

Part Three, Section H

Contract Procedure Rules

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BRIEF GUIDE TO CONTRACT STANDING ORDERS

Brexit impact

Many of the laws and practices within this Constitution, such as the UK public procurement regime, derive from EU laws, and are therefore impacted by the UK's withdrawal from the EU.

As of 31 January 2020, the UK is no longer an EU Member State and its relationship with the EU is governed by the Withdrawal Agreement, which came into effect on 1 February 2020. The Withdrawal Agreement contains transitional arrangements, which provide for a transition period until 31 December 2020.

During this period, the UK continues to be treated as a Member State for current purposes and continues to be bound by the Public Contracts Regulations 2015 and the Concession Contracts Regulations 2016. Whilst they are based on EU Law the rules are unlikely to change significantly in the short term (on 1 January 2021 when Britain leaves the EU following the transitional period) and most likely only to accommodate World Trade Organisation or other Trade Rules.

If at any time these rules differ from the law in force then the law must be followed as it will override any conflicting provision in these rules.

This Constitution and these Contract Procedure Rules will be kept under review during the implementation period and updated accordingly. For further guidance, please contact the Monitoring Officer.

These **Contract Procedure Rules** (issued in accordance with section 135 of the Local Government Act 1972) are intended to promote good purchasing practice, public accountability and deter corruption. Officers responsible for purchasing must comply with these **Contract Standing Orders**. They lay down **minimum requirements** and a more thorough procedure may be appropriate for a particular contract. (For example, if Rule 8.1 would normally require that Quotes be obtained, it might be appropriate in particular circumstances to seek additional Quotations in writing or Tender submissions).

Following the rules promotes probity, integrity and impartiality and is the best defence against allegations of fraud or corruption. Failure to follow the rules could result in disciplinary action.

Key considerations for Officers engaged in purchasing works, goods and services include:

- Follow the rules if you purchase goods or services or order building work;
- Take legal, financial and procurement advice;
- Declare any personal financial interest in a contract. Corruption is a criminal offence;
- Check whether there is an existing Corporate Contract, Government Procurement Service framework, Hampshire County Council, Hampshire and the Isle of Wight procurement partnership or other purchasing arrangement you can make use of **before** undergoing a competitive process;

- Consider the social, economic and environmental wellbeing of the area and how this can be strengthened by delivering your needs (social value);
- Normally allow at least four weeks for submission of bids;
- Keep bids confidential;
- Complete a written contract or purchase order before the supply or works begin;
- Identify a contract manager with responsibility for ensuring the contract delivers as intended;
- Keep written records of dealings with suppliers;
- Report as required periodically on performance of the supplier; and
- Assess each contract afterwards to see how well it met the purchasing need and Best Value requirements.

For the purposes of these rules, where there is a requirement for communication to be in writing, this shall be deemed to include e-mail and fax transmissions as well as hard copy.

Capitalized words are defined terms which can be found in the 'Definitions' at the back of this Section H. Words in **bold** are defined in the Glossary.

SCOPE OF CONTRACT STANDING ORDERS

1 BASIC PRINCIPLES

1.1 All purchasing and concession procedures must:

- 1.1.1 Achieve Best Value and Value for Money for public money spent;
- 1.1.2 Support the Council's corporate and departmental aims and policies;
- 1.1.3 Be consistent with the highest standards of integrity;
- 1.1.4 Be transparent;
- 1.1.5 Be non-discriminatory;
- 1.1.6 Ensure fairness in allocating public contracts;
- 1.1.7 Comply with all legal requirements and provide accountability for decisions made, with an audit trail appropriate to the decision;
- 1.1.8 Ensure that Non-commercial Considerations do not influence any Contracting Decision (except for social value considerations);
- 1.1.9 Wherever possible be made on the Council's terms/industry model contracts; and
- 1.1.10 Comply with the Council's Procurement Strategy and other relevant policies.

1.2 Before starting a procurement process, the Public Services (Social Value) Act 2012 requires the authority to consider the following:

1.2.1 How what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area; and

1.2.2 How, in conducting the process of procurement, it (the authority) might act with a view to securing that improvement.

The above matters should influence the commissioning strategy and how local businesses can be supported relevant to what is proposed to be commissioned or procured.

Further, the authority must consider whether to undertake any consultation as to the matters referred to in (a) and (b) above.

1.3 The following are key principles of public procurement:

1.3.1 Contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner.

1.3.2 No procurement shall be designed with the intention of excluding it from the scope of the regime or of artificially narrowing competition. Competition is artificially narrowed where a procurement is designed with the intention of unduly favouring or disadvantaging certain economic operators.

If the Council fails in this duty, a potential supplier may have justifiable cause for complaint. The Council may be required to pay compensation if such a complaint were upheld; in addition, a contract or Framework Agreement may be rendered ineffective, either in whole or in part, and civil financial penalties may be imposed on the Council.

2 OFFICER RESPONSIBILITIES

2.1 Officers

2.1.1 Officers responsible for purchasing must comply with these **Contract Standing Orders**, the **Financial Procedure Rules**, the **Code of Conduct for Officers** and with all UK and European Union binding legal requirements. Officers must ensure that any agents, Consultants and contractual partners acting on their behalf also comply.

2.1.2 Officers must:

(a) Have regard to guidance received from Legal and Procurement Officers;

(b) Check whether a suitable existing Corporate Contract, Government Procurement Service Contracts, Hampshire County Council,

Hampshire and the Isle of Wight procurement partnership exists before seeking to let another contract; where a suitable contract exists, this must be used unless there is a reason not to in which case the reason must be recorded;

- (c) Keep the records required by Rule 6;
- (d) Comply with s117 of the Local Government Act 1972 in relation to the declaration of interest in contracts;
- (e) Comply with the **Code of Conduct for Officers** 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 the Bribery Act 2010; and
- (f) Take legal, financial and procurement advice.

2.1.3 When any employee either of the authority or of a service provider may be affected by any transfer arrangement, Officers must ensure that the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended (TUPE) issues are considered and obtain legal and personnel advice before proceeding with inviting Tenders or Quotations.

2.1.4 Officers must not extend existing contracts without the consent of the **Chief Executive** and **Chief Finance Officer** unless the original contract made provision for extension of the original term.

2.2 Heads of Service must:

2.2.1 Ensure that their staff comply with Rule 2.1; and

2.2.2 Keep registers of:

- (a) Contracts completed by signature, rather than by the Council's seal (see Rule 19.3) and arrange their safekeeping on Council premises; and
- (b) Exemptions recorded under Rule 3.2.

3 EXEMPTIONS, COLLABORATIVE AND E-PROCUREMENT ARRANGEMENTS

3.1 The **Executive** has power to waive any requirements within these **Contract Procedure Rules** for specific projects, and any such decision may be a **Key Decision**. The **Full Council** may waive these rules in respect of **non-executive functions**.

3.2 A Head of Service may, (subject to the **Chief Finance Officer's** written approval where the Total Value is likely to exceed £50,000) and subject to paragraph 3.3 below

waive any requirements within these **Contract Standing Orders**, where they are satisfied:

- 3.2.1 Goods are to be bought at auction or reverse auction and the **Chief Executive** has approved in writing that the Council's best interest will be served by purchase through auction and has agreed an upper limit for bids;
 - 3.2.2 Only one contractor can provide the goods services or works required and there is no reasonable alternative contractor or the nature of the goods, services or works is so specialised that only one supplier or two suppliers can be found e.g. servicing existing specialist plant, dredging, computer software or equipment or where each supplier is different and rigorous evaluation has been undertaken to ensure Value for Money e.g. specialist Consultants; and
 - 3.2.3 The need for the goods, services or works is so urgent that the time needed to comply with the rules would be prejudicial to the Council's interests.
- 3.3 Where a proposed contract is likely to exceed the EU Threshold, a Head of Service has no delegated powers and the matter has to be determined by the **Executive** or **Full Council** (see Rule 3.1). Above the EU Threshold only EU compatible exemptions can be used.
 - 3.4 All exemptions, and the reasons for them, must be recorded by the Head of Service. The Corporate Procurement Service must be consulted and any exemption approved in writing by the **Monitoring Officer** in advance. **The Chief Finance Officer** may monitor the use of all exemptions.
 - 3.5 The Corporate Procurement Service, the **Chief Finance Officer** and the **Monitoring Officer** must be consulted prior to commencing any procurement process using Government Procurement Service Contracts or other joint purchasing arrangements with another local authority, statutory undertaker or public service purchasing consortium.
 - 3.6 The terms and conditions of contracts applicable to any joint purchasing framework or consortium arrangement, including the requirement to undertake competition between providers (mini-competitions), must be fully complied with.
 - 3.7 All purchases made via a local authority purchasing and distribution consortium are deemed to comply with these **Contract Procedure Rules** and no exemption is required. However, purchases above the EU Threshold must be let under the EU Procedure, unless the framework or consortium has satisfied this requirement already by letting their contract in accordance with the EU Procedures on behalf of the authority and other consortium members.
 - 3.8 Any contracts entered into through collaboration with other local authorities or other public bodies, where a competitive process has been followed that complies with the contract procedure rules of the leading organisation, will be deemed to comply with

these **Contract Procedure Rules** and no exemption is required. However, advice must be sought from the **Monitoring Officer** and the Corporate Procurement Service.

- 3.9 The presumption is that any procurement (whether open, restricted, competitive procedure with negotiation, competitive dialogue, concession or e-auction) will be managed electronically, through systems managed by the Corporate Procurement Service. The use of e-procurement technology does not negate the requirement to comply with all applicable elements of these contract procurement rules, particularly those relating to competition and Value for Money.

4 RELEVANT CONTRACTS

- 4.1 All Relevant Contracts must comply with these **Contract Standing Orders**. A Relevant Contract is any arrangement made by, or on behalf of, the authority for the carrying out of works or for the supply of goods, materials or services. These include arrangements for:

4.1.1 The carrying out of construction and engineering works;

4.1.2 The supply of goods;

4.1.3 Works or services concessions;

4.1.4 The hire, rental or lease of goods or equipment; and

4.1.5 The delivery of services.

- 4.2 Relevant Contracts do not include:

4.2.1 Contracts of employment which make an individual a direct employee of the authority;

4.2.2 Planning obligations under s. 106 Town and Country Planning Act 1990 or similar;

4.2.3 Grants, awards, loans or advances of money; or

4.2.4 Agreements regarding the acquisition, disposal, or transfer of land which do not form part of a wider transaction under which the Council procures or is deemed to procure works, goods, services or development (for which the **Financial Procedure Rules** shall apply).

COMMON REQUIREMENTS

5 STEPS PRIOR TO PURCHASE

- 5.1 The Officer must access the purchase, in a manner commensurate with its complexity and value, and take into account the Purchasing Guidance, by:

- 5.1.1 Defining the need and whether in light of social value obligations the Council, or local suppliers could provide the supplies works or services;
- 5.1.2 Satisfying themselves that they have the necessary authority to deal with the purchase and that there is budget provision for the purchase;
- 5.1.3 Taking into account the requirements from any relevant review appraising the need for the expenditure and its priority defining the objectives of the purchase;
- 5.1.4 Assessing the risks associated with the purchase (including data and information governance obligations) and how to manage them;
- 5.1.5 Considering what procurement method is most likely to achieve the purchasing objectives, including internal or external sourcing, partnering, packaging strategy and collaborative procurement arrangements with another local authority, government department, statutory undertaker or public service purchasing consortium;
- 5.1.6 Consulting users as appropriate about the proposed procurement method, contract standards and performance and user satisfaction monitoring;
- 5.1.7 Consulting potential suppliers if appropriate;
- 5.1.8 Drafting the terms and conditions that are to apply to the proposed contract;
- 5.1.9 Where the purchase is to be funded from mainstream capital or regarded as capital by the **Chief Finance Officer** it is submitted to the Chief Finance Officer for comment as soon as practicable;
- 5.1.10 Setting out these matters in writing if the Total Value of the purchase exceeds £50,000; and
- 5.1.11 Assessing any insurance requirement or bond to be included in accordance with the risk assessment outcomes.

and by confirming that:

- 5.1.12 There is member or delegated approval for the expenditure and the purchase accords with the approved policy framework and schemes of delegation to **Cabinet members** and/or Officers as set out in the Constitution; and
- 5.1.13 If the purchase is a **Key Decision**, all appropriate steps have been taken.

6 RECORDS

- 6.1 In all contractual arrangements the Officer responsible for letting the contract shall ensure that legal services is notified and any contract is stored within the Council's strong room.
- 6.2 Where the Total Value is less than £50,000, the following records must be kept:
 - 6.2.1 A unique reference number (provided by the legal service before filing in the strong room) for the contract and the title of the contract;
 - 6.2.2 Invitations to Quote or Tender and Quotations or Tenders;
 - 6.2.3 A record:
 - (a) Of any exemptions and the reasons for them; and
 - (b) Of any Contracting Decision and the reasons for it including the evaluation of the Quotation or Tender.
 - 6.2.4 Written records of communications with all tenderers or an electronic record if a written record of the transaction would normally not be produced.
- 6.3 Where the Total Value exceeds £50,000 the Officer must record:
 - 6.3.1 A unique reference number (from legal services) for the contract and the title of the contract;
 - 6.3.2 The method for obtaining bids (see Rule 8.1);
 - 6.3.3 Any Contracting Decision and the reasons for it;
 - 6.3.4 Any exemption under Rule 3 together with the reasons for it;
 - 6.3.5 The Award Criteria in descending order of importance;
 - 6.3.6 Tender documents sent to and received from Candidates;
 - 6.3.7 Pre-Tender market research;
 - 6.3.8 Any selection criteria relied upon;
 - 6.3.9 Any evaluation criteria relied upon;
 - 6.3.10 Clarification and post-Tender negotiation (to include minutes of meetings);
 - 6.3.11 The contract documents;
 - 6.3.12 Post-contract evaluation and monitoring; and

6.3.13 Communications with Candidates and with the successful contractor throughout the period of the procurement.

6.4 Records required by this rule must be kept for six years after the end of the contract.

7 ADVERTISING, APPROVED LISTS AND FRAMEWORK AGREEMENTS

7.1 Identifying and Assessing Potential Candidates.

7.1.1 Officers shall ensure that, where proposed contracts, irrespective of their Total Value, might be of interest to potential Candidates located in other member states of the EU, a sufficiently accessible advertisement is published. Generally, the greater the interest of the contract to potential bidders from other member states, the wider the coverage of the advertisement should be. Examples of where such advertisements may be placed include:

- (a) The Council's website;
- (b) Portal websites specifically created for contract advertisements;
- (c) A local or national newspaper or specialist publication; and
- (d) National official journals, Central Government **Contracts Finder** website <https://www.gov.uk/contracts-finder> /Tenders Electronic Daily (TED) or OJEU (even if there is no requirement within the EU Procedure). These can be placed by the Corporate Procurement Service.

7.1.2 Officers are responsible for ensuring that all Candidates for a Relevant Contract are suitably assessed. The assessment process shall establish that the potential Candidates have sound:

- (a) Economic and financial standing (to be confirmed with the finance team); and
- (b) Technical ability and capacity to fulfil the requirements of the authority.

7.1.3 This shall be achieved in respect of proposed contracts that are expected to exceed £100,000 by selecting firms from:

- (a) Approved Lists of providers, maintained by the authority or on its behalf, and compiled following responses to a public advertisement;
- (b) An open Tender process including this assessment; or

- (c) Shortlists assessed from expressions of interest in a particular contract submitted in response to a public advertisement.

7.1.4 Public advertisements issued over the EU Threshold shall reflect the potential degree of interest from Candidates located within other member states of the EU.

7.2 Framework Agreements

7.2.1 The term of a Framework Agreement must not exceed five years and, while an agreement may be entered into with one provider, where an agreement is concluded with several organisations, there must be at least three in number.

7.2.2 Contracts based on Framework Agreements may be awarded by either:

- (a) applying the terms laid down in the Framework Agreement (where such terms are sufficiently precise to cover the particular call-off) without reopening competition, or
- (b) by holding a mini competition in accordance with the terms and conditions of the Framework Agreement.

CONDUCTING PURCHASE

8 COMPETITION REQUIREMENTS FOR PURCHASE AND PARTNERSHIP ARRANGEMENTS

The Officer must calculate the Total Value.

The following procedures apply where there are no other procedures which take precedence. Other procedures may include agency agreements with government. If in doubt, Officers must seek the advice of the **Monitoring Officer**.

8.1 Purchasing – Competition Requirements

8.1.1 Where the Total Value for a purchase is within the values in the first column below, the Award Procedure in the second column must be followed. Shortlisting shall be done by the persons specified in the third column.

Total Value	Award Procedure	Shortlisting
Up to £10,000	One oral Quotation (confirmed in writing where the Total Value exceeds £500)	Officer
£10,001 – £50,000	At least three written Quotations	Officer and Line Manager

£50,001 - £100,000	Three written Quotations or invitation to Tender by advertisement/list to at least three Candidates	Officer and Line Manager
£100,001–EU Threshold	Three written Quotations or invitation to Tender by advertisement/list to at least three Candidates	Officer, Line Manager and Corporate Procurement Service
Above EU Threshold	EU Procedure or, where this does not apply, Invitation to Tender by advertisement/list to at least four Candidates	Consult the Monitoring Officer – see Rule 8.1.4.

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

8.1.3 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 **Contract Standing Orders**.

8.1.4 Where the Total Value exceeds £100,000 the Corporate Procurement Service should be consulted prior to the commencement of the procedure and, where the EU Procedure is required, the Officer shall consult the **Monitoring Officer** to determine the method of conducting the purchase.

8.2 Providing Services to External Purchasers

The **Chief Finance Officer** must be consulted where contracts to work for organisations other than the authority are contemplated and any bid, Tender and contract for work shall be made in accordance with the **Financial Procedure Rules**.

8.3 Collaborative and Partnership Arrangements

Collaborative and partnership arrangements are subject to all procurement legislation and must follow these **Contract Standing Orders**. Officers must seek the advice of the **Monitoring Officer** and the Corporate Procurement Service.

8.4 The Appointment of Consultants to Provide Services

8.4.1 Consultant architects, engineers, surveyors and other professional Consultants shall be selected and commissions awarded in accordance with the procedures detailed within these **Contract Procedure Rules** and as outlined below.

Total Value	Award Procedure	Shortlisting
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Up to £50,000	One oral Quotation (confirmed in writing where the Total Value exceeds £5,000)	Officer and Line Manager
£50,001 – EU Threshold	Three written Quotations	Officer and Line Manager and procurement service
Above EU Threshold	EU Procedure or, where this does not apply, (such as where Part B Services under the EU Procedure), Invitation to Tender by advertisement/list to at least four and no more than six Candidates	Consult the Monitoring Officer see Rule 8.1.4

- 8.4.2 The engagement of a Consultant shall follow the agreement of a brief that adequately describes the scope of the services to be provided and shall be subject to completion of a formal letter or contract of appointment.
- 8.4.3 Records of consultancy appointments shall be maintained in accordance with Rule 6.
- 8.4.4 Consultants shall be required to provide evidence of, and maintain professional indemnity insurance policies to the satisfaction of the **Chief Finance Officer** for the periods specified in the respective agreement.
- 8.4.5 The instruction of external legal advisers must only be carried out by the **Monitoring Officer** and the instruction of counsel shall not be subject to the requirements of Rules 8.4.1 – 8.4.4 (inclusive)

9 PRE-TENDER MARKET RESEARCH AND CONSULTATION

- 9.1 The Officer responsible for the purchase:
- 9.1.1 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
- 9.1.2 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.

10 STANDARDS AND AWARD CRITERIA

- 10.1 The Officer must ascertain the standards necessary to properly describe the subject matter of the contract having regard to any relevant British, European or international standards. The **Monitoring Officer** must be consulted if it is proposed to use standards other than European standards.
- 10.2 The Officer must define Award Criteria that are appropriate to the purchase and designed to secure an outcome giving Value for Money for the authority. The basic criteria shall be one of the following:
- 10.2.1 'lowest price' where payment is to be made by the authority;
- 10.2.2 'highest price' if payment is to be received; or
- 10.2.3 'most economically advantageous', where considerations other than price also apply.

If the last criterion is adopted, it must be further defined by reference to sub-criteria which 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, social value, relevant environmental considerations, aesthetic and functional characteristics (including security and control features), safety, aftersales services, technical assistance and any other relevant matters. Officers shall have regard to the Purchasing Guidance when defining the Award Criteria.

- 10.3 Award Criteria must not include:
- 10.3.1 Non-commercial Considerations; and
- 10.3.2 Matters which discriminate against suppliers from the European Economic Area or signatories to the Government Procurement Agreement, except where social value considerations can objectively be demonstrated.

11 INVITATIONS TO TENDER/QUOTATIONS

- 11.1 The Invitation to Tender shall state that the Council reserves the right to reject a Tender that is not received by the date and time stipulated in the Invitation to Tender. No Tender delivered in contravention of this requirement shall be considered without the **Monitoring Officer's** prior approval and shall not be considered under any circumstances when it is received after the other Tenders have been opened.
- 11.2 All Invitations to Tender shall include the following:
- 11.2.1 A specification that describes the authority's requirements in sufficient detail to enable the submission of competitive offers.
- 11.2.2 A requirement for tenderers to declare that the Tender content, price or any other figure or particulars concerning the Tender have not been disclosed by the tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose).

- 11.2.3 A requirement for tenderers to complete fully and sign all Tender documents including a form of Tender and certificates relating to canvassing and non-collusion.
- 11.2.4 Notification that Tenders are submitted to the Council on the basis that they are compiled at the tenderer's expense.
- 11.2.5 A description of the Award Procedure and, unless defined in a prior advertisement, details of the Award Criteria in objective terms and if possible in descending order of importance.
- 11.2.6 Tenders will normally be sought in accordance with an electronic tendering process approved by the Procurement Team in consultation with the **Chief Finance Officer** and **Monitoring Officer** and a statement that any Tenders submitted by fax or other electronic means shall not be considered.

- 11.3 All Invitations to Tender or Quotations must specify the goods, service or works that are required, together with the terms and conditions of contract that will apply (see Rule 18).
- 11.4 The Invitation to Tender or Quotation may state that the Council is not bound to accept any or all of any Quotation or Tender.

12 SHORTLISTING

- 12.1 Shortlisting must have regard to the financial and technical standards relevant to the contract and the Award Criteria.
- 12.2 The Officers responsible for Shortlisting are specified in Rule 8.1.1.
- 12.3 Where Approved Lists are used, Shortlisting may be done by the Officer in accordance with the Shortlisting criteria drawn up when the Approved List was compiled (see Rule 7.2). However, where the EU Procedure applies, Approved Lists may not be used.

13 SUBMISSION, RECEIPT AND OPENING OF TENDERS/QUOTATIONS

- 13.1 Candidates must be given an adequate period in which to prepare and submit a proper Quotation or Tender, consistent with the complexity of the contract requirement. Normally at least four weeks should be allowed for submission of Tenders. The EU Procedure lays down specific time periods (see guidance in the Purchasing Guidance).
- 13.2 All Tenders must be returned in accordance with the Invitation to Tender. Particular note should instruct tenderers not to place any mark on the envelope as set out in the invitation to tender.
- 13.3 Tenders will normally be sought in accordance with an electronic tendering process approved by the Procurement Team in consultation with the **Chief Finance Officer**

and **Monitoring Officer** and tenders received by fax or other electronic means (e.g. email) must be rejected.

- 13.4 The Officer must not disclose the names of Candidates to any staff involved in the receipt, custody or opening of Tenders.
- 13.5 The Corporate Procurement Service shall be responsible for the safekeeping of Tenders until the appointed time of opening. Each Tender must be:
 - 13.5.1 Suitably recorded so as to subsequently verify the date and precise time it was received;
 - 13.5.2 Adequately protected immediately on receipt to guard against amendment of its contents; and
 - 13.5.3 Recorded immediately on receipt in the Tender Record Log.
- 13.6 The Officer must ensure that all Tenders are opened at the same time when the period for their submission has ended. Tenders must be opened in the presence of two Officers, independent of the procuring Officer.
- 13.7 Upon opening, a summary of the main terms of each Tender must be recorded in the Tender Record Log.
- 13.8 Quotations and Tenders received after the specified closing date should be returned and the Head of Service shall inform the tenderer that their Tender or Quotation was disqualified from consideration by being received after the closing date (unless the tenderer is able to prove that the Tender should have been delivered by the closing date and through no fault of its own the receipt was delayed).

14 CLARIFICATION PROCEDURES

- 14.1 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. If clarification is provided to one Candidate, then this must also be copied to the other Candidates. However, discussions with tenderers after submission of a Tender and before the award of a contract with a view to obtaining adjustments in price, delivery or content (i.e. post-Tender negotiations) must be the exception rather than the rule. In particular, they must not be conducted in an EU Procedure where this might distort competition, especially with regard to price.

15 EVALUATION

- 15.1 Apart from the debriefing required or permitted by these **Contract Standing Orders**, or Regulations, the confidentiality of Quotations, Tenders and the identity of Candidates must be preserved at all times and information about one Candidate's response must not be given to another Candidate.
- 15.2 Contracts must be evaluated and awarded in accordance with the Award Criteria. During this process, Officers shall ensure that submitted Tender prices are compared

with any pre-Tender estimates and that any discrepancies are examined and resolved satisfactorily.

- 15.3 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, clarify or withdraw their Tender. If the rates in the Tender, rather than the overall price, were stated within the Tender invitation as being dominant, an amended Tender price may be requested to accord with the rates given by the tenderer.
- 15.4 In the event that Tender prices exceed the budget the Chief Finance Officer must be notified and no further action taken without notification in writing from the Chief Finance Officer as to how to proceed.

16 POST TENDER NEGOTIATIONS

- 16.1 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 that is identified as having submitted the best/most economically advantageous Tender and after all unsuccessful Candidates have been informed. During negotiations 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.
- 16.2 Post-Tender negotiation must only be conducted in accordance with the guidance issued by the **Monitoring Officer** who, together with the Corporate Procurement Service, must be consulted wherever it is proposed to enter into post Tender negotiation. Negotiations must be conducted by a team of at least two Officers, one of whom must be from a division independent to that leading the negotiations.
- 16.3 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 AWARD OF CONTRACTS AND FRAMEWORK AGREEMENTS AND DEBRIEFING CANDIDATES

- 17.1 Heads of Service may accept Quotations and tenders received in respect of proposed contracts and Framework Agreements, provided they have been sought and evaluated fully in accordance with these **Contract Procedure Rules** and, in respect of proposed contracts and Framework Agreements that are expected to exceed £250,000, with the approval of the **Chief Executive** and **Chief Finance Officer**.
- 17.2 For contracts and Framework Agreements subject to the EU Procedure, the Officer must notify all Candidates simultaneously and as soon as possible of the intention to award the contract or Framework Agreement to the successful Candidate and provide a standstill letter as required by the Regulations specifying the name(s) of the successful Candidate(s), the Award Criteria and the reasons for the decision including the score of the Candidate being debriefed and the successful Candidate(s)

and the characteristics and relative advantages of the successful Tender. The Officer must provide unsuccessful Candidates with a period of at least ten clear days (fifteen where letters are sent by post rather than electronically) in which to challenge the decision before the Officer awards the contract or Framework Agreement. If the decision is challenged by an unsuccessful Candidate then the Officer shall not award the contract or Framework Agreement and shall immediately seek the advice of the **Monitoring Officer**. It is good procurement practice to provide standstill letters with the outcome of the process even where this is not legally required.

- 17.3 If a Candidate requests in writing the reasons for a Contracting Decision, the Officer must give in writing the name(s) of the successful Candidate(s), the Award Criteria and the reasons for the decisions including the score of the Candidate being debriefed and the successful Candidate(s) and the characteristics and relative advantages of the successful Tender within 15 days of the request. If requested, the Officer must also give the debriefing information referred to in Rule 17.2 above to Candidates who were unsuccessful in a pre-qualification Shortlisting process.

CONTRACT AND OTHER FORMALITIES

18 COMPLIANCE WITH LEGISLATION

- 18.1 There must be compliance with all laws relevant to procurement and the public sector including but not limited to the Public Contracts Regulations 2015, the Equality Act 2010, the Bribery Act 2010, the Public Services (Social Value) Act 2012, Freedom of Information Act 2005 and the Data Protection Act 2018 and any relevant government guidance relating to procurement.

18.2 EQUALITIES AND DIVERSITY

The authority is committed to equal opportunities in all aspects of its operation and encourages suppliers and contractors to implement similar policies. It is therefore a requirement that all prospective contractors are able to demonstrate their compliance with the authority's policies in this respect.

In every written contract for the execution of work or the supply of goods or materials, the following clauses shall be inserted:

- "1.1 The [Contractor] shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in employment and shall have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities.
- 1.2 The [Contractor] shall take all reasonable steps to secure the observance of *clause 1.1* by all servants, employees or agents of the [Contractor] and all suppliers and sub-contractors employed in performance of this agreement."

18.3 PREVENTION OF CORRUPTION

18.3.1 The Officer needs to be aware of the Bribery Act 2010 which introduces general offences of offering or receiving bribes, a specific offence of bribing a foreign public official, and the new corporate offence of failing to prevent bribery; and the authority's Anti-Money Laundering, Anti-Fraud and Corruption Strategy.

18.3.2 The Officer must comply with the **Code of Conduct for Officers** 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.

18.3.3 The following clause must be put in every written authority contract:

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

- (a) To directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:
 - (i) Induce that person to perform improperly a relevant function or activity; or
 - (ii) Reward that person for improper performance of a relevant function or activity;
- (b) To directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) Committing any offence:
 - (i) Under the Bribery Act;
 - (ii) Under legislation creating offences concerning fraudulent acts;
 - (iii) Under money laundering legislation;
 - (iv) At common law concerning fraudulent acts relating to this Agreement or any other contract with the Authority; or
 - (v) Defrauding, attempting to defraud or conspiring to defraud the Council."

18.4 HEALTH AND SAFETY

18.4.1 The authority is committed to ensuring the health, safety and welfare of its employees, contractors' staff, the public and all others affected by its undertakings. All contractors will therefore be expected to demonstrate compliance with all relevant health and safety legislation and to submit their health and safety policies and procedures, along with confirmation of their level of public and employee liability insurance cover.

18.4.2 The following clause must be put in every written authority contract:

- “1.1 The [Contractor] must comply with relevant health and safety legislation, including health and safety regulations and relevant codes of practice that are approved by the Health and Safety Executive.
- 1.2 The [Contractor] must comply with the authority’s health and safety policies”.

19 CONTRACT DOCUMENTS

19.1 Relevant Contracts

19.1.1 All Relevant Contracts¹ shall be in writing.

19.1.2 All Relevant Contracts, irrespective of value, shall clearly specify:

- (a) What is to be supplied (i.e. the works, materials, services, matters or things to be furnished, had or done);
- (b) The provisions for payment (i.e. the price to be paid and when);
- (c) The time, or times, within which the contract is to be performed; and
- (d) The provisions for the Council to terminate the contract.

19.1.3 The Council’s standard terms and conditions or standard contract forms issued by a relevant professional body must be used wherever possible.

19.1.4 In addition, every Relevant Contract of purchase over £50,000 must also state clearly as a minimum:

- (a) That the contractor may not assign or sub-contract without prior written consent;
- (b) Any insurance requirements;
- (c) Data protection requirements, if relevant;
- (d) Freedom of Information Act requirements;
- (e) A right of access to relevant documentation and records of the contractor for monitoring and audit purposes if relevant;
- (f) Clauses in relation to equalities and diversity, prevention of corruption, and health and safety in accordance with clause 18 above.

¹ Previously only required contracts over £50k to be in writing – we would expect all contracts to be in writing, even low value exchanged by e-mail.

19.1.5 The formal advice of the **Monitoring Officer** must be sought for the following contracts:

- (a) Where the Total Value exceeds £100,000;
- (b) Those involving leasing arrangements;
- (c) Where it is proposed to use a supplier's own terms; or
- (d) Those that are complex in any other way.

19.2 Contract Formalities

19.2.1 Agreements shall be completed as follows:

Total Value	Method of Completion By
Up to £50,000	signature Authorised Signatory
Above £50,000	Authorised Signatory or sealing see Rule 19.3

19.2.2 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 **Monitoring Officer**.

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

19.3 Sealing

19.3.1 Where contracts are completed by each side adding their formal seal, such contracts shall be executed by the fixing of the Council's seal, and must be witnessed by an Authorised Signatory.

19.3.2 Every Council sealing will be consecutively numbered, recorded and signed by the person witnessing the seal.

19.3.3 A contract must be sealed where:

- (a) The Council may wish to enforce the contract more than six years after its end;
- (b) The price paid or received under the contract is a nominal price and does not reflect the value of the goods or services;
- (c) There is any doubt about the authority of the person signing for the other contracting party; or

(d) The Total Value exceeds £100,000

unless otherwise agreed by the **Monitoring Officer**.

20 BONDS AND PARENT COMPANY GUARANTEES

20.1 The Officer must consult the **Chief Finance Officer** about whether a Parent Company Guarantee is necessary when a Candidate is a subsidiary of a parent company and:

20.1.1 The Total Value exceeds £250,000, or

20.1.2 Award is based on evaluation of the parent company; or

20.1.3 There is some concern about the stability of the Candidate.

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

20.2.1 Where the Total Value exceeds £1,000,000; or

20.2.2 Where it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the contract and there is concern about the stability of the Candidate; and

20.2.3 In such other circumstances where it is considered appropriate by the Chief Finance Officer.

CONTRACT MANAGEMENT

21 MANAGING CONTRACTS

21.1 Heads of Service in sponsoring departments are to name contract managers for all new contracts. All contracts must have a named Council contract manager for the entirety of the contract.

21.2 Contract managers must follow the procedures set out in the Council's Purchasing Guidance.

22 RISK ASSESSMENT AND CONTINGENCY PLANNING

22.1 A business case must be prepared for all procurements with a potential value over the EU Threshold. Provision for resources for the management of the contract, for its entirety, must be identified in the business case.

22.2 For all contracts with a value of over £100,000, contract managers must consider maintaining a risk register during the contract period, undertake appropriate risk assessments and for identified risks ensure contingency measures are in place.

23 CONTRACT MONITORING, EVALUATION AND REVIEW

- 23.1 All contracts which have a value higher than the relevant EU Threshold limit, and which are High Risk, are to be subject to monthly formal review with the contractor. The review may be conducted quarterly if permitted by the **Chief Finance Officer**.
- 23.2 For all contracts with a value higher than the EU Threshold limits, and which are High Risk, an annual report must be submitted to the Project Board (if any).
- 23.3 During the life of the contract, the Officer must monitor in respect of:
- 23.3.1 Performance;
 - 23.3.2 Compliance with specification and contract;
 - 23.3.3 Cost;
 - 23.3.4 Any Value for Money requirements; and
 - 23.3.5 User satisfaction and risk management.

DEFINITIONS

The following terms are used within these Contract Standing Orders:

Approved List	A list drawn up in accordance with Rule 7.1.
Authorised Signatory	The Monitoring Officer or an officer authorised by the Monitoring Officer in accordance with the Council's constitution to sign a contract or witness affixing the Council's seal.
Award Criteria	The criteria by which the successful Quotation or Tender is to be selected (see further Rules 10 and 11.2.5).
Award Procedure	The procedure for awarding a contract as specified in Rules 8, 10 and 15.
Best Value	The duty, which Part I of the Local Government Act 1999 places on local authorities, to secure continuous improvement in the way in which functions are exercised, having regard to economy, efficiency and effectiveness as implemented by the Council.
Candidate	Any person who seeks to or is invited to submit a Quotation or Tender.

Consultant	Specialist advisers engaged to provide services to the Council.
Contracting Decision	Any of the following decisions: <ul style="list-style-type: none"> • Withdrawal of Invitation to Tender; • Whom to invite to submit a Quotation or Tender; • Shortlisting; • Award of contract or Framework Agreement any decision to terminate a contract.
Corporate Contract	A contract let by the Council under which purchases may be called off from time to time.
Corporate Procurement Service	The Council's central procurement unit charged with providing strategic direction and advice to secure Value for Money in the Council's procurement activities.
Council(s)	Havant Borough Council and East Hampshire District Council or either of them.
EU Procedure	The procurement procedure required by the EU where the Total Value exceeds the EU Threshold.
EU Threshold	The contract value at which the EU public procurement directives apply, currently: Supplies and services: £189,330; Works/Works concessions: £4,733,252; Light touch regime: £663,540.
Framework Agreement	An agreement between one or more authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.
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 the USA, Canada, Japan, Israel, South Korea, Switzerland, Norway, Aruba, Hong Kong, China, Liechtenstein and Singapore.

High Risk	A high-risk purchase that is in the opinion of the Chief Finance Officer one which presents the potential for substantial exposure on the Council's part should it fail or go wrong.
Invitation to Tender	Invitation to Tender documents in the form required by these Contract Standing Orders .
Line Manager	The Officer's immediate superior or the Officer designated by the Head of Service to exercise the role reserved to the Line Manager by these Contract Standing Orders .
Nominated Suppliers and Sub-contractors	Those persons specified in a main contract for the discharge of any part of that contract.
Non-commercial Considerations	<p>(a) The terms and conditions of employment by contractors of their workers or the composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces ('workforce matters');</p> <p>(b) 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;</p> <p>(c) Any involvement of the business activities or interests of contractors with non relevant fields of government policy;</p> <p>(d) 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 ('industrial disputes');</p> <p>(e) 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;</p> <p>(f) Any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees;</p> <p>(g) Financial support or lack of financial support by contractors for any institution to or</p>

	<p>from which the authority gives or withholds support; and</p> <p>(h) 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.</p> <p>Workforce matters and industrial disputes, as defined in paragraphs (a) and (d), cease to be Non-commercial Considerations to the extent necessary or expedient to comply with Best Value; or where there is a transfer of staff to which the Transfer of undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply.</p> <p>Insofar as matters relate to the Council's social value duty they are not Non-commercial Considerations,</p>
Officer	The Officer designated by the Head of Service to deal with the contract in question. Usually an employee.
Parent Company Guarantee	A contract which binds the parent of a subsidiary company as follows: if the subsidiary company fails to do what it has promised under a contract with the Council, the Council can require the parent company to do so instead.
Procurement Strategy	The document setting out the Council's approach to procurement and key priorities for the next few years.
Purchasing Guidance	The guidance documents issued from time to time by the s151 Officer that support the implementation of these contract procurement rules. The guide is available on the Council's intranet.
Quote/Quotation	A Quotation of price and any other relevant matter (without the formal issue of an Invitation to Tender).
Relevant Contract	Contracts to which these Contract Procedure Rules apply (see Rule 4).

Shortlisting	The process of selecting Candidates who are to be invited to Quote or bid or to proceed to final evaluation.
Tender	A Candidate's proposal submitted in response to an Invitation to Tender.
Tender Record Log	The log kept by the director of resources to record details of Tenders (see Rule 13.5).
Total Value	<p>The whole of the value or estimated value (in money or equivalent value) for a single purchase or disposal calculated as follows:</p> <p>(a) 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;</p> <p>(b) where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months;</p> <p>(c) where the contract is for an uncertain duration, by multiplying the monthly payment by 48; and</p> <p>(d) for feasibility studies, the value of the scheme or contracts which may be awarded as a result</p> <p>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.</p>
TUPE	<p>Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006 No.246) Subject to certain conditions, these regulations apply where responsibility for the delivery of works or services for the authority is transferred from one organisation (e.g. private contractor, local authority in-house team) to another (e.g. following a contracting out or competitive tendering process) and where the individuals involved in carrying out the work are transferred to the new employer. These regulations seek to protect the rights of employees in such transfers, enabling them to enjoy the same terms and conditions, with continuity of employment, as existed with their former employer. Broadly, TUPE regulations ensure that the rights of</p>

	employees are transferred along with the business.
Value for Money	Value for Money is not the lowest possible price; it is the most economically advantageous proposal that combines goods or services or works that fully meet your needs, with the level of quality required, delivery at the time you need it, and at an appropriate price. Whole life costing should be considered (e.g. lower maintenance costs can outweigh a difference in the initial cost) over a period of time or the useful life of the asset.