

Contracts Procedure Rules

STANDING ORDERS RELATING TO CONTRACTS

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.

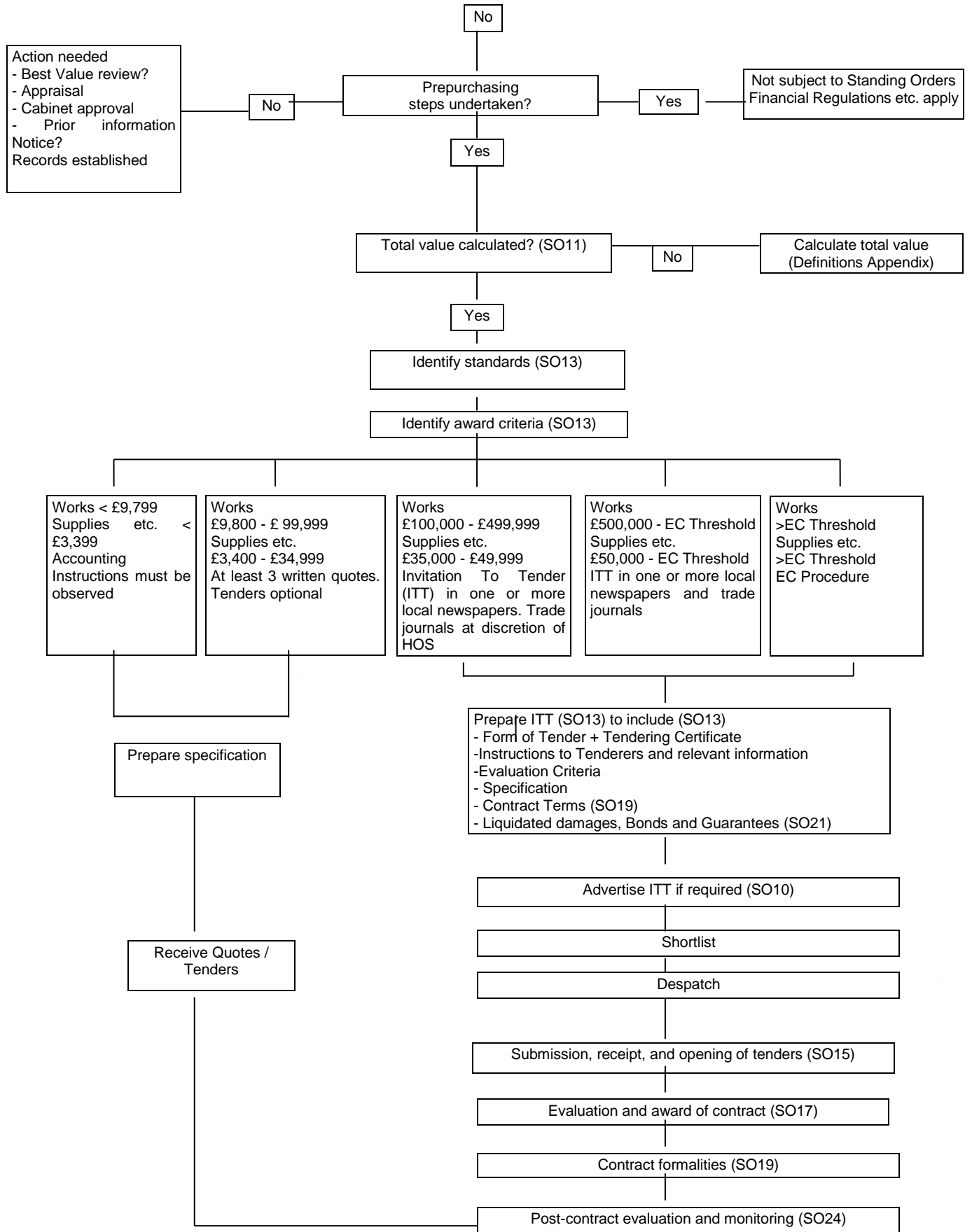
Officers responsible for the purchase or disposal of assets must comply with these Standing Orders, which lay down minimum requirements. A more thorough procedure may be appropriate for a particular contract.

- Follow the rules set out in Standing Orders if you purchase goods, materials, services, order building or civil engineering work.
- Take all necessary legal, financial and professional advice.
- Declare any personal financial interest in a contract. Corruption is a criminal offence.
- Conduct any Best Value review and appraise the purchasing need.
- Normally allow four weeks for submission of Quotations or Tenders (not to be submitted by fax or e-mail).
- Keep quotes / tenders confidential.
- Do not negotiate with suppliers except when Standing Order 17.2 applies.
- Complete a written contract or Council order before the supply or work begins.
- Keep records of dealings with suppliers.
- Assess each contract afterwards to see how well it meets the Council's needs and Best Value requirements.

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

	Works	Goods, Materials & Services
Neither written quotations nor tenders need to be invited but Accounting Instructions must be observed.	Up to £9,799	Up to £3,399
At least three written quotations. Tenders optional.	£9,800 - £99,999	£3,400 - £34,999
Invitation to Tender (ITT) by invitation to a number of firms on an approved list, by advertisement in one or more local newspapers circulating in the district and at discretion of Head of Service in one or more trade journals circulating among such persons as undertake such contracts.	£100,000 - £499,999	£35,000 - £49,999
Invitation to Tender by advertisement in one or more local newspapers and trade journals, by invitation to a number of firms on an approved list.	£500,000 - £3,834,410	£50,000 - £153,375
(EC threshold) EC Procedure	Above £3,834.410 (EC threshold)	Above £153,375 (EC threshold)

CONTRACT STANDING ORDERS – EXPLANATORY FLOWCHART



NOTE: This Guide is explanatory only and is not a substitute for reading Standing Orders

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
Best Value	The duty on local authorities to secure continuous improvement in the way in which functions are exercised, having regard to a combination of economy, efficiency and effectiveness as implemented by the Council
Bond	An insurance policy. If the contractor does not do what it has promised under contract with the Council, the Council can 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.
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"> • Composition of Standing Lists • withdrawal of Invitation to Tender • whom to invite to submit a Quotation or Tender • shortlisting • award of contract • any decision to terminate a contract
Director of Legal and Democratic Services	The most senior legal officer
Director of Resources	The most senior financial officer
EC Procedure	The procedure required by the EC where the Total Value exceeds the EC Threshold
EC Threshold	The contract value at which EC procurement directives must be applied if expected to be exceeded by the total value, currently £153,411 (£153,014 ECU's) for the supply of goods, materials or services and £3,834,411 (£5,923,624 ECU's) for building and civil engineering contracts.
European Economic Area	The 25 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 Chief Executive, Assistant Chief Executives and all Directors.
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"> • Those responding to advertisement of the contract inviting proposals placed in such publications as shall secure widest publicity among relevant suppliers; or Those included on a Standing List in respect of the type of purchase, which is the subject of the Invitation to Tender.
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"> 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; 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; 3. Any involvement of the business activities or interests of contractors with irrelevant fields of Government policy; 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; 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 6. Any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees 7. Financial support or lack of financial support by contractors for any institution to or from which the authority gives or withholds support; 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).
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"> • to quote or tender or • to proceed to final evaluation
Standing List	A list of approved persons 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.
Quotation / Tender Register	The log kept by the Members' Office Manager (Tenders) and Heads of Service (Tender/Quotations) to record details of Quotations and Tenders (see Standing Order 16).
Total Value	<p>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.</p> <p>The Total Value shall be calculated as follows</p> <ul style="list-style-type: none"> • 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; • where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months; • for feasibility studies: the value of the scheme or contracts which may be awarded as a result; • 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.

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Section 1 – Scope of Standing Orders

1. BASIC PRINCIPLES

1.1 Purchasing and disposal procedures must:

- Achieve best value for public money spent
- 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*.
- Support the Council's corporate and service aims and policies
- Comply with the Council's Best Value methodology and competition strategy.

2. GENERAL PROVISIONS

2.1 Every contract whether made by the Council or by the Executive or *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 shall be made otherwise than by direction of the Council, or by the Executive or *Head of Service* (with the agreement of the Director of Resources) concerned if satisfied that special circumstances justify such an exception.**

2.2 A record of any exemption from any of the provisions of these Standing Orders (including 4.3 below) shall be included in the Minutes if granted by the Council or the Executive or on the appropriate form if granted by a *Head of Service* (with the agreement of *the Director of Resources*), and shall specify the special circumstances by which the exemption shall have been justified.

2.3 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.

2.4 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.

2.5 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*.

2.6 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 *Director of Resources*. The Audit Manager shall, after taking legal advice and consulting the Strategic Commissioning/Procurement Manager, 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 relevant *Assistant Chief Executive, Executive Director, Director of Legal & Democratic Services, Director of Resources and Chief Executive* as appropriate.

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 20.
- 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 and professional advice.
- 3.6 **Standing Orders must be complied with strictly. They are minimum requirements. A more thorough procedure may be appropriate for a particular contract.**

(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 keep a **register** of:
- contracts completed by signature (rather than by the Council's seal – see standing order 20. Original contracts where the contract value exceeds £100,000 or are completed by the Council's seal should be passed to the *Director of Legal and Democratic Services* for safekeeping. *Heads of Service* are responsible for the safekeeping of all other original contracts on council premises.
 - exemptions recorded under Standing Order 5 and satisfy themselves that the uses of exemptions has been monitored by the *Director of Resources*.

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 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
 - 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
 - financial and consultancy services

- 4.3 *Relevant Contracts* do not include contracts relating to:
- the employment of staff, or
 - the acquisition, disposal, or transfer of land (for which *Financial Regulations* shall apply).

5. EXEMPTIONS

- 5.1 The Council, its Executive and Executive Members have power to waive the requirement of a standing order in specific instances. No exemptions can be used if the *EC 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 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 *Director of Resources* and where appropriate the *Director of Legal and Democratic Services*.
- 5.4 The following exemptions only need the signature of *the Head of Service* and the *Director of Resources*:
- 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 provided that where the contract is put out to *Tender*, the *tenders* are invited or negotiated in accordance with Standing Order 11.
 - purchase is to be made by auction.
- 5.5 In addition to the signature of *the Head of Service* and *Director of Resources*:
- *the Director of Legal and Democratic Services* to the Council must be consulted where purchase is to be made using **standing arrangements** with another local authority, government department, health authority, primary care trust, statutory undertaker or public service purchasing consortium.

- the *Director of Legal and Democratic Services* must be consulted where the contract is an extension to an existing contract and a change of supplier would cause:
 1. disproportionate technical difficulties
 2. diseconomies
 3. significant disruption to the delivery of Council services

5.6 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 next meeting of the Executive to support the action taken.

5.7 Any exemption granted for more than one year must be reviewed annually and either reconfirmed or amended.

5.8 Where grant conditions require expenditure to be incurred within a financial year, and notification of grant is received so late as to prevent compliance with contract standing order 11, an exemption may be approved by the Corporate Management Team on receipt of a report from the Head of Service.

5.9 The *Director of Resources* must monitor the use of all exemptions.

SECTION 2 - Common Requirements

6. STEPS PRIOR TO PURCHASE

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

In a manner commensurate with the complexity and value of the purchase:

- take into account the requirements from any *Best Value* review
- consult with the Corporate Procurement Unit to ensure that a contractual arrangement is not already in place
- appraise the need for the expenditure and its priority
- 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 sourcing through the Corporate Procurement Unit, packaging strategy and collaboration with other purchasers, partnering and long term relationships
- consult users as appropriate about the proposed procurement method, contract standards, and also performance and user satisfaction monitoring
- select the most appropriate procurement method; and
- set these matters out in writing if the Total Value of the purchase exceeds £50,000.

And confirm that:

- there is Member or delegated approval for the expenditure
- 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 £100,000 for works and £35,000 for supplies of goods, materials 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
 - written records of communications with the successful contractor
- 7.2 Where the Total Value exceeds £100,000 for works and £35,000 for supplies of goods, materials or 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.
 - 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 microfilmed or 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 within 15 days of the request (see further Standing Order 18.7).
- 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 *EC Procedure* applies.

8.3 *Standing Lists* shall:

- be compiled following the procedure stipulated in this Standing Order
- contain the names and addressees of all persons whose requests to be included have been approved by the *Head of Service* in consultation with the Strategic Commissioning/Procurement Manager.
- no persons may be entered 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.
- no persons shall be precluded 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 readvertisement 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 person on the list, inviting them to apply at least four weeks before each review.**

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.

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
- give the name and address of the *Head of Service* to whom applications must be sent and the latest date (not less than ten days) and time when applications will be considered.

9.3 After the period specified in the Public Notice has expired, a list shall be drawn up by the *Head of Service* concerned of all persons who applied for permission to tender and *Invitations to Tender* for the contract shall be sent to:

- not less than four such persons selected in the manner determined by the Head of Service and Strategic Commissioning/Procurement Manager.
- if fewer than four such persons have applied and are considered suitable, to all such persons

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 At least ten days public notice shall be given in one or more local newspapers and, if appropriate, in one or more newspaper or journal circulating amongst such persons or bodies capable of undertaking such contracts. The notice shall:

- express the nature and purpose of the contract
- indicate how tender documents may be obtained
- invite tenders
- state the last date and time by when valid tenders must be returned in an official envelope and to whom.

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 and second columns of the table below, the Tendering Procedure in the third column must be followed.

Works	Supply of Goods, Materials and Services	Tendering Procedure
Up to £9,799	Up to £3,399	Neither written quotations nor tenders need to be invited but Accounting Instructions must be observed.
£9,800 - £99,999	£3,400 - £34,999	At least three written quotations. <i>Tenders</i> optional
£100,000 - £499,999	£35,000 - £74,999	<i>Invitation to Tender</i> by invitation to a number of firms on an approved list, by advertisement in one or more local newspapers circulating in the district and at discretion of <i>Head of Service</i> in one or more trade journals circulating among such persons as undertake such contracts.
£500,000 - £3,834,410	£75,000 - £153,375	<i>Invitation to Tender</i> by invitation to a number of firms on an approved list or advertisement in one or more local newspapers and trade journals
Above £3,834,410 (EC threshold)	Above £153,375 (EC threshold)	(EC threshold) <i>EC Procedure</i>

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 *EC Procedure* is required the *Officer* shall consult the Strategic Commissioning/Procurement Manager and *Director of Legal and Democratic Services* 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:

TOTAL VALUE	PROCEDURE
Up to £100	two written <i>Quotations</i> or <i>Public Sale</i>
£100.01 to £10,000	at least three written <i>Quotations</i> or <i>Public Sale</i>
£10,000.01 and above	<i>Invitation to Tender</i> to at least four <i>Candidates</i>

- 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. The approval of the Executive must be sought for the provision of services to other public bodies.

Best Value and Partnership Arrangements

- 11.8 *Best Value* and Partnership Arrangements are subject to all United Kingdom and EC Procurement legislation and must follow these Standing Orders. If in doubt, *Officers* must seek the formal advice of the *Director of Legal & Democratic Services*, the *Director of Resources* and Strategic Commissioning/Procurement Manager in writing.

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 the Strategic Commissioning/Procurement Manager.

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 *Director of Legal and Democratic Services* must be consulted if the *Officer* proposes to use standards other than European standards.

13.2 The *Officer* must define *Award Criteria* appropriate to the purchase. *Award Criteria* must be designed to secure an outcome giving *Best Value* for money for the Council. The basic criteria shall be:

- 'lowest price' where payment is to be made by the Council
- 'highest price' if payment is to be received, or
- 'most economically advantageous' offer (where considerations other than price also apply).

If the last criterion is adopted, it must be further defined by reference to sub criteria.

Sub-criteria may refer only to relevant considerations. These may 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.

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*.
- matters which are anti-competitive within the meaning of the Local Government Act 1988.

14. INVITATIONS TO *TENDER* / *QUOTATIONS*

• 14.1 The *Invitation to Tender* shall state that no *Tender* will be considered unless it is received by the date and time stipulated in the *Invitation to Tender*. 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 and if possible in descending order of importance.
- A stipulation that any *Tenders* submitted by fax or other electronic means shall not be considered.
- 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* or *Quotation* must specify the goods, services or works that are required, together with the terms and conditions of contract that will apply (see Standing Order 20)

14.4 The *Invitation to Tender* or *Quotation* must state that the Council is not bound to accept any *Tender* or *Quotation*.

14.5 All *Candidates* invited to *Tender* or *Quote* 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. **SHORTLISTING**

15.1 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).

15.2 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 *EC Procedure*.

15.3 Officers may decide not to *Shortlist* but to send *Invitations to Tender* and to evaluate all possible Tenderers.

16. **SUBMISSION, RECEIPT AND OPENING OF TENDERS**

16.1 Written *Quotations* received under Standing Order 11.1 shall be opened at one and the same time in the presence of at least two persons who shall comprise the *Head of Service* or their authorised representative (on Principal Officer grade or above) and in the presence of at least one other *Officer*. A summary of the main terms of each *Quotation* must be recorded in the *Quotation / Tender Register*.

Period for *Candidates* response

16.2 *Candidates* invited to respond must be given an adequate period in which to prepare and must submit a proper *Quotation* or *Tender*, consistent with the urgency of the contract requirement. Normally at least **four weeks** should be allowed for submission of *Tenders*. The *EC Procedure* lays down specific time periods.

16.3 All *Tenders* must be returned to the Members' Office Manager or authorised representative.

- 16.4 The Members' Office Manager shall be responsible for the safekeeping of *Tenders* until opening. Receipt of each *Tender* must be:
- date stamped
 - initialled by the receiving *Officer*
 - logged immediately upon receipt in the *Tender Register*.
- 16.5 The *Officer* must not disclose the names of *Candidates* to any staff involved in the receipt, custody or opening of *Tenders*.
- 16.6 *Tenders* received by fax or E mail must be rejected, unless they have been sought in accordance with an electronic tendering system or e-auction approved by the *Director of Resources*.
- 16.7 The Members' Office Manager must ensure that all *Tenders* are opened at the same time in the presence of three people when the period for their submission has ended. Those persons present shall comprise the Members' Office Manager or their representative a Principal Officer from Legal Services and an officer from the spending Service.
- 16.8 Upon opening, a summary of the main terms of each *Tender* must be recorded in the *Quotation / Tender Register*. The summary must be initialled on behalf of the Members' Office Manager and all other persons present.
17. **CLARIFICATION PROCEDURES AND POST TENDER NEGOTIATION**
- 17.1 Providing clarification of an *Invitation to Tender* to potential or actual *Candidates* or seeking clarification of a *Tender* whether in writing or by way of a meeting is permitted.
- 17.2 Post-tender negotiation means negotiations with any tenderer after submission of a *Tender* and before the award of the contract with a view to obtaining an adjustment in price, delivery or content. It must not be conducted in an *EC Procedure* where this might distort competition particularly with regard to price. Where post-tender negotiation results in a fundamental change to the specification (or contract terms) the contract must not be awarded but re-tendered.
- 17.3 If post-tender negotiations are necessary after a single-stage *Tender* or after the second stage of a two-stage *Tender*, then such negotiations shall only be undertaken with the tenderer who has previously been identified as submitting the best *Tender*. Tendered rates and prices shall only be adjusted in respect of a corresponding adjustment in the scope or quantity included in the tender documents. Officers appointed by the *Head of Service* to carry out post-tender negotiations should ensure that there are recorded minutes of all negotiation meetings and that both parties agree actions in writing.
- 17.4 Post-tender negotiation must only be conducted in accordance with guidance given by the *Director of Legal and Democratic Services*, *Director of Resources* and Strategic Commissioning/Procurement Manager.
- 17.5 The *Director of Legal and Democratic Services* and Strategic Commissioning/Procurement Manager must be consulted
- wherever it is proposed to enter into post-tender negotiation
 - about whether negotiation is with all Tenderers

17.6 Negotiations must be conducted by a team of at least two officers, one of whom must be from a section independent to that leading negotiations.

18. EVALUATION AND AWARD OF CONTRACT

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

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

18.2 Contracts must be evaluated and awarded in accordance with the *Award Criteria*.

18.3 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.

18.4 *Heads of Service* must ensure that submitted *Tender* prices are compared with any pre-tender estimates and that any discrepancies are examined and resolved satisfactorily.

18.5 If a *Tender* or *Quotation* has been sought on the basis of price only then no such *Tender* or *Quotation* 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.

18.6 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.

18.7 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 names of Tenderers where there were three or more Tenderers.

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 *Director of Legal and Democratic Services*.

18.8 If requested, the *Officer* shall within 15 days give the debriefing information required by these Standing Orders to Tenderers who were deselected in the pre-tender *Shortlisting* process.

19. **NOMINATED SUB CONTRACTS**

19.1 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 16 of these Standing Orders.

SECTION 4 - Contract and Other Formalities

20. **CONTRACT DOCUMENTS**

20.1 All contracts above the value specified in Standing Order 11.1 as requiring *Invitations to Tender* shall be in writing and sealed on behalf of the Council in the presence of the *Director of Legal and Democratic Services* or such *Officer* designated by the *Director of Legal and Democratic Services*.

20.2 In the event of any person withdrawing a *Tender*, whether before or 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.

20.3 With the exception of minor cash transactions made in accordance with Accounting Instructions, 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 written order form signed by the appropriate *Head of Service* or their authorised representative; 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.

20.4 Every formal written contract for the supply of goods or materials shall provide that should the contractor fail to deliver the goods or materials or any portion thereof within the time or times specified in the contract, The Council, without prejudice to any other remedy for breach of contract, shall determine the contract either wholly or to the extent of such default and to purchase other goods, or materials, as the case may be, of the same or similar description to make good:

- such default; or
- in the event of the contract being wholly determined the goods or materials remaining to be delivered.

The clause shall further secure that the amount by which the cost of so purchasing other goods or materials exceeds the amount which would have been payable to the contractor in respect of the goods or materials, if they had been delivered in accordance with the contract, shall be recoverable from the contractor.

20.5 Every Relevant Contract must be in writing and must state clearly:

- what is to be supplied (description and quality)
- payment provisions (amount and timing)
- when the Council will have the right to terminate the contract
- that the contract is subject to the law as to prevention of corruption (Standing Order 23)

The Council's Order Form or standard terms and conditions must be used where possible.

20.6 In addition, every Relevant Contract for purchases over £9,799 for works and £3,399 for supplies of goods, materials 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
- race relations requirements
- 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

20.7 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 *Director of Legal and Democratic Services*. **An award letter is insufficient.**

20.8 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.’

20.9 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.

20.10 Where contracts are completed by each side adding their formal seal, such contracts shall be signed by at least two officers which, together with the fixing of the Council’s seal must be witnessed by a further officer on behalf of the *Director of Legal and Democratic Services*. 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 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 £100,000.

21. **DIRECT EMPLOYMENT OF LABOUR**

21.1 Every formal written contract, for the execution of work shall incorporate the following conditions:

- The Contractor shall be responsible for ensuring that all persons employed by them, and by any Sub-Contractor, in the work are in the Contractor’s or Sub-Contractor’s direct employment and it is expressly agreed between the parties hereto that the Contractor and Sub-Contractor shall not use ‘lump labour’ on or about the work.
- The expression ‘lump labour shall mean the practice of individual workpeople or groups of workpeople contracting as independent labour only sub-contracts and not being in the direct employment of the Contractor or any Sub-Contractor.
- The Contractor will use their best endeavours, utilising the appropriate Government employment agencies if necessary, to employ local persons in the execution of the work.

22. LIQUIDATED DAMAGES, BONDS 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 *Director of Resources* 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
- 22.3 The *Officer* must consult the Director of Resources about whether a Bond is needed:
- where the Total Value exceeds £200,000
 - 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 Director of Resources* and *Director of Legal & Democratic Services* 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 *Director of Resources* 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 *Chief Executive*. The *Chief Executive* shall report such declarations to the Executive.
- 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 *Chief Executive* shall maintain a record of all declarations of interests notified by Members and officers.
- 24.5 The *Chief Executive* shall ensure that the attention of all Members is drawn to the national code of local government conduct.

SECTION 5 - General

25. TRADING FUNCTIONS

- 25.1 In the particular cases of the Streetscene Services and only in those cases where the said Service is seeking Sub-Contractual arrangements with persons as part of a process of establishing a *Quotation or Tender* which the Service itself proposes to submit to the Council for the execution of work or the supply of materials:
- the financial limits referred to in Standing Order 11.1 (or limits subsequently fixed by the Executive as alternatives to those limits) shall be read as if the limits were the product of a multiplier of two thereof.

26. POST CONTRACT MONITORING AND EVALUATION

- 26.1 During the life of the contract the *Officer* must monitor in respect of:
- performance
 - compliance with specification and contract
 - cost
 - any *Best Value* requirements
 - user satisfaction and risk management
- 26.2 Where the *Total Value* of the contract exceeds £100,000 the *Officer* must make a written report evaluating the extent to which the purchasing need and contract objectives (as determined in accordance with SO 6.1) were met by the contract. This should be done normally when the contract is completed. Where the contract is to be re-let, a provisional report should also be available early enough to inform the approach to re-letting of the subsequent contract.

27. APPOINTMENT OF CONSULTANTS

- 27.1 The engagement of consultant architects, engineers and surveyors or other professional consultants including Counsel shall be subject to completion of a formal letter, contract of appointment or brief.
- 27.2 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.
- 27.3 Consultants shall be selected and commissions awarded in accordance with the values and procedures recorded in the second and third columns of the table in standing order 11.1 above.
- 27.4 Records of consultancy appointments shall be maintained in accordance with Standing Order 7.

28. TECHNICAL AMENDMENTS

The *Director of Resources* 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 approval of the Corporate Management Team.

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 Headteachers. 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 Director of Education will act as arbiter should a dispute arise.
- 1.5 Section 1.5 of the Fair Funding Scheme suggests the appropriate delegation to Headteachers. This includes delegation to enter into contracts. Governing Bodies are free to determine their own levels of delegation to Headteachers. In exercising delegated powers Headteachers must adhere to the principles of 'Best Value' and 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 under 'Best Value' 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 and services valued between £3,399 and £34,999. For works at least three written quotations are required for any contract valued between £9,799 and £99,999.
- 1.9 In addition to any contracts valued between £3,399 and £34,999 for goods, materials and services and between £9,799 and £99,999 for works referred to in 1.8 above, schools are advised to seek tenders for any goods, materials or services valued over £35,000 and works valued over £99,999. In all cases where quotations / tenders are sought schools should accept the lowest unless there is good reason to accept a higher quotation. The reasons for accepting a quotation / tender must always be recorded in the minutes of Governing Body meetings where Headteachers have used delegated powers referred to above.

- 1.10 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 Headteacher 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.
- 1.11 Governing Bodies (or Headteachers 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.