contracts with an estimated annual cost of more than the EU Threshold for supplies and services, or a total value more than the EU Threshold for supplies and services (if the contract is for less than 1 year), or where there is a significant supply risk (identified using a procurement risk assessment form available on Bradnet) a documented risk log must be maintained.
- 4.7.7 consider at the outset any equality and diversity implications that may require an equality impact assessment to be undertaken.
- 4.7.8 consider at the outset any TUPE implications.
- 4.7.9 identify all contracts involving the processing of personal data, information security or data processing implications that may require additional schedules or terms and conditions considering the General Data Processing Regulation, the Data Protection Act, and the need to notify the SIRO.
- 4.7.10 consider at the outset any implications from the Social Value Act.
- 4.7.11 prepare and document an estimate of the whole life-cycle costs including where appropriate any on-going costs and/or disposal costs and ensure that the cost is within the approved current and future budget provision for both capital and revenue expenditure

- 4.7.12 ensure that all evaluation criteria including sub-criteria have been determined in advance, put in order of relative importance or weighting and published in the tender documentation. Selection criteria must be relative and proportionate following statutory guidance issued by the Secretary of State.
- 4.7.13 ensure that electronic versions of all the appropriate and approved forms of procurement documentation is available through an internet portal immediately on publication of any advert.
- 4.8 Before entering into any contract, the Authorised Officer must:
  - 4.8.1 be sure that they have the necessary authority to enter into the contract and that these Contracts Standing Orders, the Council's Financial Regulations and procurement advice have been complied with, and that the proposed contract represents best value for money
  - 4.8.2 be satisfied about the technical capability of such proposed Supplier; and
  - 4.8.3 where a significant supply risk has been identified (in accordance with CSO 4.7.6 and for all contracts which exceed £100,000pa, or £100,000 (if the contract is for less than 1 year) for the procurement of works or goods consult with the Chief Financial Officer to agree appropriate checks on the financial and resource capacity of the Supplier to perform the contract and to agree what, if any, security should be provided for performing the contract. Forms of security include such as: parent company guarantee, Director's guarantee and performance bonds.
- 4.9 Authorised Officers are responsible for arrangements to ensure the proper control and use of Council ordering and contracting procedures, in accordance with guidance issued by the Chief Financial Officer and the City Solicitor.
- 4.10 All quotations and tenders must be undertaken using the Council's standard template documentation unless prior approval has been obtained from the Director of Finance.

## **5 Contracts under £25,000**

- 5.1 The Authorised Officer must be able to demonstrate best value for money and must invite quotes using local suppliers where the supply base is available. All quotations must be in writing.
- 5.2 Officers shall retain a written record of actions taken and the reasons.
- 5.3 Invitations to quote of £5,000 or above must use the Council's procurement portal, YORtender and all contracts of £5,000 or above must be recorded on the Contracts and Grants Register.



## **6 Contracts between £25,000 and the EU Threshold for Supplies and Services**

6.1 The Authorised Officer must either:

6.1.1 for contracts worth less than £100,000 seek written quotations by selecting suppliers registered on YORtender and inviting 4 local suppliers where there is a local supply base available, or

6.1.2 for contracts worth more than £100,000 seek written quotations by selecting suppliers registered on YORtender by inviting 6 suppliers to quote, including at least 4 local suppliers where there is a local supply base, or

6.1.3 advertise an open invitation to tender using both YORtender and Contracts Finder.

6.2 If the minimum number of quotations or tenders cannot be obtained owing to insufficient suitable suppliers prepared to quote or provide tenders, then the Authorised Officer must keep a record of this.

6.3 No pre-qualification questionnaire is permitted during the procurement stage. Suitable assessment questions to assess eligibility are part of the Council's template procurement documents. Only the winning bidder(s) will be required to submit certificates and documents as evidence of their legal and financial standing and technical or professional ability in addition to specific requirements relating to insurance, health and safety, equality, environmental management etc.

## **7 Contracts over the EU Threshold for Supplies and Services**

7.1 Where the contract value is likely to exceed the EU threshold, taking account of the rules of aggregation, it must be tendered in accordance with the relevant EU procurement rules, unless this rule is through an existing framework or DPS agreement that has been established via a compliant EU procurement process.

7.2 Suppliers must be appointed by one of the procedures under Contract Standing Order 8.

7.3 All tenders shall be advertised and available for download on the YORtender system and Contracts Finder. Standard template documentation must be used.

7.4 All tenders above the relevant EU threshold must be advertised in the OJEU.

## **8 Procurement Procedures**

8.1 The **open procedure** under which all those interested may respond to the advertisement by submitting a tender. This is often the most expedient and enables all of the suppliers in the market that wish to engage in the process to

submit a tender. There is no pre-qualification questionnaire (PQQ) or short-listing stage prior to invitation to tender (ITT).

- 8.2 The **restricted procedure** under which a selection is made of those who respond to the advertisement and only they are invited to submit a tender. This procedure can only be used for tenders above the EU threshold for supplies and services.
- 8.3 The following procedures apply to more strategic, complex or high value projects and must be done in consultation with the Director of Finance as there are limited circumstances under which these process can be used.
- 8.4 The **competitive dialogue procedure** under which a selection is made of those who respond to the advertisement and the Council enters into dialogue with potential bidders to develop one or more suitable solutions on which the chosen bidders submit a tender. This can be used where the contract is complex and cannot be purchased “off the shelf”.
- 8.5 The **competitive procedure with negotiation** under which a selection is made of those who respond to the advertisement and only they are invited to submit a tender. The Council may then open negotiations to seek improved offers.
- 8.6 The **innovation partnership procedure** under which a selection is made of those who respond to the advertisement and the Council uses a negotiated approach to invite suppliers to submit innovative ideas to meet a need where there is no suitable existing “product” on the market. The partnership can be awarded to more than one supplier.
- 8.7 For contracts procured under the Light Touch Regime the Director of Finance must be consulted and the Authorised Officer must ensure that principles of transparency and equal treatment are observed.

## **9 Exceptions to Requirements of Competition**

- 9.1 Subject to:
- The statutory requirements for procurement processes above EU thresholds,
  - The Authorised Officer obtains the approval of the Director of Finance that an exception to the requirements of competition is appropriate for a contract with a value of more than £25,000,
  - That the market for a proposed contract has been investigated, and
  - That the Authorised Officer can demonstrate that departure from these Rules is justifiable and provides overall value for money

No competitive procurement process is required where one or more of the following exceptions apply:

- 9.1.1 the purchase of proprietary or patented goods or materials or services which, are obtainable only from one supplier, and where no reasonably satisfactory alternative is available;
- 9.1.2 the execution of works or the supply of goods or services are controlled by a statutory body;
- 9.1.3 the execution of works or supply of goods or services are of a specialised nature which, are carried out by only one supplier, and where no reasonably satisfactory alternative is available;
- 9.1.4 the execution of works or supply of goods or services for which it can be demonstrated that no genuine competition can be obtained;
- 9.1.5 the purchase of a named product required to be compatible with an existing installation;
- 9.1.6 procurements made through or on behalf of any consortium, local authority, statutory or similar body provided that tenders or quotations are invited and contracts placed in accordance with national or EU legislation;
- 9.1.7 obtaining work or supplies from the Industrial Services Group or other in-house service provider;
- 9.1.8 special education, health or social care contracts, if, it is considered in the Council's interests and to meet its obligations under relevant legislation;
- 9.1.9 the execution of works or the supply of goods and services that are required so urgently as not to permit compliance with the requirements of competition. However these should be immediately reported to the Director of Finance;
- 9.1.10 carrying out, with the approval of the Chief Financial Officer, security works where the publication of documents or details in the tendering process could prejudice the security of the works to be done.
- 9.2 The Authorised Officer must retain written reasons justifying the decision to use Standing Order 9.1 and be able to demonstrate that best value for money has been obtained.
- 9.3 Any contract worth more than £25,000 awarded using an exception to competition shall be notified to the Director of Finance who will record the contract in the "Exceptions to Competition Log".

## **10 Submitting and Opening Tenders and Quotations**

- 10.1 Every invitation to tender or request for a quotation must state that a tender or quotation will only be considered if it is received by the specified closing date

and time via YORtender, or for quotes below £5,000 at the specified date and time.

- 10.2 All tenders or quotations for each contract must be opened by officers appointed by the Authorised Officer at a prescribed time.
- 10.3 The Authorised Officer must keep a record of all tenders and quotations.
- 10.4 The Authorised Officer shall after consultation with the Director of Finance disqualify a tender or quotation which fails to comply with the requirements of this Contracts Standing Order (10) and must return the tender or quotation to the tenderer or quotation provider stating the reason for the disqualification.

## **11 Errors in Tenders and Quotations**

- 11.1 Prior to acceptance of any tender or quotation received, any arithmetic error or other minor discrepancy made in good faith can be corrected by the City Solicitor after consultation with the Authorised Officer in one of the following two ways:
  - 11.1.1 The tenderer shall be given details of the error(s) found during the examination of the tender and shall also be given the opportunity of confirming without amendment or withdrawing the tender; or
  - 11.1.2 Amending the tender to correct genuine arithmetic error(s) provided that in this case, apart from these genuine arithmetic errors, no other adjustment, revision or qualification is permitted.
- 11.2 A written record must be kept of all such amendments.

## **12 Post Tender and Quotation Negotiations**

- 12.1 In the interests of ensuring an open, fair and transparent process, negotiation following receipt of tenders is only permissible in limited circumstances.
- 12.2 No negotiation is permitted following receipt of final tenders where the tender was subject to EU procurement rules.
- 12.3 The Authorised Officer may, after consulting with the Director of Finance, and where it is intended to obtain better value for money, authorise negotiations with one or more tenderers or quotation providers where s/he considers that none of the tenders or quotations are acceptable and it is in the Council's interests to do so.
- 12.4 Negotiation on behalf of the Council should be conducted by two or more Authorised Officers and a written record kept of the negotiation.

## **13 Accepting Tenders and Quotations**

- 13.1 Prior to accepting a tender or quotation the Authorised Officer must evaluate all tenders and quotations received in accordance with the evaluation criteria issued with the tender documentation.
- 13.2 The Authorised Officer can only accept the most economically advantageous tender or quotation and must record the reasons for acceptance.
- 13.3 The Authorised Officer must investigate any tender considered to be abnormally low.
- 13.4 All suppliers who submit a tender or quotation should be notified in writing of their success or failure in a timely manner using the standard documents and offered feedback.
- 13.5 For all tenders covered by the EU procurement rules, the minimum statutory standstill period is required between notification of the award decision and final contract award.
- 13.6 All contracts over £5,000 must be awarded on the YORtender system and all contracts over £25,000 must also be awarded on Contracts Finder. All contracts above the EU threshold must also be published in OJEU.
- 13.7 For every contract, contract extension, framework or DPS agreement over £100k in total value, then the Authorised Officer must submit a written report to the Director of Finance which includes details of:
  - the winning bid,
  - the suppliers involved,
  - results of any selection process,
  - the value and subject matter of the contract,
  - justification for using any negotiated type procedure,
  - any decision not to award,
  - reasons for not using electronic communications,
  - any conflict of interest,
  - reasons for rejecting abnormally low bids.

## **14 Contract Extensions, Variations, Novation or Termination**

- 14.1 The Authorised Officer can extend a contract by any value subject to the extension being permitted within the scope and terms of the original procurement and contract and before the expiry date.
- 14.2 An options appraisal must be undertaken to determine if it represents best value for money to extend the contract and any approval required must be sought in a timely manner.
- 14.3 The Authorised Officer must make every effort to negotiate improved terms with regard to the cost and quality of the goods or services.

- 14.4 No extension shall be made until funding has been secured in accordance with the Council's Financial Regulations or any other similar requirement.
- 14.5 All contract variations must be carried out within the scope of the original contract and must not materially affect or change the contract.
- 14.6 A new procurement will be required if the proposed variation has a material change where one or more of the following are met;
- 14.6.1 the variation introduces new conditions which had they been part of the original procurement procedure would have allowed other candidates to be selected to bid or the contract to be awarded to another tenderer
- 14.6.2 the variation changes the economic balance in favour of the Supplier
- 14.6.3 the variation extends the scope of the contract considerably
- 14.7 Variations with a value of more than £5,000 to contracts procured in accordance with these Contract Standing Orders, which are not within the scope of the original contract may, if the relevant EU Threshold is not exceeded be permitted where one of the following applies:
- A change in supplier cannot be made for economic or technical reasons such as interoperability or compatibility with existing services or equipment, or
  - A variation to an existing contract is necessary due to unforeseen circumstances.

Such variations must be approved by:

- 14.7.1 the Assistant Director of the Service if the value of the variation is less than 25%, or the revised, total contract value is less than £100k,
- 14.7.2 the Strategic Director of the Department if the value of the variation is greater than 25%, or the revised total contract value exceeds £100k, or
- 14.7.3 the Chief Financial Officer if the value of the variation is greater than 50% and the total value of the contract then exceeds £100k.
- 14.8 For works contracts variations must be managed in accordance with the relevant works contract clause(s), and by no later than the next periodic valuation of the works reported in accordance with 14.7.1 to 14.7.3 above.
- 14.9 In the event that a Supplier ceases to provide the work, goods or services whether as a result of insolvency, company restructuring, company purchase, termination of the contract or any other reason then the Authorised Officer must consult with the Director of Finance before novating or assigning the contract to a new Supplier.

- 14.10 Before commencing a process of terminating a contract with a Supplier for a breach of contract the Authorised Officer must consult the Director of Finance.

## **15 Written Contracts**

- 15.1 The Authorised Officer must ensure every contract is in writing.

- 15.2 Every contract with a contract value of £100,000 or more must be executed under seal as a Deed with the common seal of the Council by the City Solicitor where:

- the Council wishes to enforce the Contract for more than 6 years after its end (e.g. for land or construction works); or
- it is required by parties to the Contract; or
- the price paid or received under the Contract is a nominal price and does not reflect the value of the goods/services; or
- the City Solicitor deems it necessary taking into account the nature of the contract

- 15.3 Otherwise the following rules for signature apply:

- any contract with a total value over £2 million must be signed by an Appropriate Officer
- any contract with a total value less than £2 million must be signed by a 3<sup>rd</sup> tier Manager or above, except
- where the total contract value is less than £100,000 and more than £25,000 in which case an Authorised Officer can sign within the limits specified by an Appropriate Officer as per contract standing order 2.5.

- 15.4 All contracts with the exception of one-off purchases below £5,000 must be recorded on the Contracts and Grants Register.

## **16 Professional Services, Consultants and Intermediary Employment**

- 16.1 An Authorised Officer may only appoint external consultants providing professional or consulting services if such services are not available within the Council or if Council officers providing them do not have the resources to meet the needs of the Authorised Officer. Approval of the Consultancy and Contractor Procurement Process must be obtained before seeking quotes or tenders.

- 16.2 Inline with HMRC IR35 and CIS rules the Authorised Officer must consider guidance available on Bradnet and identify the employment status of the Supplier for tax purposes for the contract entered into, and notify the Director of Finance. Although not a definitive list, Suppliers providing works or services in instances must be considered:

- Services delivered personally by the Supplier
- Consultancy work
- Self employed contractors or suppliers
- The engagement of a worker through a limited company or other body
- The use of a Personal Services Company
- The engagement of a CIS registered contractor

16.3 For contracts identified as being within the scope of the IR35 payments can only be made in compliance with IR35 legislation.

16.4 The Authorised Officer must consult the Director of Finance for all Construction Industry Scheme (CIS) contractor appointments and payments.

## **17 Contract Conditions**

17.1 The Council's Standard terms and conditions should be entered for all contracts. Any exception must be agreed in consultation with the City Solicitor and the Director of Finance.

17.2 The above rule shall not apply to:

- UK government standard documentation or government sponsored schemes such as Academies and amendments may be made for best value for money or project specific reasons.
- Construction and/or engineering contracts where bespoke conditions based on accepted industry practice are used e.g. JCT, NEC or ICE.

## **18 Contract Management**

18.1 The Authorised Officer is responsible for contractual spend over the duration of a contract, and must scrutinise and challenge supplier performance, costs and progress, and must take appropriate measures and sanctions to improve supplier poor performance.

18.2 The Authorised Officer must ensure that contract specifications contain suitable key performance indicators to incentivise appropriate service delivery and to highlight poor performance.

18.3 The Authorised Officer must undertake suitable due diligence checks of a Supplier's technical and organisational measures to fulfil their obligations as Data Processors under the General Data Protection Regulation.

## **19 Leases and Other Credit Agreements**

19.1 The Authorised Officer must ensure that prior to entering into any lease or credit arrangement which has a capital cost, the cost must first be approved for inclusion in the Capital Investment Plan in accordance with Financial Regulations relating to capital expenditure.



## **20 Grants**

- 20.1 The Authorised Officer must follow the Council's principles, processes and template documents as appropriate for awarding grants prior to entering into any grant arrangements.
- 20.2 Before awarding any grant with an estimated value in excess of £100,000, the Authorised Officer must consult the Director of Finance.
- 20.3 All grant agreements shall be recorded in the Contract and Grant Register.

## **21 Payment Outside of Standard Procure to Pay Procedures**

- 21.1 The Director of Finance will make payments on account only on certificates (or other forms approved by the Chief Financial Officer) which have been issued by the Authorised Officer, or the Architect/Engineer/Supervising Officer appointed to deal with a particular contract.
- 21.2 An Authorised Officer may where there has been written agreement with the Director of Finance (setting out the parameters) make purchases and payments via a Purchasing Card. Purchasing Cards must only be used in accordance with the Council's Purchasing Card Compliance Policy, any exception to the Policy must be agreed in advance with the Director of Finance.
- 21.3 The Director of Finance will withdraw the use of Purchasing Cards should the above not be complied with. Instances of non-compliance can result in disciplinary action in accordance with CSO 2.1.
- 21.4 Payment for goods, works and services are not to be made in advance of delivery other than in a low contract value and low risk situation that has been agreed in writing with the Appropriate Officer.

## **22 Claims**

- 22.1 The Authorised Officer must inform the City Solicitor of all claims by or against suppliers which are the subject of formal dispute resolution or litigation between the Council and the supplier.

## **23 Contracts Where Members Have an Interest**

- 23.1 Members shall ensure that all procurement activity which is undertaken has regard to high standards of probity and in a manner which avoids any conflict of interest. The Members' Code of Conduct must be followed at all times.

TABLE 1

Value Band	Total Contract Value	Procurement Options	Additional procedures
1	£0 - £24,999	<b>CSO Sections 4 and 5</b> <ul style="list-style-type: none"> <li>• Must demonstrate value for money</li> <li>• Must use in-house or corporate contract</li> <li>• Must use local supplier if available</li> <li>• Consider using purchasing card for low value, low risk purchases</li> <li>• Invite one or more quotes if appropriate</li> </ul>	<ul style="list-style-type: none"> <li>• All quotes in writing</li> <li>• Use YORtender for quotes over £5,000</li> <li>• All contracts over £5,000 to be entered on the Contracts &amp; Grants Register</li> </ul>
2	£25,000 - EU Threshold for Supplies and Services	<b>CSO Sections 4 and 6</b> <ul style="list-style-type: none"> <li>• Must use in-house or corporate contract</li> <li>• Consider availability of an existing suitable framework or DPS arrangement (call-off)</li> <li>• Consider if exception to competition applies</li> <li>• &lt;£100k; seek minimum of four quotes inviting local suppliers if available</li> <li>• &gt;£100k; seek minimum of six quotes, inviting at least four from local suppliers if available</li> <li>• Formal tender process</li> </ul>	<ul style="list-style-type: none"> <li>• All quotes in writing</li> <li>• Use YORtender for quotes or formal tender</li> <li>• &gt;£100k Complete briefing note for contract award and extensions</li> <li>• All contracts to be entered on the Contracts &amp; Grants Register</li> </ul>
3	Above EU Threshold for Supplies and Services	<b>CSO Sections 4 and 7</b> <ul style="list-style-type: none"> <li>• Must use in-house or corporate contract</li> <li>• Consider availability of an existing suitable framework or DPS arrangement (call-off)</li> <li>• Consider if exception to competition applies</li> <li>• Formal tender process</li> <li>• Full EU tender process with advert published in OJEU in accordance with thresholds</li> </ul>	<ul style="list-style-type: none"> <li>• All proposed contracts must be referred to Finance and Procurement</li> <li>• Complete Procurement Risk Assessment Form</li> <li>• Use YORtender for formal tender</li> <li>• Complete briefing note for contract award and extensions</li> <li>• All contracts to be entered on the Contracts &amp; Grants Register</li> <li>• Report to Overview &amp; Scrutiny for contracts over £2million</li> </ul>