



# **MIDDLESBROUGH BOROUGH COUNCIL**

## **FINANCIAL AND CONTRACT PROCEDURE RULES (STANDING ORDERS)**

# Financial Procedure Rules

## INTRODUCTION

The financial policies of the Council are set out in these regulations. They apply to every councillor and officer of the Authority and anyone acting on its behalf.

Separate financial regulations are to be issued in accordance with the Fair Funding Scheme which will apply to Governing Bodies, Head Teachers and staff of schools with delegated budgets. These will be appended to the Fair Funding Scheme document.

These regulations identify the financial responsibilities of:

- the full Council;
- the Executive;
- scrutiny committees;
- councillors;
- the Head of Paid Service;
- Monitoring Officer;
- Chief Finance Officer; and
- Executive Directors and Assistant Directors (in these regulations jointly referred to as “Other Chief Officers”).

The Head of Paid Service and all officers should maintain a written record where decision making has been delegated to members of their staff, including seconded staff. Where decisions have been delegated or devolved to other responsible officers, such as school governors, references to the Assistant Director in the regulations should be read as referring to them.

All councillors and staff have a general responsibility for taking reasonable action to provide for the security of the assets under their control, and for ensuring that the use of these resources is legal, is properly authorised, provides value for money and achieves best value.

## 1. THE FULL COUNCIL

1.1 The full Council is responsible for adopting the Authority’s Constitution and Members’ Code of Conduct and for approving the policy framework and budget within which the Executive operates. It is also responsible for approving and monitoring compliance with the Authority’s overall framework of accountability and control. The framework is set out in its Constitution. The full Council is also responsible for monitoring compliance with the agreed policy and related decisions.

1.2 The full Council is responsible for approving procedures for recording and reporting decisions taken. This includes those key decisions delegated and decisions taken by the Council and its committees. These delegations and details of who has responsibility for which decisions are as set out in the Constitution.

## 2. THE EXECUTIVE

2.1 The Executive is responsible for proposing the policy framework and budget to the full Council, and for discharging Executive functions in accordance with the policy framework and budget.

- 2.2 Executive decisions can be delegated to a committee of the Executive, an individual Executive member, an officer or joint committee.
- 2.3 The Executive is responsible for recommending protocols to ensure that individual Executive members consult with relevant officers before taking a decision within their delegated authority. In doing so, the individual member must take account of legal and financial liabilities and risk management issues that may arise from the decision.

### **3. COMMITTEES OF THE COUNCIL**

#### Overview and Scrutiny Committees

- 3.1 Overview and scrutiny committees are responsible for scrutinising Executive decisions before or after they have been implemented and for holding the Executive to account. Overview and scrutiny committees are also responsible for making recommendations on future policy options and for reviewing the general policy and service delivery of the Authority.

#### Standards Committee

- 3.2 The Standards Committee is established by the full Council and is responsible for promoting and maintaining high standards of conduct amongst councillors. In particular, it is responsible for advising the Council on the adoption and revision of the Members' Code of Conduct, and for monitoring the operation of the code.

#### Other Regulatory Committees

- 3.3 Planning, conservation and licensing are not Executive functions but are exercised through multi-party Planning and Development and Licensing Committees under powers delegated by the full Council. The Planning and Development and Licensing Committees report to the full Council.

### **4. THE STATUTORY OFFICERS' RESPONSIBILITIES**

#### Head of Paid Service

- 4.1 The Head of Paid Service is responsible for the corporate and overall strategic management of the Authority as a whole. S/he must report to and provide information for the Executive, the full Council, scrutiny committees and other committees. S/he is responsible for establishing a framework for management direction, style and standards and for monitoring the performance of the organisation. The Head of Paid Service is also responsible, together with the Monitoring Officer, for the system of record keeping in relation to all the full Council's decisions.

#### Monitoring Officer

- 4.2 The Monitoring Officer is responsible for promoting and maintaining high standards of conduct and therefore provides support to the Standards Committee. The Monitoring Officer is also responsible for reporting any actual or potential breaches of the law or maladministration to the full Council and / or to the Executive, and for ensuring that procedures for recording and reporting key decisions are operating effectively.
- 4.3 The Monitoring Officer must ensure that decisions and the reasons for them are made public. They must also ensure that Council members are aware of decisions

made by the Executive and of those made by officers who have delegated responsibility.

- 4.4 The Monitoring Officer is responsible for advising all Members and officers about who has authority to take a particular decision.
- 4.5 The Monitoring Officer is responsible for advising the Executive or full Council about whether a decision is likely to be considered contrary to or not wholly in accordance with the policy framework.
- 4.6 The Monitoring Officer, together with the Chief Finance Officer, is responsible for advising the Executive or full Council about whether a decision is likely to be considered contrary to or not wholly in accordance with the budget. Actions that may be 'contrary to the budget' include:
  - initiating a new policy;
  - committing expenditure in future years to above the budget level;
  - incurring inter-service transfers above virement limits; or
  - causing total expenditure financed from council tax, grants and corporately held reserves to increase, or to increase by more than a specified amount.

#### Chief Finance Officer

- 4.7 The Chief Finance Officer is the corporate officer with statutory responsibility in relation to the financial administration and stewardship of the Authority. This statutory responsibility cannot be overridden. The statutory duties arise from:
  - Section 151 of the Local Government Act 1972;
  - The Local Government Finance Act 1988;
  - The Local Government and Housing Act 1989;
  - The Accounts and Audit Regulations 1996;
  - The Local Government Finance Act 1992;
  - The Local Government Act 2000; and
  - The Local Government Finance Act 2012.
- 4.8 The Chief Finance Officer is responsible for:
  - the proper administration of the Authority's financial affairs;
  - setting and monitoring compliance with financial monitoring standards;
  - advising on the corporate financial position and on the key financial controls necessary to secure sound financial management;
  - providing financial information;
  - preparing the revenue budget and capital programme;
  - treasury management, pension and trust funds; and
  - providing advice on the safeguarding of assets including risk management and insurance.
- 4.9 The Chief Finance Officer shall be responsible for setting and monitoring standards. This involves links with professional staff throughout the Council but does not interfere with normal line management arrangements. The Chief Finance Officer reserves the right to be involved in the appointment of all staff employed in posts designated as requiring a qualified accountant or auditor, wherever located.

- 4.10 The Chief Finance Officer is responsible for maintaining a continuous review of the financial regulations and submitting any additions or changes necessary to the Executive and for approval to the full Council. The Chief Finance Officer is also responsible for reporting, where appropriate, breaches of the financial regulations to the Council and / or the Executive.
- 4.11 The Chief Finance Officer is responsible for issuing advice and guidance to underpin the financial regulations that members and officers and others acting on behalf of the Authority are required to follow.
- 4.12 The Chief Finance Officer shall, in compliance with section 114 of the Local Government Finance Act, 1988, report to the full Council, Executive and external auditor if the authority or one of its officers:
- has made or is about to make a decision which involves or would involve the Council in incurring expenditure which is unlawful;
  - has taken or is about to take a course of action which, if pursued to its conclusion would be unlawful and likely to cause a loss or deficiency on the part of the Council; or
  - is about to enter an item of account, the entry of which is unlawful.
- and the Chief Finance Officer shall also make a report if it appears that the expenditure proposed by the Council in a financial year is likely to exceed the resources available to meet that expenditure.
- 4.13 Section 114 of the Local Government Finance Act, 1988 also requires the Chief Finance Officer to nominate a properly qualified member of staff to deputise should they be unable to perform the duties under Section 114 personally. The Authority shall provide the Chief Finance Officer with sufficient staff, accommodation, and other resources, including legal advice where necessary, to carry out the duties under Section 114.
- 4.14 In order to comply with all statutory duties and with the requirements and instructions of the Council, the Chief Finance Officer shall be given access to any information as is necessary.
- 4.15 The Chief Finance Officer shall approve all financial procedures, records, systems and accounts operated throughout the Council including any changes which are subsequently proposed.
- 4.16 The Chief Finance Officer is responsible for advising on effective systems of internal control. These arrangements need to ensure compliance with all applicable statutes and regulations, and other relevant statements of best practice. They should also ensure that public funds are properly safeguarded and used economically, efficiently and in accordance with the statutory and other authorities that govern their use.
- 4.17 The Chief Finance Officer shall have the power to make technical amendments from time to time to make these Financial Procedure Rules consistent with legal requirements, changes in Council structure and personnel and best practice after approval of the Corporate Management Team.

#### **OTHER CHIEF OFFICERS' RESPONSIBILITIES**

- 5.1 Other Chief Officers are responsible for ensuring that all members of staff in their Service are aware of the existence and content of the Authority's financial regulations

and other internal regulatory documents and that they comply with them. They must also ensure that an adequate number of copies are available for reference within their Service.

- 5.2 Prior to introducing, amending or discontinuing any arrangements, guidelines and procedures for the proper administration of the financial affairs of a Service, Other Chief Officers shall confer with the Chief Finance Officer.
- 5.3 Other Chief Officers are responsible for ensuring that Executive members are advised of the financial implications of all proposals and that the financial implications have been agreed with the Chief Finance Officer.
- 5.4 Other Chief Officers shall consult the Chief Finance Officer on any matter within their responsibility which is liable materially to affect the finances of the Council, before any commitment is incurred and before submitting policy options or recommendations.
- 5.5 With regard to any report or information for members of the public which relates to budget planning and / or monitoring or upon which policy decisions or consultation are to be based, Other Chief Officers are responsible for ensuring the Chief Finance Officer is consulted about any information to be included concerning the finances of the Council, its services and activities. The Chief Finance Officer is to be given adequate time to comment in advance of the agenda / deadline date. If an Other Chief Officer, having regard to the Chief Finance Officer's views, does not wish to amend the report, the Chief Finance Officer may require inclusion of his comments within the report before it is finalised.
- 5.6 Reports shall only be submitted jointly by an Other Chief Officer and the Chief Finance Officer if the Chief Finance Officer has validated and agreed the financial aspects of the report. The onus is on the Other Chief Officer to obtain the agreement of the Chief Finance Officer.
- 5.7 Before submitting an application for grant which would require the Council to commit additional resources in the current or succeeding year, Other Chief Officers should consult the Chief Finance Officer.
- 5.8 All grant bids for £150,000 or less should be submitted to the relevant Other Chief Officer for approval. Grant bids for more than £150,000 require approval at Leadership Management Team. All grant bids should include a full financial appraisal with the appropriate level of support from Accountancy staff. Other Chief Officers shall submit to the Service Accounting Team Leader grant bids and claims for validation and certification prior to submission. Only grant submissions that specifically state that they require approval by the Section 151 Officer need to be submitted to the Chief Finance Officer prior to submission. All grant claims should be completed in conjunction with the relevant Accountancy Service team. Only claims requiring Section 151 Officer sign off need to be signed by the Chief Finance Officer.
- 5.9 Notification of a successful application for grant shall be obtained in writing stating the amount and conditions relating to its receipt.

## **FINANCIAL ACCOUNTING AND ADMINISTRATION**

**The main accounting system should provide data that is accurate and adequate for the published final accounts and management in the conduct of their business. Secure and reliable systems are essential to ensure that individual transactions are processed and recorded accurately.**

## **GENERAL PRINCIPLES**

- Other Chief Officers are responsible for promoting the financial management standards set by the Chief Finance Officer in their Services and monitoring adherence to the standards and practices, liaising as necessary with the Chief Finance Officer.
- All Other Chief Officers shall promote sound financial practices in relation to the standards, performance and development of staff in their Services.

## **FINANCIAL ADMINISTRATION**

- 6.1 The Chief Finance Officer shall be responsible for keeping the principal accounting records for all Services of the Council.
- 6.2 The Chief Finance Officer shall ensure that the accounts and accompanying reconciliations are properly prepared and presented for audit in accordance with relevant guidelines and statutes.
- 6.3 All accounts, financial records, including computerised records and financial administration procedures shall be kept in a form approved by the Chief Finance Officer.
- 6.4 After conferring with Other Chief Officers, the Chief Finance Officer shall issue instructions as are deemed necessary to carry out the day to day financial work of the Council.
- 6.5 Prior to introducing, amending or discontinuing any record or procedure relating to financial transactions or accounting in their Service, Other Chief Officers shall consult the Chief Finance Officer.
- 6.6 The Chief Finance Officer shall be consulted by Other Chief Officers on the retention and safe custody of all accounting records. In determining a timescale for the retention of accounting records, the Chief Finance Officer will take into account all statutory obligations and available storage facilities. No voucher or other document shall be destroyed before the specified period has elapsed.
- 6.7 Other Chief Officers shall comply with accounting guidance provided by the Chief Finance Officer and to supply the Chief Finance Officer with information when required.

## **CLOSING OF ACCOUNTS**

- 7.1 The Chief Finance Officer shall be responsible for the production and publication of the Council's final accounts in such form and in accordance with such timetable as to make it consistent with any relevant statute.
- 7.2 The Chief Finance Officer shall produce and circulate to all relevant officers of the Council a set of guidance notes for the production of final accounts. These notes shall detail the timetable for the final accounts production, the information and action required from Services and any other details necessary to ensure that the responsibilities under this paragraph are properly discharged.
- 7.3 The Chief Finance Officer shall present the Statement of Accounts for the year in question to the Council's external auditors as early as possible.

- 7.4 Other Chief Officers must comply with accounting guidance provided by the Chief Finance Officer and supply information when required.
- 7.5 The Chief Finance Officer shall retain, in safe custody, copies of the audited Statement of Accounts including the external auditor's signed certificate and opinion.

## **UNOFFICIAL FUNDS**

- 8.1 An 'unofficial fund' is any fund where the income and expenditure does not form part of the Council's accounts but which is controlled wholly or in part by an officer by reason of employment by the Council or employment by, for instance, the Governors of a school or other semi-autonomous body.
- 8.2 Other Chief Officers shall be responsible for the immediate control of 'unofficial funds' within or relating to their Services.
- 8.3 The Chief Finance Officer shall be informed of the existence of all 'unofficial funds' and shall issue and update accounting instructions for them where necessary.

## **FINANCIAL PLANNING**

**The budget process converts the plans for the use of physical resources into monetary values and has a controlling influence over the financial affairs of the Council. Budget monitoring enables senior management; the Executive and Council to be kept fully informed of whether the Authority's financial targets are being achieved and imposes accountability upon budget holders.**

## **GENERAL PRINCIPLES**

- 9.1 The full Council is responsible for agreeing the Authority's policy framework and budget, which will be proposed by the Executive.
- 9.2 The full Council is responsible for approving procedures for agreeing variations to approved budgets, plans and strategies and forming the policy framework for determining the circumstances in which a decision will be deemed to be contrary to the budget or policy framework. Decisions should be referred to the full Council by the Monitoring Officer.
- 9.3 The full Council is responsible for setting the level at which the Executive may reallocate budget funds from one service to another. The Executive is responsible for taking in-year decisions on resources and priorities in order to deliver the budget policy framework within the financial limits set by the Council.
- 9.4 Each year, the Chief Finance Officer shall report to the Executive upon the general financial situation of the Council and upon future financial scenarios in relation to the coming year's budget prospects and long-term trends.
- 9.5 Having regard to the Chief Finance Officer's reports and advice, the Executive shall recommend the general budget strategy to be adopted with regard to preparation by Services of their annual budget submissions.
- 9.6 The Executive and Other Chief Officers shall ensure that capital and revenue spending are each contained within their approved budget ceiling and shall seek further approval from the Council before taking any action that shall cause net spending to increase by either increasing gross expenditure and / or reducing income.



## REVENUE BUDGET

- 10.1 The general format of the budget will be approved by the full Council after receiving a proposal from the Executive on the advice of the Chief Finance Officer. The draft budget should include allocations to different services and projects, proposed taxation levels and contingency funds.
- 10.2 The Chief Finance Officer is responsible for ensuring that a revenue budget is prepared on an annual basis for consideration by the Executive, before submission to the full Council. The draft budget should include allocations to different services and projects, proposed taxation levels and contingency funds.
- 10.3 Each Other Chief Officer shall prepare annually a forward revenue budget in accordance with the criteria, format, timetable and targets specified by the Chief Finance Officer and / or Executive.
- 10.4 If any line at the level of the detailed budget agreed by the Council becomes, or is expected to become overspent, the Other Chief Officer must take action to correct the position; this may include use of virement powers contained in paragraph 10.5 below.
- 10.5 Virement between one line in the revenue budget and another is allowed in accordance with the rules and limits currently prescribed by the Council. At present these are:
  - all proposed virements must be reported to the Chief Finance Officer;
  - all virements involving a significant change in policy are subject to Executive approval;
  - any virement proposing a permanent change in establishments require the approval of Corporate Management Team;
  - no proposed virement shall be used to justify additional resource allocation in following years;
  - once a proposed virement has been agreed / approved, the Chief Finance Officer shall ensure that the appropriate changes are made to the Authority's computerised accountancy system at the earliest opportunity;
  - Approval of the Executive is required for any virement where it is proposed to vire between service level budgets agreed by Council in setting the annual revenue budget; and
  - Other Chief Officers may vire within the overall service budget allocated to them by the Council in the annual budget setting report, within the virement rules above.
- 10.6 A Service may, subject to the approval of the Chief Finance Officer and Corporate Management Team not later than its last meeting before the end of the financial year, carry forward from one year to another unspent balances where it is satisfied that:
  - for reasons beyond the Service's control, supplies and services are not obtainable within the financial year;

- because of changes of specification, design, etc. it is advantageous to defer a purchase beyond the end of the financial year; or
- where the balance is a carry forward of a revenue contribution to capital outlay.

Such agreement shall constitute authority for the appropriate Service to incur relevant expenditure not exceeding the amount approved.

10.7 The extent to which a Service can carry forward and utilise in subsequent years any underspends which arise on its revenue budget as a result of:

- improved management control; or
- external factors outside its control,

shall be determined by the Corporate Management Team not later than its last meeting before the end of the financial year. The Corporate Management Team may, at its discretion, require a Service to carry forward to the following financial year any overspent balances.

## **CAPITAL BUDGET**

11.1 The Executive shall recommend the policy guidelines within which a forward capital programme shall be prepared each year through the Prudential Indicators Statement.

11.2 The definition of capital expenditure shall be such as the Council may determine in accordance with statutory provisions and the advice of the Chief Finance Officer.

11.3 The Chief Finance Officer shall report to Executive on the current and planned capital programme. New capital projects recommended for Executive approval will be subject to a capital project appraisal, the format of which is agreed by the Executive.

11.4 Where capital expenditure is to be met in part or whole by a grant, contribution from another party (e.g. government department) or supplementary credit approval, no expenditure shall be incurred until all necessary approvals have been obtained, including that of the Executive.

11.5 Where the actual or estimated cost of a capital scheme exceeds the original budgetary provision by more than £100,000 the appropriate Other Chief Officer shall prepare a report for the Executive outlining the reasons and consequences of adhering to the approved capital programme. The Executive must take action to correct the position; this may include the use of virement powers contained in paragraph 11.6 below.

11.6 Virement between one capital scheme and another is allowed in accordance with the rules and limits currently prescribed by the Council. At present these are:

- Virements between capital projects are subject to approval by Executive;
- all necessary approvals are obtained from external funding bodies where necessary; and
- the diversion does not increase the Council's eventual revenue liabilities.

- 11.7 Any proposal to add, delete, substitute or substantially amend any capital project shall be subject to approval by the Executive.
- 11.8 Any reduction in payments on a capital project, whether resulting from slippage or cost savings, shall be reported to the Executive and shall not be used by Services to fund additional capital expenditure unless the Executive so determine.

## **BUDGET MONITORING**

- 12.1 The Chief Finance Officer is responsible for providing appropriate financial information to enable budgets to be monitored effectively.
- 12.2 It is the responsibility of Other Chief Officers to control income and expenditure within their Service and to monitor performance, taking account of financial information provided by the Chief Finance Officer. Other Chief Officers should report to their Executive Director on variances within their own service area. The Chief Finance Officer will report on the overall projected outturn position for the Council to the Executive.
- 12.3 It is the responsibility of each Other Chief Officer to identify budget holders under their direct control and to ensure that budgets are not overspent. They should also take any action necessary to avoid exceeding their budget allocation and alert the Chief Finance Officer to any problems.
- 12.4 Budget planning shall assume annual inflation increases are applied to fees and charges, unless a lower or higher figure is approved by the Corporate Management Team. The Executive shall receive reports for approval.

## **CONTRACTS, AGREEMENTS AND PURCHASING**

**Officers authorised to commit the Authority to current or future expenditure are expected to act responsibly and demonstrate that the arrangements and procedures followed comply with the Council's instructions.**

## **GENERAL PRINCIPLES**

- 13.1 All contracts, agreements and purchases are subject to the requirements of Standing Orders, and the procedures and financial limits which they prescribe.
- 13.2 Advice and assistance shall be available from the Council's Head of Commissioning and Procurement to enable Other Chief Officers to comply with the requirements of any relevant government or E. C. Regulations relating to contracts.
- 13.3 Every officer and councillor has a responsibility, in accordance with appropriate codes of conduct, to declare any links or personal interests which they may have with suppliers and/or contractors if they are engaged in contractual or purchasing decisions on behalf of the Council. It is important for everyone involved in spending public money to demonstrate that they do not benefit personally from decisions that they make and to avoid any situation which might be regarded as compromising their objectivity and impartiality.
- 13.4 Before entering into purchasing commitments, Other Chief Officers shall ensure that the estimated cost is covered by financial provision in the budget to which it relates.

- 13.5 Official orders and official purchasing/procurement cards must not be raised for any personal or private purchases, nor must personal or private use be made of Authority contracts.

## **ORDERS FOR WORK, GOODS AND SERVICES**

- 14.1 Before concluding any purchase, an Other Chief Officers should always ensure that best value for money is obtained having due regard to any special circumstances which may apply.
- 14.2 Official orders shall be in a form approved by the Chief Finance Officer and released only by officers authorised by the appropriate Other Chief Officer. All official orders issued by a Service shall be the responsibility of the Other Chief Officer. An up to date list of authorised officers shall be maintained by Other Chief Officers and a copy sent to the Chief Finance Officer. Any changes to the list of authorised officers shall be notified to the Chief Finance Officer immediately.
- 14.3 Official orders shall be issued for all goods, work and services except where the Council enter into a formal contract with a supplier made for supplies of utility services, periodic payments such as rents or rates, for petty cash purchases or such other exceptions as the Chief Finance Officer may approve.
- 14.4 All goods, equipment etc., ordered on official order forms shall be for the Council's own use, including those purchased under VAT Savings Schemes.
- 14.5 Any subsequent variations or amendments to official orders shall be approved by an authorised officer, linked to the original record.

## **CONTRACTS**

- 15.1 These regulations with regard to contracts shall be read in conjunction with the Council's Standing Orders relating to Contracts.
- 15.2 All Other Chief Officers should ensure that adequate and effective systems and procedures are operated for arranging and managing contracts and agreements having regard to advice and guidance from the Chief Finance Officer on financial aspects. This includes the financial vetting of contracts where appropriate.
- 15.3 Contractual agreements for the provision of social care between the Council and independent sector providers shall take into account the following specific issues:
- the need to reflect a high degree of client, carer and client's family's involvement in contracting arrangements;
  - The need for a long term service relationship avoiding regular changes in service provider, particularly in the case of long term residential care; and
  - the involvement of potential providers, such as small charities or voluntary organisations, who may have limited experience and resources to cope with complex contracting and tendering arrangements.
- 15.4 Any contract or agreement involving a charge upon assets or property must be forwarded to the Monitoring Officer for signature on behalf of the Council.

- 15.5 Except on the instruction of the Chief Finance Officer, no Other Chief Officer shall enter into any agreement or contract involving the borrowing of funds, leasing of equipment, credit arrangement, hire purchase agreement, insurance contract, or the investment of Council monies; nor the authorising of any direct debit to be charged against the Council's bank accounts (except as agreed and authorised by the Chief Finance Officer).
- 15.6 Except as agreed by the Executive, no officer may raise money by securing any legal charge or claim upon the buildings, property or any other asset or interest of the Council.
- 15.7 The content and form of contracts and agreements are to be agreed by the Monitoring Officer before finalising by an Other Chief Officer on behalf of the Council.
- 15.8 Prior to entering into any contract, Other Chief Officers will fully consider all Insurance and Risk Management implications, and where necessary seek appropriate advice.

### **PAYMENT OF ACCOUNTS**

- 16.1 The Chief Finance Officer has authority to pay all amounts to which the Council is legally committed, after authorisation by the appropriate Other Chief Officer.
- 16.2 Unless alternative arrangements have been agreed and approved by the Chief Finance Officer, the Other Chief Officer responsible for issuing an order, or nominated officer, shall authorise all invoices.
- 16.3 Payments on account to contractors shall be made only on a certificate issued by the appropriate Other Chief Officer (or private architect, engineer or consultant where engaged by the Council) or other officer nominated in writing for the purpose.
- 16.4 Before the appropriate Other Chief Officer or duly authorised person issues a final certificate of payment under a contract, the Chief Finance Officer shall be notified and have the right to examine the contractor's final account, together with other such documents as the Chief Finance Officer may consider necessary. The appropriate Other Chief Officer shall notify the Chief Finance Officer in writing on the satisfactory completion of the maintenance period under a contract so that any performance bonds may be released.

### **IMPREST ACCOUNTS**

- 17.1 The Chief Finance Officer may make imprest advances to officers for the purpose of defraying petty cash expenses for which the Council is liable.
- 17.2 An officer receiving an imprest advance shall acknowledge receipt.
- 17.3 Cash shall be kept in a safe place at all times.
- 17.4 Payments shall be limited to minor items of expenditure unless approval is given by the Chief Finance Officer for exceptional payments.
- 17.5 An imprest account shall not be allowed to become overdrawn.
- 17.6 Imprest accounts and supporting vouchers shall be submitted at regular intervals for examination and reimbursement of expenditure.

- 17.7 The imprest holder shall be responsible for the control and operation of the imprest account in accordance with instructions issued by the Chief Finance Officer.
- 17.8 Monies received on behalf of the Council shall not be paid into an imprest account but banked into the Council's main account.

## **EMPLOYEE AND PERSONNEL ASPECTS**

**The largest element of Council expenditure is the cost of staff. Reliable and timely information is required to ensure that only genuine employees are paid in accordance with their proper entitlement. Failure to apply taxation and national insurance regulations correctly to all payments could incur significant financial penalties.**

## **GENERAL PRINCIPLES**

- 18.1 The payment of salaries, wages, pensions, compensation and other emoluments to all employees or former employees of the Council and allowances to members shall be made by the Chief Finance Officer or under arrangements approved and controlled by the Chief Finance Officer.
- 18.2 All Other Chief Officers shall ensure appointments are made in accordance with the regulations of the Authority and approved establishments, grades and scale of pay and that adequate budget provision is available.
- 18.3 All Other Chief Officers shall ensure that payroll transactions are processed only through the payroll system. Careful consideration should be given to the employment status of individuals employed on a self-employed, consultant or sub contract basis. The Inland Revenue applies a tight definition for employee status, and in cases of doubt, advice should be sought from the Chief Finance Officer.
- 18.4 All timesheets or other pay documents shall be in a form agreed with the Chief Finance Officer and shall be signed as a correct record by both the employee concerned and by an officer authorised to certify the document on behalf of the appropriate Assistant Director.
- 18.5 All Other Chief Officers shall determine which officers from within their Services are authorised to certify salaries and wages documents. An up to date list of these authorised officers together with their specimen signatures and initials should be maintained by the Other Chief Officer and a copy sent to the Chief Finance Officer. Any changes to the list shall be notified to the Chief Finance Officer.
- 18.6 All relevant records and other pay documents shall be submitted to the Chief Finance Officer in accordance with timetables and deadlines determined by the Chief Finance Officer.
- 18.7 The Chief Finance Officer shall be responsible for making arrangements for the administration and regulation of claims for expenses and allowances to employees and members of the Council and its committees and other approved bodies. The Monitoring Officer shall be responsible for monitoring the budget for member's expenses.
- 18.8 Certification of officers' travel and subsistence claims, by or on behalf of a Service, shall be taken to mean that the certifying officer is satisfied that the journeys were authorised, expenses properly incurred and that the allowances are payable by the Council.

- 18.9 The Chief Finance Officer shall ensure that there are adequate arrangements for administering superannuation matters on a day to day basis.

## **BANKING, INCOME AND TREASURY MANAGEMENT**

**Proper administration of bank accounts is fundamental financial control. All income collection systems must provide for prompt recording of both cash and credit and the prompt banking of all receipts. Income is vulnerable if not adequately and effectively controlled.**

### **BANKING**

- 19.1 All arrangements concerning the opening, closing and operation of the Council's bank accounts (including local imprest accounts) shall be notified to the Chief Finance Officer. All Bank Mandates shall be signed by the Chief Finance Officer or nominated officer.
- 19.2 Other Chief Officers shall not enter into any arrangements for payments to be automatically debited from the Council's bank account without prior approval of the Chief Finance Officer. An Other Chief Officer shall not apply for additional banking services, for example credit/debit cards without the express approval of the Chief Finance Officer.
- 19.3 Each bank account operated by the Council shall bear an official title and in no circumstances shall an account be opened in the name of an individual except in respect of an account in the name of the Acting Returning Officer for the Middlesbrough Constituency.

### **INCOME**

- 20.1 Arrangements for the collection of all monies due to the Council shall be agreed with the Chief Finance Officer, even though an Other Chief Officer may be responsible for the actual collection, either upon a directive of the Council or by agreement with the Chief Finance Officer. Records of all income transactions shall be maintained by Other Chief Officers, in a form agreed by the Chief Finance Officer.
- 20.2 The Chief Finance Officer shall set out the arrangements necessary to ensure that all monies due and received are banked promptly.
- 20.3 All receipt forms, books, tickets and other such items shall comply with the requirements of the Chief Finance Officer who shall be satisfied as to the arrangements for their control. Every issue of any such document shall be acknowledged by the signature of the officer to whom the issue is made. No officer shall give a receipt for any money received on behalf of the Council on any form other than an official receipt form or ticket.
- 20.4 All sums received by officers shall be paid over promptly to the Chief Finance Officer, or by arrangement, to the Council's bankers. No deduction should be made from such money, unless specifically authorised by the Chief Finance Officer. Personal cheques must not be cashed out of collections.
- 20.5 The Chief Finance Officer shall be notified as early as possible of all money due to the Council under contracts, or any other arrangements which would involve the receipt of money by the Council, and shall have access to the original documents or relevant particulars.

- 20.6 Every officer when depositing money or paying over collections must complete a paying in slip in accordance with best practice.

## **DEBT COLLECTION**

- 21.1 Income arising from work done, goods supplied or services rendered and not paid for at the time, must be invoiced and all Other Chief Officers must ensure the prompt issue and rendering of such accounts. To do this, all Other Chief Officers should ensure that the full details of the debtor and service provided are recorded in order that amounts due can be collected. Performance management systems should be established to monitor recovery of income and flag up areas of concern to the Chief Finance Officer. Evidence of the debt shall be retained by Other Chief Officers for a period agreed with the Chief Finance Officer.
- 21.2 Before raising any invoices for work done, goods supplied or services delivered, Other Chief Officers should consider the most cost effective method of collecting the income. Where it would be reasonable to expect payment in cash it should be collected prior to the provision of goods or services.
- 21.3 All Other Chief Officers have a responsibility to collect debts which they have originated, by providing any further information requested by the debtor, and in pursuing the debt on the Council's behalf.
- 21.4 The Chief Finance Officer and Monitoring Officer shall take all reasonable steps to obtain recovery of debts (involving debt collection agencies and / or Court proceedings as appropriate).
- 21.5 The authority to approve the write off of debts raised from the 1 April 2012 is delegated to Other Chief Officers. Write off of debts raised prior to the 1 April 2012 requires the approval of the Chief Finance Officer. The Chief Finance Officer is authorised to approve the write off of debts in respect of the following:
- Council Tax;
  - National Non Domestic Rates;
  - Community Charge; and
  - Sundry Debt (Commercial Rents, Payroll, Housing Advances, Overs and Shorts of Cash, Returned Payments, Small Balances and Unclaimed Credit Accounts).
- 21.6 Any bad debts shall be charged against the budget of the Service to which it originally related.

## **TREASURY MANAGEMENT**

- 22.1 The Council has adopted the key recommendations from the Chartered Institute of Public Finance and Accountancy's (CIPFA) "Treasury Management in the Public Services: Code of Practice". Accordingly, Middlesbrough Council will create and maintain, as the cornerstones for effective treasury management.
- A treasury management policy statement, stating the policies and objectives of its treasury management activities; and
  - Suitable treasury management practices (TMPs), setting out the manner in which Middlesbrough Council will seek to achieve those policies and objectives



and prescribing how it will manage and control those activities. The Chief Finance Officer will approve the TMPs and amend them as necessary, with such amendments being reported to the Executive.

- 22.2 The Executive will receive reports on its treasury management policies, practices and activities, including an annual strategy and plan in advance of the year, and an annual report after its close.
- 22.3 The Executive is responsible for the implementation and monitoring of its treasury management policies and practices. The Chief Finance Officer is responsible for the execution and administration of treasury management and will act in accordance with the Treasury Management Policy Statement and CIPFA's Standard of Professional Practice on Treasury Management.
- 22.4 All money received by the Council shall be aggregated for the purpose of treasury management and shall be under the control of the officer designated for the purpose of section 151 of the Local Government Act 1972, referred to in the Code as the Responsible Officer.
- 22.5 All borrowings and investments shall be effected in the name of Middlesbrough Borough Council.
- 22.6 The Chief Finance Officer shall be the registrar for all stocks, bonds and mortgages of the Council and shall maintain records of all transactions relating thereto, and of all borrowings of money by the Council.
- 22.7 All borrowing and investments shall be effected in the name of Middlesbrough Borough Council.
- 22.8 The Chief Finance Officer shall be the registrar for all stocks, bonds and mortgages of the Council and shall maintain records of all transactions relating thereto, and of all borrowings of money by the Council.

## **ASSETS, SECURITY AND RISK MANAGEMENT**

**The Council's assets represent a significant resource, which must be protected against loss or misuse. The need for effective measures to reduce losses has led the Council to adopt a more positive strategy towards the management of risk.**

### **ASSETS**

- 23.1 All Other Chief Officers shall maintain an inventory for each establishment within their control, recording an adequate description of such readily portable items of furniture, fittings, equipment, tools, plant and machinery in a form approved by the Chief Finance Officer. All leased assets shall be identified and recorded separately.
- 23.2 All Other Chief Officers shall arrange for regular physical checks (at least annually) to be carried out of equipment, stores etc. against the relevant records. Any significant surplus, deficiency or deterioration revealed as a result of such checks shall be identified, investigated, pursued to a satisfactory conclusion and the inventory annotated accordingly.
- 23.3 All Other Chief Officers shall arrange for the valuation of assets for accounting purposes in accordance with the Local Government Act 1989 and associated codes of practice.

- 23.4 The Council's property shall not be removed other than in accordance with the ordinary course of business or used other than for the Council's purposes except in accordance with specific directions issued by the Other Chief Officer of the appropriate Service.
- 23.5 Assets owned by the Council shall as far as possible, be effectively marked as Council property.
- 23.6 Before Other Chief Officers take any action on the disposal of surplus or obsolete stock they should consult other Services to determine if there is a continuing need for the item(s) within the Council. Where there is no internal need for the item(s), Other Chief Officers shall arrange for the items to be offered for sale by competitive tender or public auction, except as agreed otherwise by the Chief Finance Officer and in accordance with Standing Orders.
- 23.7 The Chief Finance Officer shall be notified of the intention to dispose of any item which might be regarded as capital or was obtained via leasing agreement. No leased asset shall be disposed of without the written agreement of the Chief Finance Officer.
- 23.8 Assets leased by the Council must be maintained in full working order in accordance with the terms of the lease and shall not be adapted for any alternative use without the prior written agreement of the Chief Finance Officer.

## **SECURITY**

### **Assets**

- 24.1 All Other Chief Officers shall be responsible for introducing and maintaining adequate arrangements for all aspects of security including personnel, stores, equipment, cash, data, and confidential information under their control. The Chief Finance Officer shall be consulted in any case where security is thought to be defective or where it is considered that special security arrangements may be needed.
- 24.2 Maximum limits of cash to be held by an Other Chief Officers at any one time shall be agreed with the Chief Finance Officer and shall not be exceeded without permission.
- 24.3 The Chief Finance Officer shall be responsible for ensuring that secure arrangements are made for the preparation and holding of pre-signed cheques, stock certificates, bonds and other financial documents.
- 24.4 All Other Chief Officers should ensure that contingency plans are in place for the security of assets and continuity of service in the event of disaster or system failure.

### **Information**

- 24.5 All employees of the Council have a personal responsibility with regard to the protection and confidentiality of information, whether held in manual or computerised records. Information may be classified as sensitive, or may possess some intrinsic value, and its disclosure or loss could result in a cost to the Council in some way. All Other Chief Officers shall seek to inculcate in their staff an awareness of safety and security issues, and an appreciation of the individual responsibilities of staff both under the Health and Safety at Work Act 1974 and otherwise to ensure the safety of individuals and security of the Council's assets.

- 24.6 The Council has adopted a Computer Security Code of Practice. All Other Chief Officers should ensure that employees are familiar with this document, and that effective controls and security routines are operated to protect data against the hazards listed (e.g. computer viruses; unauthorised access; loss of data etc.).
- 24.7 It is the responsibility of all Other Chief Officers to ensure that all computerised systems within their responsibility are properly registered and operated in accordance with requirements of the 1998 Data Protection Act and other legislation.

## **INSURANCE**

- 25.1 The Chief Finance Officer shall ensure that adequate insurance protection is maintained for the Council's assets and operations where it is considered to be cost-effective and appropriate. Such protection may, on advice, be arranged by way of external insurance cover, or by way of an internal 'Insurance Fund' established for that purpose, or a combination of such measures.
- 25.2 The Chief Finance Officer shall be responsible for the negotiation of all the Council's insurance contracts, and Other Chief Officers shall provide all such information and assistance as is required to facilitate such negotiations. No insurance contracts may be entered into by Other Chief Officers other than through the offices of Chief Finance Officer.
- 25.3 Each Other Chief Officer shall give prompt notification to the Chief Finance Officer of all new insurable risks and all changes in operations, responsibilities, contractual arrangements, indemnities, or ownership or occupation of properties in which the Council has an interest whenever such changes may have a bearing on any of the Council's insurance arrangements.
- 25.4 Each Other Chief Officer shall be responsible for providing prompt notification to the Chief Finance Officer of all incidents likely to give rise to an insurance claim by or against the Council. In the case of accidents involving death or serious injury to any party, such notification shall in the first instance be by way of an immediate oral report.
- 25.5 Each Other Chief Officer shall ensure full and prompt co-operation of their Service and individual staff in the investigation, defence and negotiation of claims.
- 25.6 Other Chief Officers may arrange with the Chief Finance Officer for the provision of insurance cover additional to those arranged generally for the Council when they judge such additional cover to be appropriate.
- 25.7 Fortuitous accidents and losses, which arise in a wide variety of ways, may have a very significant impact both in humanitarian terms, and in terms of financial cost to the Council. It is the responsibility of every Other Chief Officer to manage the operations of their Service in such a way as to reduce as much as reasonably practicable both the humanitarian and financial costs of risks. To this end, all Other Chief Officers must consider the risk and insurance implications of all existing and new operations undertaken and contracts and indemnities entered into; where appropriate consulting with specialist Health and Safety, Risk Management, Insurance, Legal or other technical staff within the Council in order to minimise the attendant risks.

## **Risk Management**

- 25.8 The Corporate Performance Manager shall provide advice on Risk Management and every Other Chief Officer has a responsibility to support these initiatives with the aim of improving Risk Management throughout the Council.

## **INTERNAL AUDIT**

**Internal Audit systematically monitors the Council's objectives and through an examination of system and management controls attempts to ensure that those objectives are being met in the most efficient, economic and effective manner.**

## **GENERAL PRINCIPLES**

- 26.1 The Accounting and Audit Regulations 1996 issued by the Secretary of State for the Environment require every local authority to maintain an adequate and effective internal audit. The Council has delegated its statutory responsibility to the Chief Finance Officer.
- 26.2 As a service to management, the Internal Audit Section shall provide an independent appraisal of all the Council's activities, reporting on the adequacy and effectiveness of the systems of internal control, including management controls and arrangements. The work undertaken by the Internal Audit Section shall have the following objectives:
- to review and appraise the soundness, adequacy and application of accounting, financial and other controls;
  - to ascertain the extent to which systems of control ensure compliance with established policies and procedures;
  - to ascertain the extent to which assets and interests entrusted to or funded by the Council are properly controlled and safeguarded from losses of all kinds;
  - to ascertain that accounting and other information is reliable as a basis for the production of accounts and other returns;
  - to ascertain the integrity and reliability of financial and other information provided to management including that used in decision making; and
  - to ascertain that systems of control are laid down and operate to promote the most economic, efficient and effective use of resources.
- 26.3 The Chief Finance Officer or authorised representative shall have authority on production of identification to:
- enter at all reasonable times on any Council property or land;
  - have access to all assets, staff, records, computer files, documents and correspondence relating to any financial and other transactions;
  - require and receive such explanations as are necessary concerning any matter under examination;
  - require any employee holding or controlling cash, stores or any other Council property to produce such items;

- access records belonging to third parties, such as contractors and partners, when required; and
  - have direct access to the Head of Paid Service and Executive.
- 26.4 In relation to these rights of access, Internal Auditors are regarded as having a personal responsibility to observe the highest standards of confidentiality and personal integrity. Any breach of this could give rise to disciplinary proceedings.
- 26.5 Whenever any matter arises which involves, or is thought to involve, irregularities concerning cash, stores or other property of the Council or any suspected irregularity in the exercise of the functions of the Council, the Other Chief Officer concerned shall immediately notify the Chief Finance Officer, who shall investigate and report as necessary. Pending any investigation and reporting, the Assistant Director should take all necessary steps to prevent further loss and secure records and documentation against removal or alteration.
- 26.6 Other Chief Officers shall ensure that any agreed actions arising from audit recommendations are carried out in a timely and efficient fashion.
- 26.7 Other Chief Officers shall ensure that new systems for maintaining financial and non-financial records or records of assets, or changes to such systems, are discussed with and agreed by the Head of Internal Audit prior to implementation.

## **PARTNERSHIPS**

**Partnerships are likely to play a key role in delivering community strategies and in helping to promote and improve the well-being of the area. Local Authorities are working in partnership with others: public agencies, private companies, community groups and voluntary organisations. Local Authorities still deliver some services, but their distinctive leadership role is to bring together contributions of the various stakeholders.**

## **GENERAL PRINCIPLES**

- 27.1 The Executive is responsible for approving delegations of Executive functions, including frameworks for partnerships. The Executive is the focus for forming partnerships with other local public, private, voluntary and community sector organisations to address local needs.
- 27.2 The Executive can delegate functions - including those relating to partnerships, to officers. These are set out in the scheme of delegation that forms part of the Authority's Constitution. Where functions are delegated, the Executive remains accountable for them to the full Council.
- 27.3 The Head of Paid Service represents the Authority on partnership and external bodies, in accordance with the scheme of delegation.
- 27.4 The Monitoring Officer is responsible for promoting and maintaining the same high standards of conduct with regard to financial administration in partnerships that apply throughout the Authority.
- 27.5 The Chief Finance Officer must ensure that the accounting arrangements to be adopted relating to partnerships and joint ventures are satisfactory. They must also consider the overall corporate governance arrangements and legal issues when

arranging contracts with external bodies. The Chief Finance Officer must ensure that the risks have been fully appraised before agreements are entered into with external bodies.

- 27.6 Other Chief Officers are responsible for ensuring that appropriate approvals are obtained before any negotiations are concluded in relation to work with external bodies.

# **CONTRACT PROCEDURE RULES**

# STANDING ORDERS RELATING TO CONTRACTS

## CONTENTS

- **PART A – A Brief Guide to Standing Orders**
- **PART B – Exemptions**
- **PART C – Glossary of Defined Terms**
- **PART D – Standing Orders**



## **PART A – A Brief Guide to Standing Orders**

Contract Standing Orders promote good purchasing practice, public accountability and deter corruption. Following the rules is the best defence against allegations that a purchase has been made incorrectly or fraudulently.

Officers responsible for the purchase or disposal of assets must comply with these Standing Orders, which lay down minimum requirements. A more thorough procedure may be appropriate for a particular contract.

- Follow the rules set out in Standing Orders if you purchase goods, materials, services, consultancy, order building or civil engineering work.
- Take all necessary legal, financial, procurement and professional advice in a timely manner.
- Declare any personal interest in a contract. **Corruption is a criminal offence.**
- Conduct any review and appraise the purchasing need.
- Normally allow two weeks for submission of Quotations
- Normally allow four weeks for submission of Tenders (not to be submitted by fax or e-mail).
- Keep tenders confidential.
- Complete a written contract or Council order before the supply or work begins.
- Keep records of dealings with suppliers in line with the Council's retention policy.
- Assess each contract afterwards to see how well it meets the Council's needs.

## PART B – Exemptions

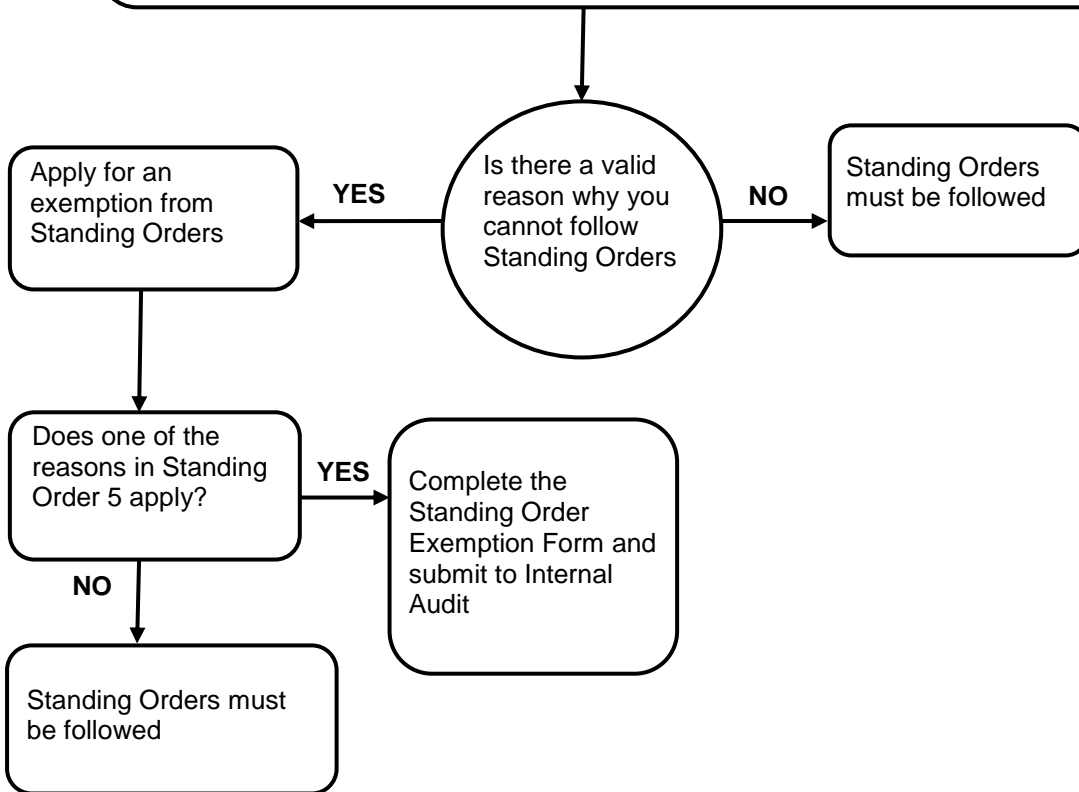
All Relevant Contracts (see Standing Order 4) must be subject to competition, unless there is an exemption, as follows:

Works	Supply of Goods, Materials and Services	Light Touch Regime	Consultants	Tendering Procedure
Up to £15,999	Up to £15,999	Up to £15,999	Up to £15,999	Neither written quotations nor tenders need to be invited ensuring value for money is achieved <b>using local suppliers where possible.</b>
£16,000 – £1,000,000	£16,000 - £164,176	£16,000 - £589,148	£16,000 - £164,176	At least 3 written quotations. The NEPO portal quotation system must be used for quotations. <b>From local suppliers where possible.</b> Tenders can be sought but this is optional.
£1,000,000 – £4,104,394	Not Applicable	Not Applicable	Not Applicable	At least 4 Tenders must be sought. The Tender advert(s) must be placed on Contracts Finder. The NEPO portal must be used.
Above £4,104,394 (EU threshold)	Above £164,176 (EU threshold)	Above £589,148 (Light Touch Regime)	Above £164,176 (EU threshold)	EU Procedure - OJEU notice At least 5 tenders must be sought, ensuring that the tender process complies with the EU Directives. The NEPO portal must be used.

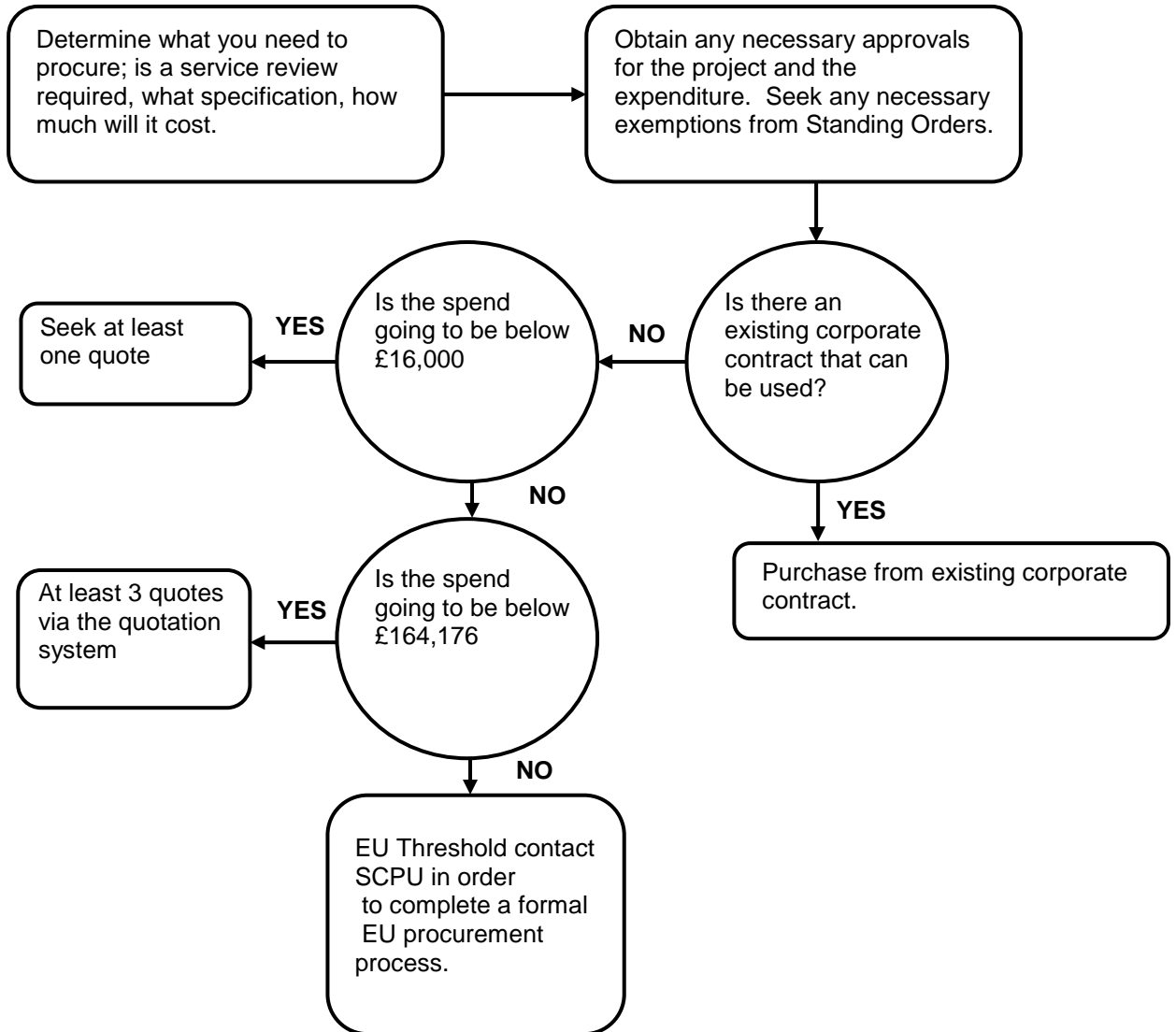
NOTE: The following flow charts are explanatory only and not a substitute for reading Standing Orders.

# PROCUREMENT

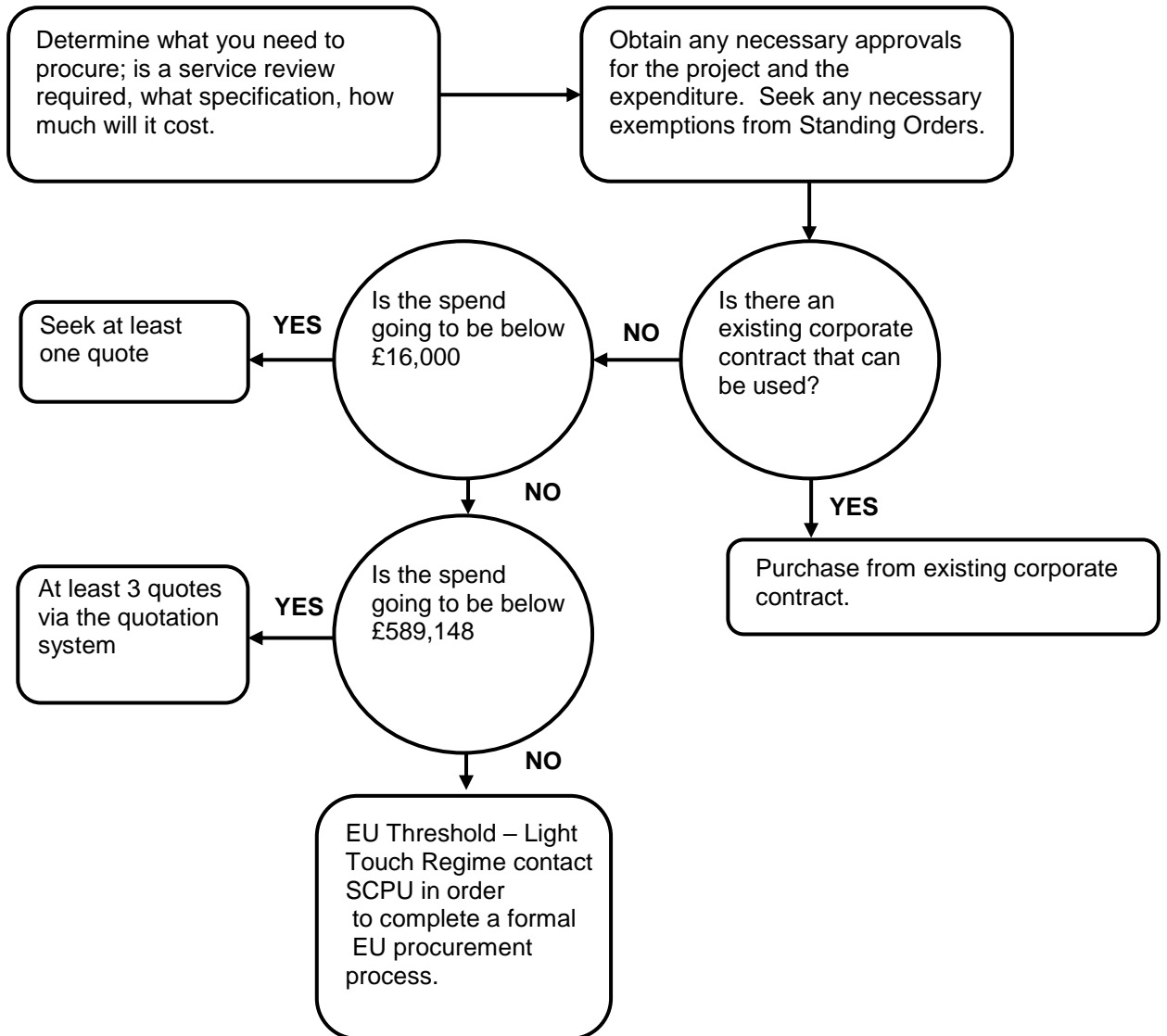
All procurement must follow Standing Orders by following the appropriate guidance dependent upon the level of spend or by obtaining an exemption from Standing Orders if appropriate. **Please note that where a contract value either meets or exceeds OJEU then an exemption from Standing Orders cannot be sought.**



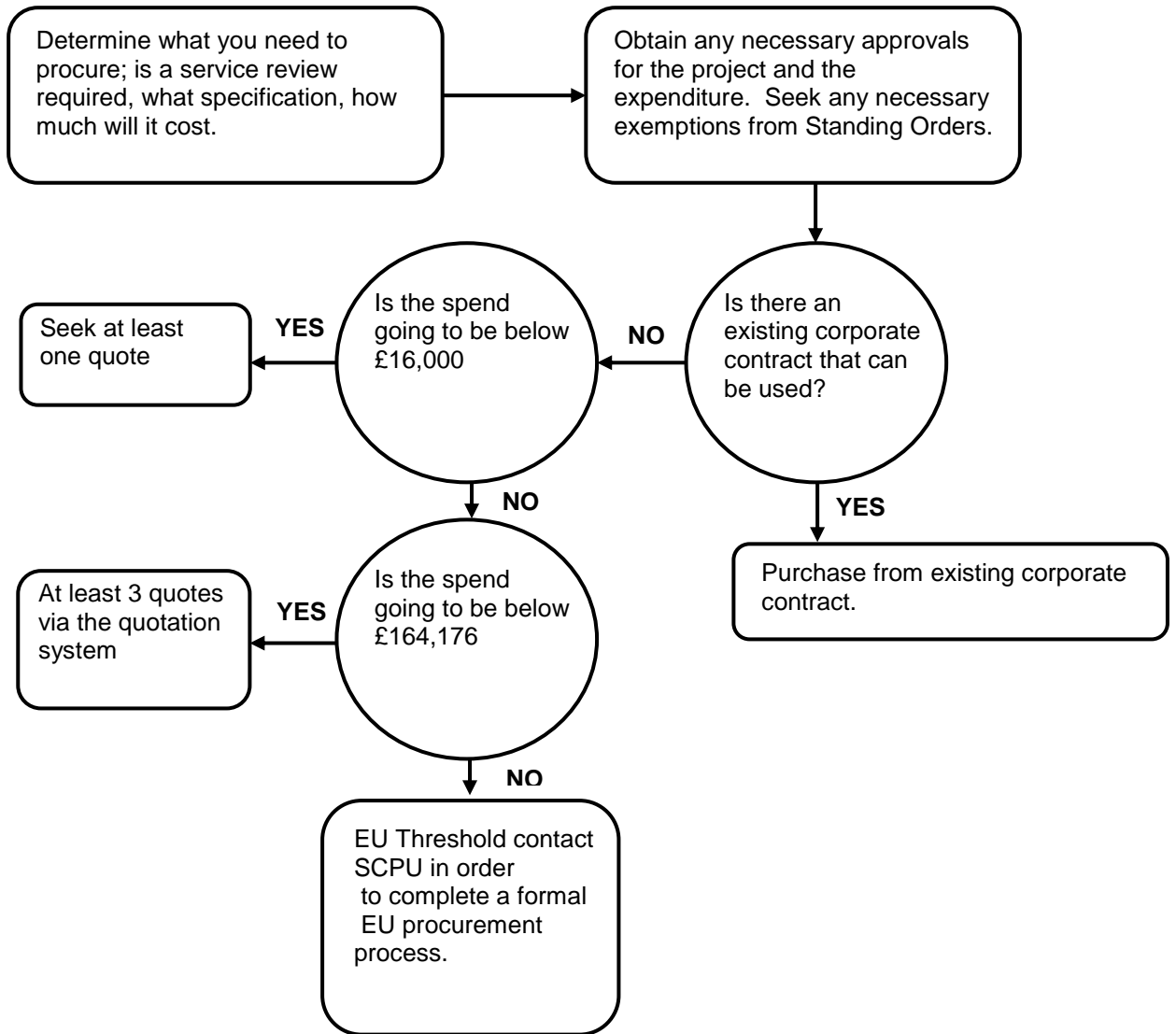
## GOODS & SERVICES



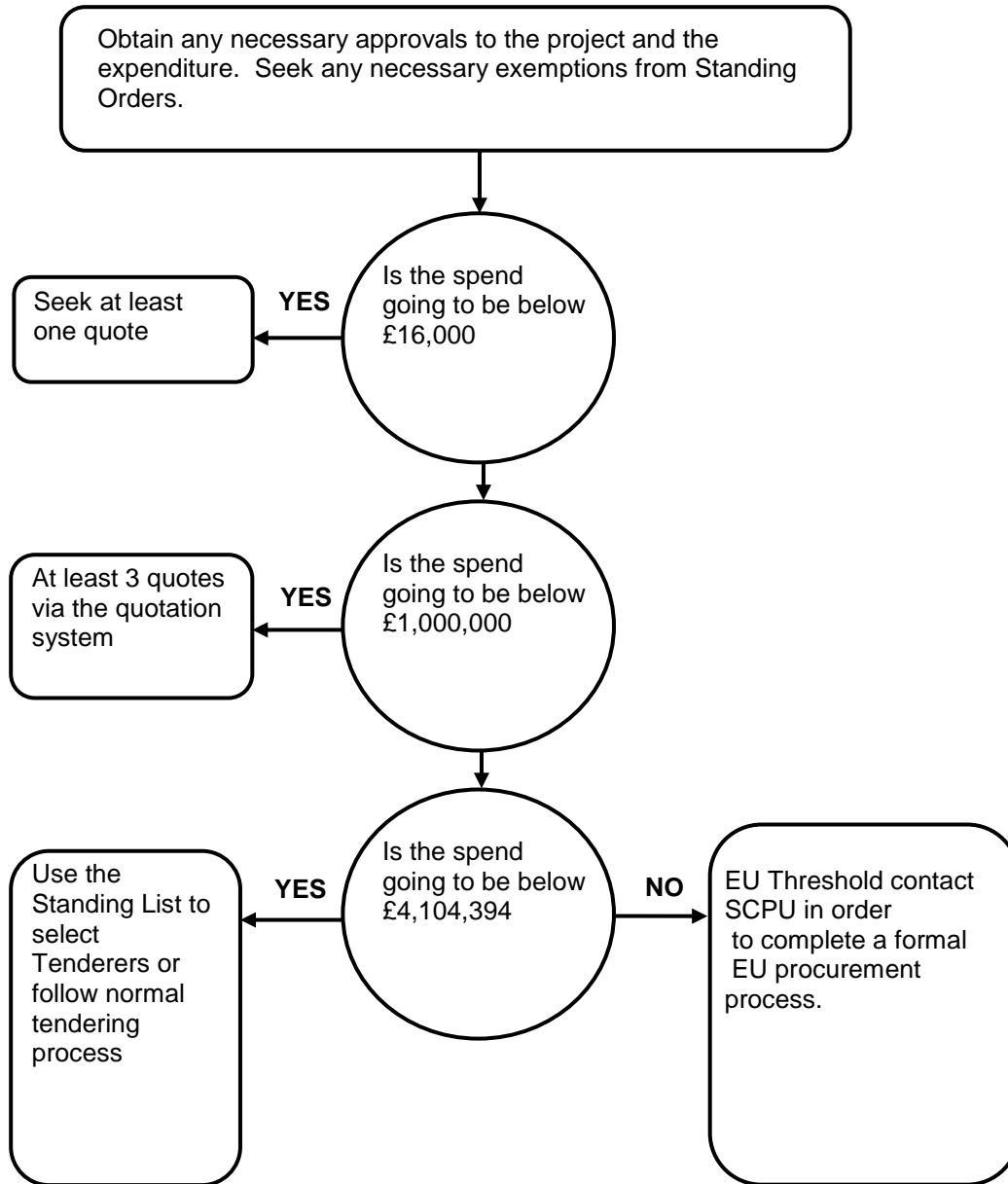
## LIGHT TOUCH REGIME



## COMMISSIONING CONSULTANTS



# WORKS



## PART C – Glossary of Defined Terms

Award Criteria	The criteria by which the successful Quotation or Tender is to be selected (see further Standing Order 13 and 14.5)
Award Procedure	The procedure for awarding a contract as specified in Standing Order 11
Bond	An insurance policy. If the contractor does not do what is has promised under contract with the Council, the Council ca claim from the insurer the sum of money specified in the Bond (often 10% of the contract value). A Bond is intended to protect the Council against a level of cost arising from the contractor's failure.
Candidate	Any person who asks or is invited to submit a quotation or tender.
Chief Finance Officer	The most senior financial officer
Code of Conduct	The code regulating conduct of officers issued by the Council
Contracting Decision	Any of the following decisions: <ul style="list-style-type: none"> <li>• Composition of Standing Lists</li> <li>• withdrawal of Invitation to Tender</li> <li>• whom to invite to submit a Quotation or Tender</li> <li>• shortlisting</li> <li>• award of contract</li> <li>• any decision to terminate a contract</li> </ul>
EU Procedure	The procedure required by the EU where the Total Value exceeds the EU Threshold
EU Threshold	The contract value at which EU procurement directives must be applied if expected to be exceeded by the total value, currently £164,176 for the supply of goods, materials or services, £589,148 for Light Touch Regime and £4,104,394 for building and civil engineering contracts.
European Economic Area	The members of the European Union and Norway, Iceland and Liechtenstein
Financial Regulations	Financial regulations provide the framework for managing the authority's financial affairs. They apply to every member and officer of the authority and any one acting on its behalf.
Government Procurement Agreement	The successor agreement to the General Agreement on Trade and Tariffs. The main signatories other than those in the European Economic Area are: USA, Canada, Japan, Israel, South Korea, Switzerland, Norway, Aruba, Hong Kong, China, Liechtenstein and Singapore.



Head of Service	The most senior officer in a service of the Council, it includes the Head of Paid Service, Strategic Directors, Assistant Directors, and Heads of Service.
Invitation to Tender	Invitation to tender documents in the form required by Standing Orders.
Invitation to Tender by Advertisement/List	An Invitation to Tender sent to prospective contractors shortlisted from among either: <ul style="list-style-type: none"> <li>• Those responding to advertisement of the contract inviting proposals placed in such publications as shall secure widest publicity among relevant suppliers; or</li> <li>• Those included on a Standing List in respect of the type of purchase, which is the subject of the Invitation to Tender.</li> </ul>
M.E.A.T.	Award criteria that considers more than just price; which could include price, service, quality of goods, running costs, technical merit, previous experience, delivery date, cost effectiveness, quality, relevant environmental considerations, aesthetic and functional characteristics (including security and control features), safety, after-sales service, technical assistance and any other relevant matters.
Monitoring Officer	The most senior legal officer
NEPO portal	The North East Procurement Organisation (NEPO) electronic tendering system
Nominated Suppliers and Sub-contractors	Those persons specified in a main contract for the discharge of any part of that contract.
Non-Commercial Considerations	<ol style="list-style-type: none"> <li>1. The terms and conditions of employment by contractors of their workers or composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces;</li> <li>2. Whether the terms on which contractors contract with their sub-contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self employed persons of their services only;</li> <li>3. Any involvement of the business activities or interests of contractors with irrelevant fields of Government policy;</li> <li>4. The conduct of contractors or workers in industrial disputes between them or any involvement of the business activities of contractors in industrial disputes between other persons;</li> <li>5. The country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors</li> <li>6. Any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees</li> <li>7. Financial support or lack of financial support by contractors for any institution to or from which the authority gives or withholds support;</li> </ol>

	Use or non-use by contractors of technical or professional services provided by the authority under the Building Act 1984 or the Building (Scotland) Act 1959.
Officer	The officer designated by the Service Director to deal with the contract in question.
Open Procedure	All prospective candidates are invited to bid in response to advertisement.
Parent Company Guarantee	A contract which binds the parent company of a subsidiary company as follows: If the subsidiary company fails to do what it has promised under a contract with the Council, it can require the parent company to do so instead.
Prospective Candidate	Any persons who asks or is invited to submit a Quotation or Tender
Public Sale	A sale open to members of the public or Council staff, at least at a section level, conducted in person, by internal or public notice or by any other means.
Quotation	An indication by any person of a price for the execution of work or the supply of goods, materials or services (without the formal issue of an Invitation to Tender).
Quotation System	The NEPO portal quotation system.
Relevant Contract	Contracts to which these Standing Orders apply (see Standing Order 4).
Shortlisting	Where prospective contractors are selected <ul style="list-style-type: none"> <li>• to quote or tender or</li> <li>• to proceed to final evaluation</li> </ul>
Standing List	A list of approved suppliers able to perform contracts to supply goods or services of particular types.
Tender	A written offer made by any person (following an invitation from the Council) which can be accepted by the Council to form a binding contract.
Total Value	The whole of the value or estimated value (in money or equivalent value) for a single purchase or disposal, whether or not it comprises several lots or stages, to be paid or received by the Council or a Service within the Council. The Total Value shall be calculated as follows <ul style="list-style-type: none"> <li>• where the contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period;</li> <li>• where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months;</li> <li>• for feasibility studies: the value of the scheme or contracts which may be awarded as a result;</li> </ul>

	<ul style="list-style-type: none"><li>• for nominated suppliers and sub-contractors: the Total Value shall be the value of that part of the main contract to be fulfilled by the nominated supplier or sub-contractor.</li></ul>
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## **PART D – Contract Standing Orders**

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4. Relevant Contracts
5. Exemptions

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Annex 1 – Letting of School Based Contracts

## **Section 1 – Scope of Standing Orders**

### **1. BASIC PRINCIPLES**

- 1.1 Purchasing and disposal procedures must:
- Secure the most economically advantageous tender;
  - Be consistent with the highest standards of integrity;
  - Ensure fairness in allocating public contracts;
  - Comply with all legal requirements;
  - Ensure that *Non-Commercial considerations* do not influence any *Contracting Decision*; and
  - Support the Council's corporate and service aims and policies.

### **2. GENERAL PROVISIONS**

- 2.1 Every contract, whether made by the Council, the Executive or an Officer to which the power of making contracts shall have been delegated, **shall be made in accordance with these Standing Orders, and no exemption from any of the provisions of these Standing Orders (where possible) shall be made otherwise than by direction of:**
- 2.1.1 the Council;**
  - 2.1.2 the Executive; or**
  - 2.1.3 the Head of Service concerned, with the prior agreement of the Chief Finance Officer, if they are satisfied that exceptional circumstances justify such an exemption.**
- 2.2 Any contract or sub contract which is substantially (i.e. above 50% of value) for the execution of work shall be treated as such for the purposes of these Standing Orders notwithstanding that it includes the supply of goods, services or materials.
- 2.3 Every contract made by or on behalf of the Council shall comply with the Treaty of Rome and any relevant directives of The European Union for the time being in force in the United Kingdom.
- 2.4 It shall be a condition of any contract between the Council and any person (not being an officer of the Council) who is required to supervise a contract on its behalf that in relation to such contract they shall comply with the requirements of these Standing Orders as if they were an Officer.
- 2.5 Where external funding is received unless otherwise stipulated in the grant criteria the Council's Standing Orders will apply. Obviously where the grant criteria dictates a procurement process then that procedure will take precedent and be followed.
- 2.6 Any breach or non-compliance with these Contract Standing Orders must on discovery be reported immediately to the Audit Manager acting on behalf of the Chief Finance Officer. The Audit Manager shall, after taking legal advice and consulting Strategic Commissioning and Procurement, decide whether each reported breach or non-compliance presents a significant risk of harm to the Council's interests and if satisfied that such risk exists shall undertake any necessary investigation and report the findings to the Chief Finance Officer.

### 3. RESPONSIBILITIES OF OFFICERS

#### Officers

- 3.1 The Officer responsible for purchasing or disposal must comply with these Standing Orders, Financial Regulations, Code of Conduct and with all United Kingdom and European Community binding legal requirements.
- 3.2 The Officer must keep the records required by Standing Order 21.
- 3.3 Tender procedures must be conducted in accordance with procedures set out in the Invitation to Tender
- 3.4 Officers must also ensure that agents, consultants and contractual partners acting on behalf of the Council also comply.
- 3.5 Officers must take all necessary legal, financial, procurement and professional advice in a timely manner.
- 3.6 **Standing Orders must be complied with strictly. They are minimum requirements and a more thorough procedure may be appropriate for particular contracts.**

(For example, if Standing Order 11.1 would normally require that quotes be obtained, it might be appropriate in the particular circumstances to seek more quotations in writing or tender submissions. Equally it may not always be appropriate to make use of an exemption under Standing Order 5 even if one might apply or be granted.)

#### Heads of Service

- 3.7 Heads of Service must ensure that their staff comply with Standing Order 3.1.
- 3.8 Heads of Service must ensure that their staff complete the **Council's Corporate Contract Register for all contracts entered into**, which means that notification of any contract award must be provided to Strategic Commissioning & Procurement.

### 4. RELEVANT CONTRACTS

- 4.1 **All Relevant Contracts must comply with these Standing Orders.**
- 4.2 A Relevant Contract is any arrangement made by or on behalf of the Council (including maintained schools) for the carrying out of work or the supply of goods, materials or services. These include arrangements for:
  - the supply or disposal of goods or materials;
  - hire, rental or lease of goods or equipment;
  - execution of works; or
  - the delivery of services including those related to:
    - the recruitment of staff;
    - the supply of staff by employment agents, consultants or any other companies;
    - land and property transactions; or
    - financial and consultancy services.

- 4.3 Relevant Contracts do not include contracts relating to:
- the employment of staff;
  - the acquisition, disposal, or transfer of land (for which *Financial Regulations* shall apply); or
  - legal advice or representation, or medical advice, or other expert advice required in the context of actual or potential litigation which the Monitoring Officer considers it necessary to obtain.

## 5. EXEMPTIONS

- 5.1 The Council, the Executive and Executive Members have power to waive the requirement of a standing order in specific instances. **No exemptions can be used if the EU procedure applies.**
- 5.2 An exemption under this Standing Order (5) allows a contract to be placed by direct negotiation with one or more suppliers rather than in accordance with Standing Order 11.
- 5.3 Subject to Standing Order 5.4, all exemptions, and the reasons for them, must be recorded using the appropriate form. Exemptions shall be signed by the Head of Service and countersigned by the Chief Finance Officer and the Monitoring Officer.
- 5.4 The following exemptions only need the signature of the Head of Service and the Chief Finance Officer:
- any contract or sub contract that is substantially for the undertaking of services in which the exercise of professional knowledge and skill is of primary importance;
  - for work, supplies and services which are patented or of a proprietary or special character and for which it is not possible or desirable to obtain competitive prices;
  - where for technical, commercial or artistic reasons or because of exclusive rights, it is not reasonable to advertise for tenders;
  - where the contract is awarded under the terms of a strategic partnership arrangement approved by the Executive;
  - social care services under the National Health Services and Community Care Act, 1990 or the Children Act, 1989 (contract value must be below £589,148);
  - where a supplier owns a property and is also a registered service delivering care into those premises (contract value must be below £589,148);
  - where grant conditions require expenditure to be incurred within a financial year, and notification of a grant is received so late as to prevent compliance with contract standing order 11;
  - where we are awaiting publication or confirmation of legislative changes that will directly impact future service delivery and the loss of the service would be detrimental to the delivery of Council services;
  - where a purchase is to be made by auction;
  - where there is no market;
  - where a purchase is to be made using **standing arrangements** with another local authority, government department, health authority, statutory undertaker or public service purchasing consortium; or
  - where a new contract is proposed to be entered into or an existing contract is being extended and a change of supplier would cause:
    - disproportionate technical difficulties;
    - diseconomies; or



- significant disruption to the delivery of Council services.
- 5.5 Where an exemption is necessary because of an unforeseeable emergency involving immediate risk to persons, property or serious disruption to Council Services, Heads of Service may approve the exemption but must prepare a report for the Chief Finance Officer to justify the action taken. If they consider it necessary, the Chief Finance Officer may require that report to be submitted to the next meeting of the Executive.
- 5.6 The Chief Finance Officer must monitor the use of all exemptions, and maintain a record of all exemptions used.

## **Section 2 – Common Requirements**

### **6. STEPS PRIOR TO PURCHASE**

6.1 Before beginning a purchase, the *Officer* responsible for it must:

- a) In a manner commensurate with the complexity and value of the purchase:
- ensure there is a service specification that clearly articulates the outcomes to be achieved;
  - take into account the requirements from any review;
  - appraise the need for the expenditure and its priority;
  - ensure there are no existing contract arrangements already in place;
  - define the objectives of the purchase;
  - assess the risks associated with the purchase and how to manage them;
  - consider what procurement method is most likely to achieve the purchasing objectives, including external or internal sourcing or accessing an existing contract, collaboration with other purchasers, partnering and long term relationships;
  - adhere to the provisions of the Social Values Act 2012 for eligible contracts; and
  - consult users as appropriate about the proposed procurement method, contract standards, and also performance and user satisfaction monitoring, and
- b) confirm that:
- there is Member or delegated approval for the expenditure (and a copy of that approval be retained on file);
  - there is Executive approval for significant new proposals as required by Financial Regulations; and
  - prior information notices, if required in accordance with EC procedures, have been sent.

### **7. RECORDS AND DEBRIEFING CANDIDATES**

- 7.1 Where the Total Value is less than £1,000,000 for works and £164,176 for supplies of goods, materials, consultants or services the following documents must be kept:
- invitations to quote and Quotations received;
  - a written record of:
    1. any exemption and reasons for it;

- 2. the reasons if the lowest price is not accepted; and
- written records of communications with the successful contractor.

7.2 Where the Total Value exceeds £164,176 for works and £164,176 for supplies of goods, materials, consultants or services and £589,148 for Light Touch Regime services the Officer must record:

- pre-tender market research;
- the method for obtaining bids (see Standing Order 11.1);
- any Contracting Decision and the reason for it;
- any exemption under Standing Order 5 together with the reasons for it;
- the Award Criteria;
- tender documents sent to and received from Candidates;
- the contract documents;
- clarification and post-tender negotiation (to include minutes of meetings);
- written records of communications with Candidates and with the successful contractor throughout the period of the contract; and
- post contract evaluation and monitoring.

7.3 Written records required by this Standing Order must be kept for six years (twelve years if the contract is under seal) after the final settlement of the contract. However, documents which relate to unsuccessful Candidates may be electronically scanned or stored by some other suitable method after twelve months from award of contract, provided there is no dispute about the award.

7.4 Prospective Candidates must be notified simultaneously in writing and as soon as possible of any Contracting Decision. If a Candidate requests in writing the reasons for a Contracting Decision, the Officer must give the reasons in writing as soon as possible (see further Standing Order 19.6).

7.5 The Freedom of Information Act 2000 gives a general right of public access to all types of 'recorded' information held by public authorities, sets out exemptions from that general right, and places a number of obligations on public authorities with regard to the disclosures of information. The Council will, as a general rule, allow public access to recorded information where possible and the contractor shall agree to the Council making any disclosures in accordance with the Act.

## 8. APPROVED LISTS

8.1 This Standing Order shall have effect where the Council has determined that a Standing List or lists shall be kept of persons suitable for undertaking contracts for the execution of specified categories of work or for the supply of specified categories of goods, materials or services within such values or amounts as may be specified.

8.2 Standing Lists should be used where recurrent transactions of a similar type are likely but where such transactions need to be priced individually and cannot easily be aggregated and priced in a single tendering exercise. **Standing Lists cannot be used where the EU Procedure applies.**

8.3.1 Standing Lists shall:

- be compiled following the procedure stipulated in this Standing Order;
- contain the names and addresses of all persons whose requests to be included have been approved by the Head of Service in consultation with the Strategic Commissioning & Procurement Team;

- not enter persons on a Standing List until there has been an adequate investigation into both their financial and technical ability to perform the contract, unless such matters will be investigated each time tenders are invited from that list;
- not preclude persons from inclusion on a Standing List other than for good reasons;
- indicate whether a person whose name is included is approved for contracts of all or only some of the specified categories, values or amounts;
- be kept by the relevant Head of Service who will co-ordinate all enquires in respect of the list.

8.4 Standing Lists must be drawn up after an advertisement inviting applications for inclusion on the list. The advertisement must be placed to secure widest publicity amongst relevant suppliers and not less than four weeks before the list is first compiled. Persons may be entered on a list between the initial advertisement and re-advertisement provided the requirements of Standing Order 8.3 are met.

8.5 Standing Lists and shortlisting criteria must be reviewed at least annually and re-advertised at least every three years, Review means:

- the reassessment of the financial, technical ability and performance of those persons on the list unless such matters will be investigated each time Candidates are invited from that list, and
- the deletion of those persons no longer qualified, with a written record kept justifying the deletion.

8.6 **On re-advertisement, a copy of the advertisement must be sent to each supplier on the list, inviting them to confirm they wish to remain on the list at least four weeks before. If they wish to remain then a review of necessary checks will be completed and they will remain on the list if checks are satisfactory.**

8.7 All Standing Lists must be open to public inspection.

8.8 Where invitation to tender for a contract is limited to persons whose names appear on a Standing List maintained under this Standing Order, an invitation to tender for that contract shall be sent to at least four of those persons. Each person invited to tender must be approved for a contract for the category, value or amount selected. If there are insufficient suitably qualified persons to meet the competition requirement, all suitably qualified persons must be invited.

## 9. **SELECTIVE TENDERING FOR SPECIFIC CONTRACTS**

9.1 This Standing Order shall apply where the Council has resolved that Invitations to Tender for a specific contract shall be limited to persons who reply to a Public Notice via the NEPO portal and Contracts Finder.

9.2 The manner of issuing the required Public Notice shall be that stipulated by Standing Order 10.2 except that in place of inviting tenders the Notice shall:

- request expressions of interest;
- express the purpose and nature of the proposed contract; and
- provide the registration instructions for the NEPO portal and the closing date and time when expressions of interest must be made.

## 10. OPEN TENDER

10.1 This Standing Order shall apply where the Head of Service has decided that Tenders for a contract are to be obtained by open tender.

10.2 All tenders will be advertised via Contracts Finder and the advert shall:

- express the nature and purpose of the contract;
- indicate how tender documents may be obtained;
- invite tenders; and
- state the closing date and time by when valid tenders must be returned via the NEPO portal.

### **Section 3 – Conducting a Purchase or Disposal**

## 11. COMPETITION REQUIREMENTS FOR PURCHASE, DISPOSAL AND PARTNERSHIP ARRANGEMENTS

### 11.1 Purchasing - Competition Requirements

Where the estimated Total Value for a purchase is within the values in the first, second third and fourth columns of the table set out at Part B of these Standing Orders above, the Tendering Procedure in the fifth column must be followed.

All Relevant Contracts (see Standing Order 4) must be subject to competition, unless there is an exemption as set out in Part B of these Standing Orders above.

Where it can be demonstrated that there are insufficient suitably qualified Candidates to meet the competition requirement, all suitably qualified Candidates must be invited.

11.2 **An Officer must not enter into separate contracts nor select a method of calculating the Total Value in order to minimise the application of these Standing Orders.**

11.3 Where the EU Procedure is required the Officer shall work with Strategic Commissioning & Procurement to determine the method of conducting the purchase.

11.4 Where services are currently purchased internally, i.e. from within the Council, for internal provision, the requirement to obtain other quotations or tenders does not apply. However, Services may choose to seek alternative quotations / tenders for the purpose of market testing.

### **Disposal**

11.5 **Assets for disposal** must be sent to Public Sale except where better value for money is likely to be obtained by inviting Quotations and Tenders. In the latter event, the method of disposal of surplus or obsolete stocks/stores or assets other than land must be determined as follows:

<b>TOTAL VALUE</b>	<b>PROCEDURE</b>
Up to £1,000	two written Quotations or Public Sale

£1,000.01 to £100,000	at least three written Quotations or Public Sale
£100,000.01 and above	Invitation to Tender to at least four Candidates

- 11.6 The sale of goods and materials to staff must be approached with caution and the tendering procedures must be used.

### **Providing Services to External Purchasers**

- 11.7 Providing services to external purchasers must be in compliance with the Local Authority Goods and Services Act.

### **Partnership Arrangements**

- 11.8 Partnership Arrangements are subject to all United Kingdom and EU Procurement legislation and must follow these Standing Orders. If in doubt, Officers must seek the formal written advice of the Chief Finance Officer and Strategic Commissioning & Procurement.

## **12. PRE-TENDER MARKET RESEARCH AND CONSULTATION**

- 12.1 The Officer responsible for the purchase:

- may consult potential suppliers prior to the issue of the Invitation to Tender in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters **provided** this does not prejudice any potential Candidate, but
- must not seek or accept technical advice on the preparation of an Invitation to Tender or Quotation from anyone who may have a commercial interest in them, if this may prejudice the equal treatment of all potential Candidates or distort competition, and
- should seek advice from Strategic Commissioning & Procurement.

## **13. STANDARDS AND AWARD CRITERIA**

- 13.1 The Officer must ascertain what are the relevant British or equivalent, European or International **standards**, which apply to the subject matter of the contract. The Officer must include those standards, which are necessary to properly describe the required quality. The Monitoring Officer must be consulted if the Officer proposes to use standards other than European standards.

- 13.2 The Officer must define Award Criteria in order to ensure the most economically advantageous tender (M.E.A.T.) is secured.

- 13.3 Award Criteria must not include:

- Non-Commercial Considerations;
- matters which discriminate against suppliers from the European Economic Area or signatories to the Government Procurement Agreement; or
- matters which are anti-competitive within the meaning of the Local Government Act 1988.

## 14. **INVITATIONS TO TENDER**

14.1 The Invitation to Tender shall state that no Tender will be considered unless it is received by the date and time stipulated. No Tender delivered in contravention of this clause shall be considered.

14.2 All Invitations to Tender shall include the following:

- a specification that describes the Council's requirements in sufficient detail to enable the submission of competitive offers;
- A requirement for Candidates to declare that the Tender content, price or any other figure or particulars concerning the Tender have not been disclosed by the Candidate to any other party (except where such disclosure is made in confidence for a necessary purpose);
- A requirement for Candidates to complete fully and sign all tender documents including a form of tender and certificates relating to canvassing and non-collusion;
- Notification that tenders are submitted to the Council on the basis that they are compiled at the Candidates expense;
- A description of the Award Procedure and, unless defined in a prior advertisement, a definition of the Award Criteria in objective terms;
- A stipulation that any Tenders submitted by fax or e mail are not allowed; and
- The method by which arithmetical errors discovered in the submitted tenders are to be dealt with. In particular, whether the overall price prevails over the rates in the tender or vice versa.

14.3 All Invitations to Tender must specify the goods, services or works that are required, together with the terms and conditions of contract that will apply (see Standing Order 21)

14.4 The Invitation to Tender must state that the Council is not bound to accept any Tender and can stop the tender process at any time.

14.5 All Candidates invited to Tender must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.

## 15. **INVITATIONS TO QUOTE**

15.1 The Invitation to Quote shall state that the Council will reserve the right to accept a Quote that is not received by the date and time stipulated in the Invitation to Quote.

15.2 All Invitations to Quote shall include the following:

- a specification that describes the Council's requirements in sufficient detail to enable the submission of competitive offers;
- A requirement for Candidates to declare that the Quotation content, price or any other figure or particulars concerning the Quote have not been disclosed by the Candidate to any other party (except where such disclosure is made in confidence for a necessary purpose);
- A requirement for Candidates to complete fully and sign all quotation documents including a form of quote and certificates relating to canvassing and non-collusion;

- Notification that quotes are submitted to the Council on the basis that they are compiled at the Candidates expense;
  - A description of the Award Procedure and, unless defined in a prior advertisement, a definition of the Award Criteria in objective terms; and
  - A stipulation that any quote submitted by fax or e mail will be rejected unless they have been sought in accordance with tender instructions.
- 15.3 All Invitations to Quote must specify the goods, services or works that are required, together with the terms and conditions of contract that will apply (see Standing Order 21).
- 15.4 The Invitation to Quote must state that the Council is not bound to accept any quote and can stop the quotation process at any time.
- 15.5 Quotations will be received and opened via the Quotation System and it will be the responsibility of the officer to ensure that at least three suitable organisations receive the quote, including the verifying of e-mail and premise addresses.
- 15.6 A minimum of two weeks must be given for the return of quotations.

## 16. **SHORTLISTING**

- 16.1 Where Standing Lists are used, Shortlisting may be done by the Officer or other authorised representative of the Head of Service in accordance with shortlisting criteria drawn up when the Standing List was compiled (See Standing Order 8.5).
- 16.2 Any Shortlisting must have regard to the financial and technical standards relevant to the contract and may have regard to Award Criteria. Special rules apply in respect of the EU Procedure.
- 16.3 Officers may decide not to Shortlist but to send Invitations to Tender and to evaluate all possible Tenderers.

## 17. **SUBMISSION, RECEIPT AND OPENING OF TENDERS**

- 17.1 Tenders received via the NEPO portal under Standing Order 11.1 shall have the electronic seal removed at one and the same time by Strategic Commissioning and Procurement.

### **Period for Candidates response**

- 17.2 Candidates invited to respond must be given an adequate period in which to prepare and must submit a proper Tender, consistent with the urgency of the contract requirement. Normally at least **four weeks** should be allowed for submission of Tenders. The EU Procedure lays down specific time periods, which must be adhered to.
- 17.3 All Tenders must be returned using the NEPO portal.
- 17.4 Tenders received by fax or E mail must be rejected.

## 18. CLARIFICATION PROCEDURES

- 18.1 Providing clarification of an Invitation to Tender to potential or actual Candidates or seeking clarification of a Tender or Quote whether in writing or by way of a meeting is permitted.

## 19. EVALUATION AND AWARD OF CONTRACT

- 19.1 Apart from the debriefing required or permitted by this Standing Order:

- confidentiality of Tenders and the identity of Tenderers must be preserved at all times; and
- information about one Tenderers' response must not be given to another Tenderer.

- 19.2 Contracts must be evaluated and awarded in accordance with the Award Criteria.

- 19.3 The arithmetic in compliant Tenders must be checked. If arithmetical errors are found they should be notified to the tenderer, who should be requested to confirm or withdraw their Tender. Alternatively, if the rates in the Tender, rather than the overall price, were stated within the Invitation to Tender as being dominant, an amended Tender price may be requested to accord with the rates given by the Tenderer.

- 19.4 If a Tender has been sought on the basis of price only then no such Tender other than the lowest if payment is to be made by the Council, or the highest if payment is to be received by the Council shall be accepted, except:

- by the Executive after considering a report from the appropriate Head of Service; or
- by a duly authorised Officer following consultation with the appropriate Executive Member.

A record of the reason must be made as appropriate.

- 19.5 Details of the amount of each tender shall be made available to all present at the meeting of the Executive at which they are under consideration but no information regarding the identity of individual tenderers in relation to the Tenders received shall be given until a tender has been accepted by the Executive.

- 19.6 The Officer should debrief in writing all those Tenderers who submitted a bid about the reasons why they were unsuccessful and the characteristics and relative advantages of the leading bidder. This should normally include:

- how the award criteria were applied
- the prices or range of prices submitted, in either case not correlated to Tenderers names

The same information may be given to those who responded in any pre-tender selection process. No other information should be given without taking the advice of the Chief Finance Officer and the Head of Commissioning & Procurement.



## 20. **NOMINATED SUB CONTRACTS**

20.1 The following provisions shall have effect where the Council proposes to enter into a contract for the execution of work with a person (in this Standing Order called 'the main contractor') and also proposes to nominate to the main contractor one or more sub-contractors or suppliers for the execution of work or the supply of goods, materials or services within the main contract.

- Tenders for the nomination shall be invited in accordance with the relevant provisions of Standing Orders 11.1:
  1. the terms of the invitation shall require an undertaking by the tenderer that if selected they will be willing to enter into a contract with the main contractor on terms which indemnify the main contractor against their own obligations under the main contract in relation to the work or goods, materials or services included in the sub-contract;
  2. the Head of Service concerned or their authorised representative shall nominate to the main contractor a person whose tender is in their opinion the most suitable. Provided that where the tender is other than the lowest received, the circumstances shall be reported appropriately;
- Tenders received under this Standing Order must comply with Standing Order 14 and must be opened in accordance with Standing Order 17 of these Standing Orders.

## **Section 4 – Contract and Other Formalities**

### 21. **CONTRACT DOCUMENTS**

21.1 All contracts with a value in excess of EU Thresholds must be referred to Legal Services for preparation and registrations, whether made in writing or under seal at the sole discretion of the Monitoring Officer, subject only to 21.8.

21.2 In the event of any person withdrawing a Tender after it has been accepted, no further Tender from that person shall, unless the Executive otherwise resolves, be considered for a period of three years from the date of withdrawal.

21.3 With the exception of minor cash transactions made in accordance with financial regulations, every contract for the execution of work or the supply of goods, materials or services shall be created only by one of the following means:

- by the issue of an official order raised via the Council's financial system; or
- where tenders have been invited by the completion of a formal written contract unless the Head of Service or their authorised representative certifies that, owing to the nature of the proposed contract, the interest of the Council will be adequately protected by the issue of an official order form as above.

21.4 In addition, every Relevant Contract over £15,999 for purchases, for works, supplies of goods, materials, consultants or services must also as a minimum state clearly:

- that the contractor may not assign or sub-contract without prior written consent;
- any insurance requirements;

- health and safety requirements;
- ombudsman requirements;
- data protection requirements if relevant;
- that charter standards are to be met if relevant;
- the Council's requirements in respect of Freedom of Information and Human Rights;
- that agents must comply with these Standing Orders relating to contracts (where agents are used to let contracts);
- a right of access to relevant documentation and records of the contractor for monitoring and audit purposes; and
- Whistleblowing arrangements.

21.5 All contracts must be concluded formally in writing before the supply, service or construction work begins, except in exceptional circumstances, and then only with the written consent of the Chief Finance Officer. **An award letter is insufficient.**

21.6 All contracts must include the following paragraph:

*“The Contractor recognises that the Council is under a duty to act in a manner which is compatible with the Convention rights as defined by Section 1(1) of the Human Rights Act 1998 (‘Convention Rights’). This duty includes a positive obligation on the Council to ensure that contractors providing services on the Council’s behalf act in a way which is compatible with the Convention Rights. The Contractor therefore agrees to provide the Services and comply with its other obligations under this contract in a manner which is compatible with the Convention Rights.”*

21.7 The Officer responsible for securing the signature of the contractor must ensure that the person signing for the contracting party has authority to bind it.

21.8 Where contracts are completed by each side adding their formal seal, the fixing of the Council’s seal must be witnessed by an officer on behalf of the Monitoring Officer. Every Council sealing will be consecutively numbered, recorded and signed by the person witnessing the seal. The seal must not be affixed without the authority of the Council, the Executive or of a Head of Service acting under delegated powers. A contract must be sealed where;

- The Council wishes to enforce the contract for more than six years after it ends
- The price paid or received under the contract is a nominal price and does not reflect the value of the goods or services
- Where there is any doubt about the authority of the person signing for the contracting party
- Where the total value is expected to exceed £164,176.

## 22. **LIQUIDATED DAMAGES AND PARENT COMPANY GUARANTEES**

22.1 Every formal written contract, which exceeds £25,000 in value or amount and is for the execution of works shall provide for liquidated damages to be paid by the contractor in case the terms of the contract are not duly performed.

22.2 The Officer must consult the Chief Finance Officer when a Tenderer is a subsidiary of a parent company and the officer does not think a Parent Company Guarantor is necessary, and:

- the total value exceeds £200,000;

- award is based on evaluation of the parent company; or
- there is some concern about the stability of the Tenderer.

23.2 The Officer must consult the Chief Finance Officer about whether a Bond is needed:

- where the total value exceeds £200,000; or
- where it is proposed to make stage payments or other payments in advance of receiving the whole of the subject matter of the contract.

## 23. PREVENTION OF CORRUPTION

23.1 The Officer must comply with the Council's Employee Code of Conduct and must not invite or accept any gift or reward in respect of the award or performance of any contract. It will be for the officer to prove that anything received was not received corruptly. High standards of conduct are obligatory. Corrupt behaviour will lead to dismissal and is a crime under statutes referred to in Standing Order 23.2

23.2 The following clauses must be put in every written Council contract:

*"The Council may terminate this contract and recover all its loss if the Contractor, its employees or anyone acting on the Contractor's behalf do any of the following things:*

- *offer, give or agree to give anyone any inducement or reward in respect of this or any other Council contract (even if the Contractor does not know what has been done); or*
- *commit an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117(2) of the Local Government Act 1972; or*
- *commit any fraud in connection with this or any other Council Contract whether alone or in conjunction with Council Members, contractors or employees.*

*Any clause limiting the Contractor's liability shall not apply to this clause."*

23.3 Any suspected irregularity shall be referred to the Audit Manager who shall notify the Chief Finance Officer and Monitoring Officer where necessary. Any examination of contractors' or tenderers' books and records as a result of any such suspected irregularity shall be conducted by the Audit Manager. If, in the investigation of any irregularity, the Chief Finance Officer considers that disciplinary procedures may need to be invoked, the appropriate Head of Service, Head of Legal & Democratic Services and Head of HR Client Services shall also be notified.

## 24. DECLARATION OF INTERESTS

24.1 If it comes to the knowledge of a member or an employee of the Council that a contract in which he or she has a pecuniary interest has been or is proposed to be entered into by the Council, he or she shall immediately give written notice to the Monitoring Officer.

24.2 Such written notice is required, irrespective of whether the pecuniary interest is direct or indirect. An indirect pecuniary interest is distinct from a direct pecuniary interest in as much as it is not a contract to which the member or employee is directly a party.

24.3 A shareholding in a body not exceeding a total nominal value of £1,000 or 1% of the nominal value of issued share capital (whichever is the less) is not a pecuniary interest for the purposes of this standing order.

- 24.4 The Monitoring Officer shall maintain a record of all declarations of interests notified by Members and officers.
- 24.5 The Monitoring Officer shall ensure that the attention of all Members is drawn to the national code of local government conduct.

## **SECTION 5 - General**

### **25. POST CONTRACT MONITORING AND EVALUATION**

- 25.1 During the life of the contract and in order to inform future commissioning decisions the Officer must monitor in respect of:
- performance;
  - compliance with specification and contract;
  - cost;
  - value for money achieved; and
  - user satisfaction and risk management.

### **26. COMMISSIONING A CONSULTANT**

- 26.1 The engagement of consultant architects, engineers and surveyors or other professional consultants shall be subject to completion of a formal letter, or contract of appointment.
- 26.2 Consultants shall be required to provide evidence of and maintain professional indemnity policies to the satisfaction of the relevant Head of Service for the periods specified in the respective agreement. The excess for any one claim shall be no more than £250,000.
- 26.3 Consultants shall be selected and awarded in accordance with the values and procedures recorded in the table in standing order 11.1 above.
- 26.4 Records of consultancy contract shall be maintained in accordance with Standing Order 7.

### **27. TECHNICAL AMENDMENTS**

- 27.1 The Chief Finance Officer shall have the power to make technical amendments from time to time to make these Standing Orders consistent with legal requirements, changes in Council structures and personnel and best practice, after consultation with the Head of Paid Service, Monitoring Officer, and Chair of the Council.

## LETTING OF SCHOOL BASED CONTRACTS – ANNEX 1

This section outlines the Department for Education & Skills (DfES) regulations ensuring compliance with the requirements of the Fair Funding Scheme when letting contracts. The Fair Funding Scheme has been drawn up in consultation with schools and is approved by the Secretary of State. The scheme sets out the financial relationship of schools under delegation with the Council and the areas it covers are required by regulations made under the School Standards and Framework Act 1988.

1. The following must be borne in mind when evaluating tenders and letting contracts:
  - 1.1 Section 2.9 of the Fair Funding Scheme requires that Governing Bodies maintain a register of business interests of governors and Head teachers. This does not preclude participation in discussions about the relative merits of quotations and tenders but does mean those with a declared interest cannot vote on the final decision on the award of a contract. Those with declared interests must not be given any information about the quotations or tenders of other contractors until after the deadline for submission of all quotations and tenders has passed.
  - 1.2 Governing Bodies are acting as agents of Middlesbrough Council when they enter into contracts using funds delegated by the Authority. This means that Governing Bodies enter into contracts on behalf of Middlesbrough Council. Schools must adhere to the terms and conditions within the contract. Section 6.2.3 of the Fair Funding Scheme enables the Authority to charge any costs to a school's delegated budget awarded against it by a court for breach of contract by a school where they have failed to heed LEA advice.
  - 1.3 The status of Governing Bodies of aided and foundation schools gives them additional responsibilities. Governing Bodies of these schools are not acting as agents of the LEA and are not bound by the Financial Scheme when exercising their additional powers or discharging additional responsibilities.
  - 1.4 The provision of services and facilities by the LEA are covered by Section 8 of the Fair Funding Scheme. Although not a legally binding contract the terms and conditions of the Service Level Agreement set out the respective responsibilities of schools and the LEA. The Executive Director of Children Families & Learning will act as arbiter should a dispute arise.
  - 1.5 Section 1.5 of the Fair Funding Scheme suggests the appropriate delegation to Head teachers. This includes delegation to enter into contracts. Governing Bodies are free to determine their own levels of delegation to Head teachers. In exercising delegated powers Head teachers must abide by the contracting processes referred to in this document.
  - 1.6 Section 2.10 of the Fair Funding Scheme does not restrict schools to selecting contractors from approved lists. However, where schools choose contractors who are not on Middlesbrough Council's approved list they must satisfy themselves as to the health and safety competence and insurance cover of the contractor. Schools should also have regard to Child Protection legislation and satisfy themselves that contractors have made adequate arrangements to monitor the activities of employees where they will have access to children during the course of their work. It is essential that schools record their reasons for assessing and selecting a contractor when they let a contract. This is not only considered good practice but also provides essential evidence to safeguard schools and the LEA from litigation claims.

- 1.7 Schools are advised that selecting contractors from Middlesbrough Council's approved list is the preferred method of obtaining quotes and tenders. Details of contractors on the approved list are available, including the type and value of work for which each contractor is approved and their status for tax deduction under the Construction Industry Taxation Scheme (CITS) (see section 7.2 of the Finance Scheme and Annex 5 of the Fair Funding Scheme).
  - 1.8 Schools are required to seek at least three written quotations for any contract for goods, materials, services & consultants valued between £16,000 and £53,099. For works at least three written quotations are required for any contract valued between £16,000 and £106,099.
  - 1.9 Schools are required to seek tenders for any goods, materials, services or consultants valued over £53,100 and works valued over £106,100.
  - 1.10 In all cases where quotations or tenders are sought schools should accept the bid that is most economically advantageous tender. The reasons for accepting a quotation or tender must always be recorded in the minutes of Governing Body meetings where Head teachers have used delegated powers referred to above.
  - 1.11 All tenders should be accepted by the full Governing Body (subject to the withdrawal from the decision making process by those with business interests (see above) and delegation to the Head teacher by the Governing Body (see above)). In exceptional circumstances where the lowest tender is not accepted the Governing Body must record its decision in the minutes of the meeting.
  - 1.12 Governing Bodies (or Head teachers with delegated powers) must ensure that tenderers have adequate public liability insurance cover of at least £5m for the work or goods and services covered by the contract before contractors are appointed.
- 1.