

PLYMOUTH CITY COUNCIL

Contract Standing Orders

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CONTRACT STANDING ORDERS

SECTION I - Background and context

Purpose of the document

1. The purpose of these Contract Standing Orders (CSOs) are to set out the governance framework for how the Council undertakes commercial spend with Third Party Suppliers for the provision of Supplies, Works & Services from those Suppliers.
2. The CSOs form an essential part of the Councils Constitution and are to be read in conjunction with the supporting **Procedural Notes - see Appendix I**.
3. The accompanying Procedural Notes explain how the CSOs are to be complied with and must be followed and given due regards to them as compliance with the CSOs.
4. The CSOs and supporting Procedural Notes are to be applied in order to ensure:
 - 4.1 Compliance with European (EU) Procurement Directives and Public Contracts Regulations 2015 as amended from time to time (the Regulations);
 - 4.2 The commercial interests of the Council are duly safeguarded along with the interests of elected Members and Officers;
 - 4.3 Probity and sound reputation of the Council is maintained in respect of procurement and commercial arrangements;
 - 4.4 Robust commercial governance is in place with related risks duly understood, effectively managed and mitigated;
 - 4.5 Fulfilment of duty to Best Value plus maximising value for money and efficiencies;
 - 4.6 Minimising and wherever possible avoidance of fraud and / or malpractice in commercial matters.
5. The Regulations are not extracted or transposed and where reference is within the documents, the Regulations need to be considered and complied with. These can be viewed at the following: <http://www.legislation.gov.uk/uksi/2015/102/contents/made>
6. The CSOs set out the following:
 - 6.1 The Legislative framework which are applicable;
 - 6.2 Overarching principles to be applied;
 - 6.3 When the rules apply, when they do not apply and when they can be exempted;
 - 6.4 Details on routes to market decisions;
 - 6.5 Processes to be followed when commissioning, procurement and contracting;
 - 6.6 Key financial thresholds that apply to tendering and commercial activity;
 - 6.7 Key stakeholders roles / responsibilities and consequences if not followed.

When the CSOs apply

7. The CSOs will apply:
 - 7.1 In circumstances where the Council expects to spend money or provide other value for Works, Services or Supplies;
 - 7.2 To both capital and revenue expenditure.
8. In the case of Concessions, reference should be made to **Procedural Note: Concessions** and the associated Concessions Contracts Regulations 2016. These can be viewed at the following: <http://www.legislation.gov.uk/ukxi/2016/273/contents/made>
9. In the event of an unforeseen emergency or a disaster involving immediate risk to persons, property or serious disruption to Council services or significant financial loss; any Strategic Director can approve progressing work as required. The Strategic Director must:
 - 9.1 Prepare a report for the next Cabinet on the actions taken;
 - 9.2 Ensure due process to fulfilling the requirements to the CSOs are in place as soon as practically possible following risk being mitigated.

When CSOs can be Exempted

10. It should be the default position to follow the CSOs in all situations, but it is recognised that on occasions it may not be possible or in the best interest of the Council to do so.
11. In such circumstances that the CSOs cannot be followed, **Procedural Note: Exemptions** must be applied for all spend over £5,000.
12. Exemptions can only be applied in the event of following situations:
 - 12.1 Resulting in **Breach or Conflict of Statutory Duties** if CSOs were applied, and / or;
 - 12.2 Evidence of **Limited Market** that negates wider public interest, and / or;
 - 12.3 **Unavoidable / Time Critical** considerations that would result in negative **Reputational Implications** to the Council if action outlined within the Exemption application is not followed and / or;
 - 12.4 Detriment to **Personal Welfare of Service Users**, where there is a likelihood that vulnerable service user(s) would be placed in unnecessary or inappropriate risks if the proposed actions within the Exemption application are not undertaken.
13. It is noted that the Council has the authority to apply Exemptions to the CSOs but must comply with national and European Union laws and regulations.
14. Furthermore, the approval of an Exemption provides the necessary transparency and accountability in terms of decisions to the approach to be applied but it does not preclude the need to follow the Procurement Gateway & Contract Procedure.

When the CSOs do not apply

- 15.** The CSOs do not apply to the following arrangements:
- 15.1** Appointment outside the Council's control, eg/Appointment of external auditors;
 - 15.2** Employment Contracts;
 - 15.3** Specific licensing requirements eg/TV License or Public Entertainment License;
 - 15.4** Planning and Highway Agreements, eg/Section 106, 278 and 38;
 - 15.5** Allocation of Grant payments by the Council to third parties;
 - 15.6** Acquisitions and disposals of land or buildings;
 - 15.7** Individual budgets for personal care services;
 - 15.8** Financial dealings by the Chief Finance Officer in respect of dealing in money markets or obtaining finance for the Council;
 - 15.9** Contracts offered by the Head of Legal Services for the appointment of counsel;
 - 15.10** Contracts where a sole Supplier has exclusive rights eg/alterations to statutory undertakers apparatus;
 - 15.11** Disposal of surplus Goods / Supplies;
 - 15.12** Loan payments or loans from the Council to third parties provided on market terms (otherwise State Aid considerations may apply);
 - 15.13** Where it is clear no need to go through a procurement process on the basis of other regulatory or legislative grounds;
 - 15.14** Subscriptions to National Organisations, eg/Local Government Association;
 - 15.15** Professional subscriptions where not having membership would detrimentally impact on the Council's ability to fulfil its purpose;
 - 15.16** Procurement of certain insurances not available on open market eg/Marine.
- 16.** In cases where the CSOs do not apply, other rules and regulations will likely apply. The Responsible Officer shall ensure that they adhere to any relevant rules and legislation, and if in doubt seek advice on those other relevant rules and legislative regulations.

Other relevant Laws, Regulations and Policy

- 17.** In applying the CSOs due regards must be taken to complying with:
- 17.1** All relevant national law and EU procurement law;
 - 17.2** All relevant EU procurement rules and guidance;
 - 17.3** The Constitution, including Part B – Budget and Policy Framework and Part H Financial Regulations.

Proportionality

18. Commercial approach shall be proportionate to the risks and resources required to fulfil the requirements. The CSOs outlined are considered to be the minimum to be followed.
19. The CSOs and application of them takes account of applying proportionality. In the case of requirements which are subject to the Regulations OJEU Thresholds then compliance in line with the Regulations should be made.
20. For below OJEU Threshold the principles to be applied in a proportional manner. The CSOs take account of key elements of proportionality in the Thresholds applied within the CSOs and decision points.

Breaches and non-compliance

21. Consequences of not applying due process in how contracts and commercial arrangements are established can be significant. Compliance with the CSOs is mandatory.
22. Those with responsibility for fulfilling their duties in line with the CSOs are required to maintain ongoing knowledge and awareness to ensure compliance.
23. In addition, it will be the responsibility of Responsible Officers (including those with line management responsibilities) to address non-compliance swiftly and in the most appropriate way according to the circumstances.
24. Any potential misuse or non-compliance of the CSOs will be reported to the appropriate officer. Non-compliance with the CSOs may result in the Council's Disciplinary Policy and Procedure being applied. In respect of wilful, negligent, repeated or other serious breaches this could result in significant sanctions and even dismissal.
http://documentlibrary.plymcc.local/documents/Policy_and_procedure_disciplinary.docx.pdf
25. Means of reporting concerns can also be raised anonymously in line with the Council's Whistleblowing Policy. <http://documentlibrary/documents/Policy%20-%20whistleblowing.pdf>
26. In the event of a suspected breach reference should be made to **Procedural Note: Breach of the Contract Standing Orders**.

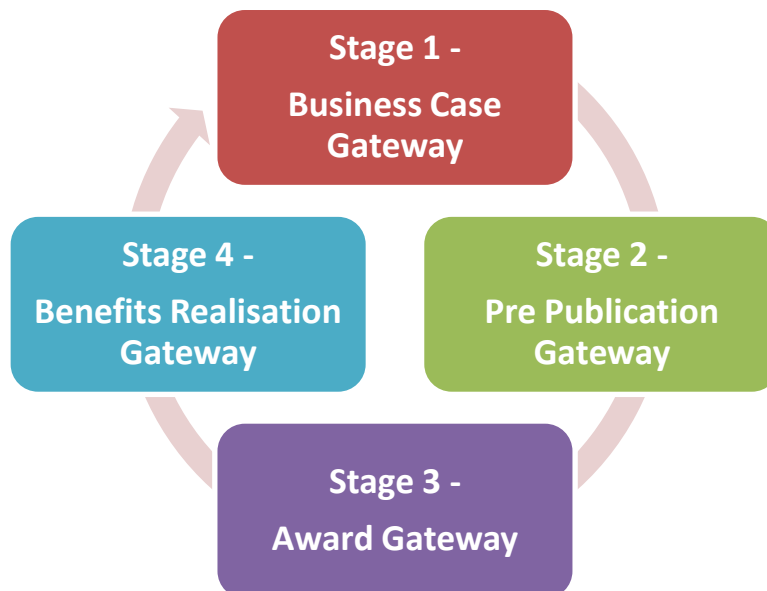
SECTION 2 - SOURCING STRATEGY

Key Principles

27. Those responsible in application of the CSOs in how procurement and commercial activity is undertaken shall apply the following key principles:
- 27.1 **Transparency**
 - 27.2 **Equal Treatment**
 - 27.3 **Proportionality**
 - 27.4 **Non-discrimination**
 - 27.5 **Mutual Recognition**
28. **Section 5** provides more details on the required Roles and Responsibilities of key stakeholders.

Sourcing Strategy - Route to market decisions

29. Where the Council undertakes the services internally, these should be the first point of consideration, prior to the consideration of external sourcing routes.
30. The CSOs recognise that there will be a range of existing commercial arrangements in place. Where an additional or new requirement exists the Sourcing Strategy outlines key decisions that need to be made in regards to priority order and sequencing ahead of commencing any formal decision to undertake a new procurement. A business case will need to be established in respect of the procurement as indicated in Key Thresholds Table 1.



31. Authorisation will be required at four key stages as shown above. Consideration shall be made around relevant areas of due diligence. The areas of assurance required will vary depending on the subject matter of the contract.
32. Due regard should also be taken to the tender and authorisation thresholds set out within section 3 of the CSOs.

33. One of six procurement procedures must be used as appropriate for the particular procurement: Open, Restricted, Competitive procedure with negotiation, Competitive dialogue, Innovation partnership, or Negotiation without prior publication. These must be performed in accordance with The Public Contracts Regulations 2015. <http://www.legislation.gov.uk/ukxi/2015/102/contents/made>
34. The Responsible Officer shall be responsible for carrying out appropriate due diligence to understand proportional risks related to the spend and ensure relevant and proportional means of mitigation are considered. This is to be done in conjunction with relevant Specialist Subject Matter Officers to consider risks and mitigations relevant to their area of expertise. This may include representatives from relevant functional areas of the Council and may include, as appropriate: legal, HR, finance, health and safety, ICT, asset management and others.
35. In the event of a project(s) being funded from capital; then the Responsible Officer will be required to ensure that the project(s) have been formally registered onto the Capital Programme. For such projects no procurement process shall commence unless the project has been registered onto the Capital Programme. See Capital Governance Project Funding Policy, http://documentlibrary.plymcc.local/documents/capital_programme_governance.pdf

Sourcing Strategy Steps

36. Step 1 – Grant / Funding Conditions

- 35.1 Where external Grant / Funding is being considered this should form part of the necessary due diligence work for the project ahead of seeking, and if successful accepting the external Grant / Funding to ensure that the Council can comply with any necessary conditions that would be applied.
- 35.2 Where an external Grant or Funding stream is secured as part of the project, care shall be taken to ensure the funding conditions are satisfied and complied with; to avoid risk to the loss of the Funding being made in full or in part to the Council.
- 35.3 This should include engagement with relevant internal Subject Matter Experts.

37. Step 2 – Exiting Contract / Framework Agreement

- 36.1 If an existing Corporate Contract exist, then the default route to market would be the Corporate Contract. This would be subject to the Contract permitting modifications and proportional consideration is made to rights to modify in line with the Regulations, in particular Section 6 and regulation 72 - see: <http://www.legislation.gov.uk/ukxi/2015/102/part/2/chapter/2/crossheading/ontract-performance/made>
- 36.2 Due consideration must also be made to whether the modification of the existing contract and/or framework call off offers value for money. Terms of the existing contracts must also be considered to mitigate risks of non compliance if it were decided to procure the requirement with another Supply route eg/ Exclusivity terms.

- 36.3** Use of existing framework call-off agreement(s) are optional so must pass value for money test in order to proceed.
- 36.4** Details on current Corporate Contracts Register can be found at <https://www.supplyingthesouthwest.org.uk/>
- 38. Step 3 – Council Teckal Company Arrangements**
- 37.1** Steps 3 and 4 can be undertaken at the same time. The Council has a number of company's which it has established to fulfil its various functions.
- 37.2** Where there is an existing Council Company the first stage of decision making should be whether the requirements can be secured through the respective company. reference should be made to part 88.
- 37.3** Where the requirements are not currently serviced by one of the Council's Company; the question should be raised as to whether it should form part of an existing Company or establishment of a new Company.
- 39. Step 4 – Formal Procurement Process**
- 38.1** The formal process should aim to carry out all necessary due diligence including but not limited to:
- 38.1.1** Clearly identify the need for the Works, Service or Supplies;
 - 38.1.2** Understanding the legal power to entering into contract;
 - 38.1.3** Confirming options and determine best route to market;
 - 38.1.4** If the project is a capital project, then the project has to be accepted onto the Council's capital programme.
 - 38.1.5** Considering the Council's procurement business plan and any other associate strategic objectives as appropriate;
 - 38.1.6** For works procurements >£1,000,000 then the National Skills Academy Client Based Approach for the employment and skills shall apply;
 - 38.1.7** Determining the most appropriate commercial model and contract type, including the appropriate level of contract management resource required to manage the contract.
- 40.** Consideration shall also be made in relation to the Council's Social Value Policy and its requirements to tenders above and below OJEU thresholds evaluation of tender award criteria. The Social Value Policy aims to positively impact engagement with Small Medium Enterprises (SME) and the local economy. This can positively impact the wider strategic objectives of the Council and its partners.
<http://democracy.plymouth.gov.uk/mgConvert2PDF.aspx?ID=99353>

SECTION 3 - FINANCIAL THRESHOLDS

Calculation of Contract Values

41. When estimating the total contract value, the estimate shall be:
 - 40.1 For the whole life term of any anticipated contract, for example, if the contract value is estimated at £50,000 per annum for two years, then the total contract value will be an estimated £100,000. If the length of a contract is uncertain and the value cannot be reasonably estimated, its total value will be its total value over 4 years; The total estimated spend and not split down or subdivided to avoid the application of these or any other Regulations;
 - 40.2 Net of Value Added Tax (VAT);
 - 40.3 The value of any non-monetary consideration or benefit the Council is giving;
 - 40.4 The value of anything the Council is getting for free as part of the contract;
 - 40.5 The value of any amount that could be paid by extending the contract.

42. Where the initial contract value estimate is within 10% of the relevant Official Journal of the European Union (OJEU) Threshold. A furthermore detailed calculation shall be conducted in accordance with regulation 6 of the Regulations.
<http://www.legislation.gov.uk/ukxi/2015/102/regulation/6/made>

43. In the event of a Concession then **Procedural Note: Concession Arrangements** should also apply.

44. A single contract must not be undervalued or split into smaller contracts to circumvent the thresholds as set out in the Regulations.

45. OJEU Thresholds:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/850566/PPN_for_New_Thresholds_2020_pdf.pdf

46. Social and Other Specified Services, the appropriate OJEU Threshold in relation to Authorisation and Contract Signature stages to apply. Public Contract Regulations – Schedule 3 <http://www.legislation.gov.uk/ukxi/2016/273/schedule/3/made>

Key Thresholds Table I – Quotation and Tendering Thresholds

| ACTIVITY | Up to £5k | Over £5k to £25k | Over £25k - relevant OJEU Thresholds | Over Relevant OJEU Threshold |
|---|--|---|---|------------------------------|
| Tender process | Minimum: One Tender Quotations (non-verbal) Preferably: From PL Postcode | Minimum: Three Tender Quotations (non-verbal) Preferably: Two from PL Postcodes | Minimum: Three Tender Quotations (non-verbal) Preferably: Two from PL Postcodes | Formal Advertised Tender |
| Business Case Required? | No | No | Yes | Yes |
| Formal Advertisement of Opportunity? | Optional | Optional | Optional (If Advertised Contracts Finder utilised) | OJEU & Contracts Finder |
| Formal Publication of Award? | Optional | Optional | Contracts Finder | OJEU & Contracts Finder |
| Contract Published on Contract Register? | Not required | Yes | Yes | Yes |
| Use of Electronic Tendering System? | Optional | Yes | Yes | Yes |
| Procurement Service Responsible? ⁻¹ | Yes (except in case of Self-Serve: Please refer to Self Service Procedure) | Yes (except in case of Self-Serve: Please refer to Self Service Procedure) | Yes | Yes |

⁻¹ Procurement Service defined as both the core Procurement Service team and / or Strategic Commissioning

Key Thresholds Table 2 – Authorisation and Contract Thresholds

| STAGES | Up to £25k | >£25K to £150K | >£150K to £500K Supplies/Services >£150k to £2MM for Works | >£500K Supplies/Services >£2MM Works to £3MM | Over £3MM or a key Decision |
|--|---|---|---|--|--|
| Who can Authorise Business Case Gateway? | Responsible Officer | Head of Service | Service Director | Portfolio Holder | Cabinet |
| Who can Authorise Pre-Publication Gateway? | Responsible Officer | Head of Service | Service Director | Service Director | Service Director |
| Who can award the contract? | Responsible Officer | Head of Service | Service Director | Portfolio Holder | Cabinet |
| Approval Documents Required (minimum requirement) | n/a | Business Case and Contract Award Report and Officer Individual Executive Decision (if applicable) | Business Case and Contract Award Report and EIA and Officer Individual Executive Decision | Business Case and Contract Award Report Part1 & Part2 and Executive Decision and EIA | Business Case and Contract Award Report Part1 & Part2 and Executive Decision and EIA |
| Form of Contract / Contract Signature | Council Purchase Order / Standard Terms | Formal Signed Contract | Formal Signed Contract | Formal Signed Contract or Signed Sealed Contract | Formal Signed Contract or Signed Sealed Contract |

SECTION 4 - APPLICATION AND APPROACH

Due Diligence

47. Relevant subject matter experts (eg/ Service Area teams, Legal Services, Finance, etc.) are to be consulted at appropriate times during the procurement process.
48. Prior to the commencement of the procurement; all officers (including those involved as part of any evaluation teams) are required to sign a declaration of direct or indirect interest, canvassing and confidentiality form. The completed form should be retained as part of the records.

Low Value / Self-Services (below £25,000)

49. With prior agreement with the Procurement Service; procurements £25,000 and below may be undertaken on a self-service basis direct by the client Service area.
50. Self Service - This means staff will be able to purchase Supplies, Services and Works £25,000 and below without having to go through the Procurement Services Function. This service is designed to help front line services by speeding up the process of obtaining Supplies, Services and Works; which ultimately benefits the customers of our services.
51. Not all departments are approved for Self Service. Self Service is permitted for departments by the Procurement Service. The CSOs must be complied with and training successfully completed.

Timescales

52. Quotation and Tender timescales for submission shall be reasonable, sufficient and proportional to enable Suppliers to submit a suitable response and facilitate genuine competition.
53. Where the procurement route is to re-tender an existing contract; appropriate timescales are essential to ensure continual service. Any re-tendering exercise must comply with the CSOs and the Regulations.
54. Due regard should be taken to the Regulations in regard to OJEU Threshold Tenders and associated timescales related to the various procurement processes therein.

Preliminary Market Consultation

55. Where relevant and proportional to do so; appropriate market intelligence through preliminary market consultation is permitted and encouraged with the intention to inform the procurement process and potential Suppliers. Where such consultation takes place care shall be taken that it is in line with the Regulations, in particular regulation 40 and 41. <http://www.legislation.gov.uk/ukxi/2016/273/part/3/made>

eTendering

56. The Council's eTendering System shall be used as the means of seeking Quotes and Tenders in line with Thresholds as set out in Table I - Quoting and Tendering Thresholds. The eTendering System shall be compliant with the requirements of the Regulations.

Advertising Opportunities

57. Publishing of quotation / tender opportunities shall be in line with Thresholds as set out in Table I Quoting and Tendering Thresholds. The primary means of advertising shall be via Contracts Finder, any associated Portal in connection with the Council default eTendering System and for OJEU Tenders the Official Journal.
58. Advertising of OJEU Tenders shall be in line with the requirements of the Regulations in particular regulations 49 and 50 plus 106 in regards to Contracts Finder.
<http://www.legislation.gov.uk/ukxi/2016/273/part/3/made>

Procurement Clarifications

59. Where Quotations / Tenders are placed via the Council's eTendering System then Clarifications regarding the procurement are only permitted via that System.
60. Discussions with tenderers after submission of a Tender and before the award of a contract must be in accordance with Section 2:27 of the CSOs.

Evaluation

61. Quotations / Tenders will be evaluated in accordance with the evaluation criteria disclosed and published on issuing of the Quotation / Tender eg/Price, Quality, Social Value.
62. Reference should be made to the Procurement Service templates and guidance in order to ensure a consistent, fair and transparent approach.

Opening of Quotations / Tenders

63. In line with Table I where Quotations / Tenders are submitted via eTendering System and be transmitted by electronic means. Quotations and Tenders submitted by electronic means shall ensure that:
- 62.1 evidence that the transmission was successfully completed is obtained and recorded through the Systems auditing functionality; and,
 - 62.2 Quotations / Tenders submitted are not opened until the deadline has passed for receipt of tenders.
64. Quotations / Tenders received after the specified date and time be assessed in line with **Procedural Note: Late Submissions**.
65. Where on receipt of Quotations / Tenders information is felt to be missing or omitted then reference should be made to **Procedural Note: Missing / Omitted Information**.

- 66.** In the exceptional circumstance where a Quotation / Tender submission has been received by a medium other than that of the Councils eTendering System then due process shall be put in place to maintain probity and accountability; upholding the principles as set out in the CSOs.

Contract Award

- 67.** Contracts awarded over £25,000 shall have the award notified on Contracts Finder in line with regulations 109 and 112 of the Regulations.
<http://www.legislation.gov.uk/ukxi/2015/102/regulation/112/made>
- 68.** Contract Award Notices for OJEU Tenders shall be in line with the Regulations and take into account any requirements and conditions around Standstill.
- 69.** A contract may only be awarded by an officer with the requisite delegated authority to award contracts. The authorised officer should make sure that the budget holder responsible for the contract has sufficient funds in place to sustain the contract prior to award. For all procurements valued at above £500,000 the decision to award a contract must be made by the cabinet member for the relevant portfolio.

Application of the Light Touch Regime

- 70.** Under the Regulations the Council can apply flexibility to the approach and procedures for certain Services. A list of services to which the Light Touch Regime applies can be found in Schedule 3 of the Regulations.
<http://www.legislation.gov.uk/ukxi/2015/102/schedule/3/made>
- 71.** The Light Touch Regime only applies to contracts over the stated threshold as defined by the European Union OJEU Thresholds. Below this Threshold the requirements a proportional approach should apply as applicable and appropriate application of the CSOs.
- 72.** Although the use of the flexibility in such situation is encouraged principles of the European Treaty still apply meaning procurement procedures and the award of contracts shall be fair, transparent and non-discriminatory.
- 73.** The application of the Light Touch Regime does not negate the requirement to comply with the CSOs and follow the Council's formal decision-making processes.

Terms and Conditions

- 74.** Wherever possible and appropriate to do so, contracts shall be based on the Council's Terms and Conditions, related to the subject matter of the contract.
- 75.** Terms and Conditions shall be stated and disclosed at time of tendering.
- 76.** Where this is not the case then suitable justification shall be made for audit purposes. Justification may include (but is not limited to) procuring from ("calling off") other parties' Framework Agreements pursuant to which the terms and conditions of that Framework Agreement will be applicable.

- 77.** In such cases consideration of the implications of those terms and conditions is required prior to purchasing from the Framework Agreement and suitable advice shall be obtained as required.

Contract Arrangements

- 78.** Contracts must be in writing. Electronic signatures may be used in accordance with the Electronic Signature Regulations 2002 provided assurance the arrangements are secure.
- 79.** Contracts shall be executed as a deed (Sealed Contract) if they are
- 77.1** For Works contracts (e.g. construction), or
 - 77.2** Where the Council may wish to enforce the contract more than six years after its end; or
 - 77.3** Nil consideration or the price paid or received under the contract is a nominal price and does not reflect the value of the supplies or services; or
 - 77.4** the Total Value exceeds £1,000,000; or
 - 77.5** if the Head of Legal Services advises they must be executed as a deed; or probate.
- 80.** Where Sealed Contracts are required to be executed as a deed then Legal Services shall be engaged. Contract Signatory thresholds are outlined in Table 3.

Table 3 – Contract Signatory Thresholds

| Threshold | Action | Who | Outcome |
|---|---------------------------------------|--|--|
| Up to £25,000 | Purchase Order / Standard Terms | Responsible Officer with appropriate Budget responsibilities. | Contract formed under Purchase Order / Standard Terms. |
| Over £25,000 up to EU Thresholds (Services) | Signed Terms and Conditions or Sealed | Responsible Officer with appropriate Budget responsibilities. Procurement Service & Legal Services required in event of Sealed. | Formal signed Contract or Sealed if deemed necessary. |
| Over EU Threshold | Signed Terms and Conditions or Sealed | Head of Service, Service Director & Legal Services required in event of Sealed. | Formal signed Contract or Sealed if deemed necessary. |

- 81.** In the event of any ambiguity on the appropriate level of authorisation required; the overarching Financial Regulation 24.3 will take precedence.
- 82.** Reference should also be made to Table 1. Contracts above £5,000 will have details placed on the Contracts Register.

Contract Management and Monitoring

- 83.** Contract management and monitoring arrangements shall be undertaken in a manner that is commensurate to risks.

- 84.** Ensuring the suitable contract records are in place is the responsibility of the Responsible Officer. During the life of all contracts the appropriate Strategic or Service Director shall ensure that the Council's approved processes for contract management are adhered to.

Modifications to Contracts / Framework Agreements

- 85.** Particular attention shall be given to modifications of contracts or Framework agreements including variations, extensions and innovations.
- 86.** Where a modification to the contract or Framework Agreement is not expressly provided for in the initial procurement documents and the Contract or Framework Agreement, the involvement of both Procurement Service and Legal Services is required to assess the commercial and legal implications of any such modification.
- 87.** Where necessary consultation with subject matter experts maybe required. All modifications shall be in writing and in accordance with the terms of the relevant Contract or Framework Agreement. Due regard shall be taken to the Regulations in particular Section 6 regulation 72.

<http://www.legislation.gov.uk/uksi/2015/102/regulation/72/made>

Teckal Contract Award

- 88.** A contract can be direct awarded to a public sector entity when compliant with Regulation 12 of The Public Contracts Regulations.

<http://www.legislation.gov.uk/uksi/2015/102/regulation/12/made>

SECTION 5 - ROLES AND RESPONSIBILITIES

89. Defined roles and responsibilities:

| | |
|------------------------------------|--|
| Section 151 | Ensuring overall probity in respect of related financial matters, through relevant controls and monitoring. |
| Corporate Management Team | <p>Maintaining a strategic overview of compliance with the CSOs and overall accountability for non-compliance with the CSOs in their respective areas of responsibility.</p> <p>Instructing relevant changes to ensure compliance and controls remain effective.</p> <p>Authorisation in line with levels as set out in the Authorisation Process.</p> |
| Elected Members | <p>Ensuring compliance with the Members' Code of Conduct, including in relation to any interests they may have, and any specific responsibilities they have in relation to the CSOs themselves.</p> <p>Make such decisions as are referred to them for determination in relation to these Rules.</p> |
| Monitoring Officer | <p>To ensure lawfulness and fairness of decision-making. After consulting with the Head of Paid Service and Responsible Finance Officer, the Monitoring Officer will report to Council if he/she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.</p> <p>To provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all Councillors.</p> <p>Acting as the ultimate point of escalation in respect of breaches or non-compliance with the CSOs and associated Procedural Notes.</p> |
| Head of Procurement Service | <p>Overall ownership of the CSOs and ensuring that the overall framework for commercial considerations is complied with robustly and effectively.</p> <p>Ensuring compliance with the Council's overarching decision-making responsibilities and providing related guidance. On occasions will also have the same responsibilities as outlined in the Responsible Officer definition.</p> |
| Legal Services | <p>Leading on the overall ownership of commercial matters related to Contract Terms and Conditions.</p> <p>Point of escalation in relation to formal challenges within procurement or contract matters.</p> |
| Portfolio Holder | Ensuring accountability by Officers is maintained with responsibilities for delivery of the CSOs. |
| Procurement Service | Acting as primary advisory service in relation to public sector procurement, commercial and contract management matters. In the case of Social Care / Commissioning the direct line of responsibility will be with the Product Portfolio Managers. |
| Responsible Officer | This will include Service Leads and those with responsibilities in any of the following activities, including: |

| | |
|--|---|
| | <p>Quoting, Tendering or contract renewals in line with the CSOs and associated Procedural Notes</p> <p>Seeking additional advice where these CSOs do not apply.</p> <p>Ensuring there is a genuine and legitimate business requirement for the spend and an approved budget and acting with the authority as budget holder or the budget holder.</p> <p>Ensuring that the appropriate Authorisations have been received in respect of committing spend.</p> <p>Drafting fit for purpose specifications for each procurement, that meet the requirements of the procurement.</p> <p>Providing justification for any deviation from the approved Sourcing Strategy.</p> <p>Accurately estimating the total contract value at the start of each procurement.</p> <p>Conducting sourcing / procurement in line with the Authorisation Process.</p> <p>Diligently applying Exemptions process where relevant.</p> <p>Diligent contract management for contracts which are within their jurisdiction.</p> <p>Reporting matters of breach or non-compliance.</p> <p>Engaging the Procurement Service where the project / Tender is in excess of £5k (or £25k in case of Self Service)</p> |
| <p>Service / Strategic Director</p> | <p>Authorisation in line with levels as set out in the Authorisation Process and Scheme of Delegation as set out in the Constitution.</p> <p>Ensuring awareness and compliance within their respective areas of responsibility.</p> <p>Escalation point to investigate and / or action breaches and non-compliance within the respective area of responsibility and, where necessary, onward escalation to Director / Monitoring Officer.</p> |
| <p>Subject Matter Expert</p> | <p>Subject Matter Experts shall be relevant subject matter experts related to specialisms or professions, e.g. service area teams, Legal Services, Finance, Health and Safety, etc.) are to be consulted at appropriate times during the procurement process.</p> |

APPENDIX 1 - Supporting Information

Procedural Notes:

- Breach of Contract Standing Orders
- Concessions Arrangement
- Exemptions
- Late Submissions
- Missing / Omitted Material

APPENDIX 2 – DEFINITION OF KEY TERMS

Breach: Where there has been failure to comply with an aspect of the Contract Standing Orders.

Commercial Assurance and Authorisation: Means the assurance and authorisation around the appropriately qualified and procured Supplier and commercial terms of contract relevant and proportional to the subject matter of the Works, Supplies and / or services. The award of all contracts must follow the Council's decision making processes as appropriate to the value/risk associated with the contract.

Concession Arrangements: Meaning where the provision and the management of services or the execution of works is entrusted to one or more economic operators, the consideration of which consists either solely in the right to exploit the services or works that are the subject of the contract or in that right together with payment. See also Procedural Note: Concession Arrangement

Contract Register: Means the formal Contract Register of the Council to comply with the Local Government Transparency Code 2015 see www.supplyingthesouthwest.org.uk

Contract Standing Orders (CSOs): means this document and referenced Procedural Notes that form the overall rules around how the Council shall consider Public procurements.

Corporate Contracts: means contracts that have been set up with the expressed intention of supporting the delivery of Works, Service or Supplies across the whole of the Council.

Grants: For the purpose of this document Grants shall mean a payment to help the recipient (e.g. charity). In return, the grant funder (e.g. the Council) gets no services delivered directly. A grant is usually provided subject to conditions that state how the grant shall be used (for example to support the wider objectives of the public body in promoting the social, economic or environmental well-being of their area). Grant funding is usually preceded by a call for proposals. The grant offer letter will normally set out general instructions as to how this is to be achieved, for example, that children need to be kept entertained by taking them on excursions and have sporting activities.

Official Journal of the European Union (OJEU) Thresholds: meaning the defined thresholds as set out by the EU – see here for more details https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/850566/PPN_for_New_Thresholds_2020_pdf.pdf (see “Other Contracting Authorities”).

Procurement Service: Means the Council's own Procurement team within the Council.

Quotation: means for the purposes of this document price only submissions from Suppliers to provide Works, Services or Supplies.

Regulations: Means the Public Contracts Regulations 2015 (or Public Utilities Regulations where applicable to the subject matter) see <http://www.legislation.gov.uk/uksi/2015/102/contents/made>.

Responsible Officer: In general means the Officer within the Council who is the budget holder and who has direct responsibilities from an operational / client perspective for the supplies, works and services.

Sealed Contract: being a contract executed under seal by the parties (signed by the parties, witnessed and most importantly made clear that it is executed as a deed) with the intentions to secure limitation period of 12 years, for example specifically relevant in the case of Works contracts

Services: means the provision of Service from a Supplier(s) to the Council as a Contracting Authority. See also “Public Service Contract” as defined in the Regulations
<http://www.legislation.gov.uk/uksi/2015/102/regulation/2/made>

Social and Other Specific Services (also referenced as **Light Touch Regime:** As defined within the Public Contracts Regulations - Social and Other Specific Services see
<http://www.legislation.gov.uk/uksi/2015/102/part/2/chapter/3/made>.

Sourcing Strategy: means the approach to determining how to secure Works, Services or Supplies on behalf of the Council as detailed in section 2 of this document.

Supplier: means a third party who either is already contracted with the Council or used in general terms a potential third parties who provide contracted arrangements to others.

Supplies: means the provision of Supplies from a Supplier(s) to the Council as a Contracting Authority. See also “Public Supplies Contract” as defined in the Regulations
<http://www.legislation.gov.uk/uksi/2015/102/regulation/2/made>

Teckal Company / Council Company: A company owned in whole or in part by the Council which benefits from contracts for works, services or supply from its controlling Contracting Authority (e.g. the Council) without having to go through a competitive tender process.

Teckal: The right to award contracts for Works, Services or Supplies from the controlling authority to the Council Owned company. See the Regulations regulation 12 for more details:
<http://www.legislation.gov.uk/uksi/2015/102/regulation/12/made>

Tender: means for the purposes of this document Tenders sought or from Suppliers to provide Works, Services or Supplies that are evaluated on the basis of most economically advantages offer, considering Price, Quality and other considerations including consideration and compliance with the Council’s Social Value Policy.

Works: means the provision of Works from a Supplier(s) to the Council as a Contracting Authority. See also “Public Work Contract” as defined in the Regulations:
<http://www.legislation.gov.uk/uksi/2015/102/regulation/2/made>