

**Contract Standing Orders**

**Council rules for the purchase of**

**Goods, Works and Services**

|

April 202~~3~~2

CONTENTS	Page
Definitions	210
Section A Scope and Purpose General Requirements	
1. Scope and Purpose	213
2. General Requirement	214
2.1 Classification and Valuation of Contracts	214
2.2 Summary of procedures to be followed according to value for the purpose of these CSOs	215
2.3 Guiding Principles	216
2.4 Exemptions from advertising requirements	216
2.5 Approvals	216
2.6 Exemptions	217
2.7 Contract Formalities Sealing and Register	217
2.8 Contract Documents	218
2.9 Record Keeping	218
2.10 Contract Management, Evaluation and Review	219
2.11 Insurance	219
Section B Officer Responsibilities	
3. Officer Responsibilities	221
3.1 General	221
3.2 Contract Managers	221
3.3 Corporate Heads	221
3.4 Codes of Practice and training	222
3.5 Form of Contract and record keeping	222
Section C The Contracting Process	
4. The Contracting Process	223
4.1,4.2 Steps Prior to Purchase	223
4.3,4.4 Pre-Tender Market Research and Consultation	223
4.5,4.6 Prevention of Corruption	223
5. Advertising and Assessing Potential Suppliers	224
5.1, 5.2 Advertising and assessing potential tenderers	224
6. Framework Agreements	224

7.	The Appointment of Consultants to Provide Services	225
		<b>Page</b>
8.	The Council as a Supplier	225
9.	Collaborative and Partnership Arrangements	225
10.	Setting Standards and Award Criteria	225
11.	Invitations to Tender/Quotations	227
12.	Submission, Receipt and Opening of Tenders / Quotes	228
13.	Clarification Procedures and Post Tender Negotiations	228
14.	Evaluation, Award of Contract and Debriefing Tenderers	228
15.	Local Lists	229
16.	Constructionline	229
17.	Liquidated Damages and Security	229
18.	Requirements for Contracts	230
19.	British Standards	230
20.	Additional Work not contracted for	230
21.	Nominated Sub-Contractors and suppliers	231
22.	Authorisation of payments, claims etc	231

## Definitions

"Agent"	A person or organisation acting on behalf of the council.
"Award Criteria"	The criteria on which the award of a Contract is based following an evaluation of Contract tenders in a procurement procedure. Award criteria must be focused on the tender and not the tenderer (which will already have been assessed for suitability at the qualification step against the relevant Selection Criteria).
"Award Procedure"	The procedure for awarding a Contract as specified in CSO 14.
"Code of Conduct"	The 'Code of Conduct for Staff' (See Part 5 Council's Constitution).
"Consultant"	Someone engaged for a specific length of time to work to a defined project brief with clear outcomes to be delivered, and who brings specialist skills or knowledge to the role.
"Contract"	In this context, means an agreement between parties for the supply of goods, services or works on terms and conditions, which are intended to be enforceable through law.
"Contracts Finder"	A central website maintained by Government on which public sector tender opportunities above <del>£25,000</del> <del>20,833</del> (Exclusive of VAT) and which are advertised by the council are required to be published.
"Contract Managers"	Those Officers authorised to carry out the day to day activities required to let and manage a Contract.
"Framework Agreement"	A framework agreement is an 'umbrella agreement' that sets out the terms (particularly relating to price, quality and quantity) under which individual Contracts (call-offs) can be made throughout the period of the agreement.
"Invitation to Tender"	An Invitation to Tender (ITT) is sent to Tenderers inviting tenders for works, goods or services
"In-tend"	The council's e-tendering system which must be used for all procurement exercises with a value of £5,000.00 excluding VAT or more.
"Local Authority Consortium"	A collection of Local Authorities who collaborate around the purchase of goods and services.
"Non-Commercial Considerations"	The following are a list of Non-Commercial Considerations: <ul style="list-style-type: none"> <li>(a) the terms and conditions of employment by contractors of their workers or the composition of, the arrangements for the promotion, transfer of or the other opportunities afforded to, their workforces ("workforce matters");</li> <li>(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;</li> <li>(c) any involvement of the business activities or interests of contractors with irrelevant fields of Government policy;</li> <li>(d) the conduct of contractors or workers in industrial disputes</li> </ul>

	<p>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 from which the authority gives or withholds support;</p> <p>(h) use or non-use by contractors of technical or professional services provided by the authority under the Building Act 1984.</p>
<p>"Open Procedure"</p> <p>"PAS 91 PQQ"</p>	<p>Workforce matters and industrial disputes, as defined in paragraphs (a) and (d) cease to be non-commercial considerations for the purposes of s17(5) Local Government Act (LGA) 1988 and part 1 of the LGA 1999 (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>A one-stage procurement where there is an open advert and any potential supplier can access and submit a tender to be evaluated.</p> <p>Prequalification questionnaire to be used for all procurements for works that are between the Service and Supplies threshold and the Works threshold. A template is available on request from the Procurement Office.</p>
<p>"Procurement Toolkit"</p> <p>"Public Procurement Procedure"</p> <p>"Purchase Order"</p> <p>"Quotation"</p> <p>"Restricted Procedure"</p> <p>"Runnymede Borough Council Terms and Conditions"</p>	<p>A guide to procurement providing help and advice in the procurement processes along with supplying template documents, useful forms and sample documents to assist Officers in running their own procurement projects.</p> <p>The procedure required whereby the Total Value of a Contract exceeds the Threshold.</p> <p>A document sent from the council as a buyer to a supplier with a request for an order, indicating types, quantities, and agreed prices for products or services. Once the order is accepted by the seller it becomes a Contract binding on both parties. The council's Terms and Conditions will govern the terms of the supply of goods and services ordered under a Purchase Order unless a standard form or bespoke Contract has been entered into prior to the issuing of the Purchase Order.</p> <p>A written quotation of price and goods/services to be provided.</p> <p>A two-stage procurement, where the advert invites potential suppliers to submit a Selection Questionnaire and only those that meet the selection criteria are then shortlisted and permitted to submit a tender for evaluation. The PCR 2015 (as amended) only permit this procedure for above Threshold procurements.</p> <p>The council's Terms and Conditions for the supply of goods and services using Purchases Orders. Supplier's accepting Purchase Orders are deemed to have accepted the terms and conditions. A copy of the Terms and Conditions can be found on the council's website at <a href="https://www.runnymede.gov.uk/tandcs">https://www.runnymede.gov.uk/tandcs</a>.</p>

"Selection Criteria"	The criteria by which Tenderers are chosen to be invited to submit Quotations or Tenders, where a Restricted Procedure is adopted.
"Shortlisting"	The process of selecting Tenderers who are to be invited to submit Quotations or Tenders or to proceed to final evaluation.
"Sourcing Plan"	A document to be completed by all officers who wish to buy anything with a value of £5,000 or more which will identify the correct route to market for the exercise. For purchases or Contracts with a value greater than <del>£20,833</del> <u>£25,000</u> the document must be submitted to the Procurement function for review and sign off prior to commencing a procurement exercise. Available in the Forms section of the Procurement Toolkit.
"SPD"	Single Procurement Document – can be submitted in place of the Selection Questionnaire in a Find a Tender Service procurement exercise and must be accepted. An example document and further instructions as to the use of the document are available on request from the Procurement Office.
"Standard Form Contracts"	Forms of agreement to be used without variation for certain agreed areas of work (Building Services, Engineering Services and Housing Services) with values below <del>£25,000</del> <u>£20,833</u> . They are administered by Contract Managers, with the formats drafted by Legal Services and subject to annual review and updating.
"Suitability Criteria"	In a single stage procurement the objective criteria, such as financial standing and professional ability, by which Tenders are assessed to determine whether they proceed to be evaluated.
"Tender"	A Tenderer's proposal on price and quality submitted in response to an Invitation to Tender.
"Tenderer"	Any person who asks or is invited to submit a Quotation or Tender.
"Tender Record Log"	The logs kept by Head of Service to record details of Tenders received (see CSO 11).
"Threshold"	The Contract value at which the Public Procurement Procedure must be applied.
"Total Value of the Contract"	The amount payable under the Contract to be used to select the procedure; excluding VAT.
"TUPE" Transfer of Undertakings (Protection of Employment) Regulations	Subject to certain conditions, these regulations apply where responsibility for the delivery of works or services for the council are 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 employees are transferred along with the business.
"Works Order"	A document issued by the council (typically used in Housing Maintenance and Building Services) to a contractor with details of the works to be carried out, indicating types, quantities, and agreed prices for products or services. Once the order is accepted by the contractor it becomes a Contract binding on both parties. The council's Terms and Conditions will govern the terms of the supply of goods and services unless a standard form or bespoke Contract has been entered into prior to the issuing of the Works Order.

## SECTION A

### 1. Scope and Purpose

- 1.1 These Contract Standing Orders (CSOs) aim to promote good procurement practice, public accountability, prevent corruption and provide protection for staff against allegations of impropriety. The council should only enter into *written* rather than oral Contracts unless there are exceptional circumstances e.g. to deal with an emergency.
- 1.2 All procurement exercises must:
- Achieve best value for money;
  - Be consistent with the highest standards of integrity;
  - Ensure fairness in awarding public Contracts;
  - Comply with all legal requirements;
  - Support the council's corporate aims and policies.
- 1.3 A Contract for the purposes of these CSOs is any arrangement made by, or on behalf of, the council for the carrying out of works or for the supply of goods, materials or services, for example:
- the supply or sale of goods;
  - hire, rental or lease of goods or equipment; and
  - the delivery of services.
- 1.4 The term Contract also includes arrangements where the council is supplying goods, works or services.
- 1.5 Contracts must comply with these CSOs, irrespective of the method of funding (e.g. capital, revenue, sponsorship, donations or grant monies from a third party).
- 1.6 The following Contracts are excluded from the provisions of the CSOs:
- (a) contracts of employment, which makes an individual a direct employee of the council;
  - (b) agreements for the acquisition, disposal, or transfer of land (See Standing Orders for Acquisition Disposal of Land Property Part 4 Council Constitution);
  - (c) contracts entered into by or on behalf of Legal Services for the appointment of Counsel and/or External Solicitors and/or Experts; or
  - (d) loans to or from banks or other financial institutions;
  - (e) provision of emergency accommodation as required by the Homelessness Act;
  - (f) subscriptions to magazines/publications/online resources/professional journals/professional memberships.
  - (g) appointments for appointed persons for the purpose of Local Audit and Accountability Act 2014 and the Local Audit (Appointing Person) Regulations 2015
- 1.7 A Procurement Toolkit is available in the Procurement section of the Runnymede Borough Council Staff Web Pages. The toolkit can be used to assist in any tendering exercises. It covers everything from pre-procurement considerations right through to putting Contracts in place and

the subsequent reporting requirements. There are templates and forms available as well as a number of sample documents to help guide Officers in completing their own tender documents.

## 2. General Requirement

### 2.1 Classification and Valuation of Contracts

The Total Value of the Contract should be calculated by reference to the following (where one or more apply use the higher value):

- (a) for fixed term Contracts the total price expected to be paid during the whole of the Contract period, including possible extensions For example if the Contract is fixed term for three years it will be the estimated annual value times by 3; if however the Contract allows for a possible extension of 2 years the Contract value shall be the annual value times 5 regardless of whether the extension will be utilised or not.;
- (b) where the Contract period is uncertain, multiply the price expected to be paid each month by 48 (where the value exceeds the Threshold, other rules apply and you should seek advice from Procurement Services);
- (c) if the Contract involves a series of separate transactions for the same type of item, the 'Total Value of the Contract' is the expected aggregate value of all those transactions in the coming 12 months. For example if the Contract is to change light bulbs, it is the estimated number of light bulbs estimated to be required to be changed within a 12 month period.
- (d) for feasibility studies, when the contractor may potentially also carry out the work, it is the value of the scheme or Contracts which may be awarded as a result.

A Contract Manager must not select a method for calculating the Total Value of the Contract in order to avoid the application of these CSOs.

- 2.1.1 A Sourcing Plan should be completed for every procurement as soon as the need to purchase goods, works and services arises to assist with calculating the total Contract value and the procurement route necessary. Sourcing Plans for Contracts with a total Contract value above ~~£25,000~~20,833, must be submitted to the Procurement Office for review prior to a procurement exercise being undertaken.



2.2 Summary of procurement process to be followed according to value for the purposes of these CSOs.

Total Contract Value (excluding vat)	Procurement Process Required:	Type of Contract
Up to £5,000.00	One written quote	Purchase order using the council's Terms and Conditions
Between £5,000.01 and <del>£25,000</del> <u>20,833</u> .00	3 quotes obtained via the council's e-tendering system	Purchase order using the council's Terms and Conditions depending on the nature of the procurement (pending discussions with the Procurement Office and Legal Team) <i>or</i> Standard Form of Contract <i>or</i> Bespoke Contract if amends to the council's standard terms and conditions are required
Above <del>£25,000</del> <u>20,833</u> .00	Sourcing Plan to be completed and submitted to corporateprocurement@runnymede.gov.uk  Tender process via the council's e-tendering system; legal obligation to publish opportunity and contract award on Contracts Finder	Bespoke Contract only
Above £100,000.00	Sourcing Plan to be completed and submitted to corporateprocurement@runnymede.gov.uk  Tender process plus approval from the relevant committee for the budget and procurement process	Bespoke Contract only
Above Threshold for Supplies, Services or Works	Sourcing Plan to be completed and submitted to corporateprocurement@runnymede.gov.uk  Find a Tender Service (FTS) process	Bespoke Contract only

Please refer to the relevant Procurement Toolkit for process maps for each threshold

## 2.3 Guiding Principles

- (a) All Contracts must be let in accordance with these CSOs unless an exemption under 2.6 below has been granted.
- (b) The Public Contract Regulations 2015 as amended by the Public Procurement (Amendment etc.) (EU Exit) Regulations 2019 and Public Procurement (Amendment etc. (EU Exit) (No. 2) Regulations 2019 ('Withdrawal Regulations') (SI 2015/102) ('the PCR 2015 (As amended)') are domestic UK legislation which apply completely to the council as an English local authority. The PCR 2015 (as amended) set out detailed procedures for the award of Contracts where the Contract value equals or exceeds the specific thresholds shown in the table below. The threshold values stated below exclude VAT. The PCR 2015 (as amended) also impose certain requirements on below threshold procurements.

Other public sector contracting authorities	Supplies	Services	Works
	£177,898	£177,898	£4,447,448

- (c) The council's e-tendering system – In-Tend - must be used for all procurement exercises with a value in excess of £5,000.00 unless in exceptional circumstances a justification not to use it has been approved via a waiver to CSOs by the Procurement Office or Corporate Head of Law and Governance.

## 2.4 Exemptions from advertising requirements

The following may be excluded from advertising and other requirements under these CSOs, although the requirement for achieving best value shall still apply:

- 2.4.1 Contracts made via a local authority purchasing consortium or Framework and may include Contracts above the Threshold if the consortium or the framework has been awarded in accordance with EU Public Procurement Directives implemented as the PCR 2015 (as amended) for England.
- 2.4.2 Contracts entered into through sub-regional working or collaboration with other Local Authorities or public bodies, where a competitive process has been followed that complies with the CSOs of the lead organisation will be deemed to comply with these CSOs.
- 2.4.3 Collaborative proposals for joint working or shared services with other public authorities which the Corporate Head of Law and Governance has approved as meeting the conditions set out in 2.4.4 below.
- 2.4.4 The principal activity of the collaborative arrangement is the provision of services back to the participating authorities:
- the collaborating public authorities when acting together exercise the same kind of control over the service provision as they would over in-house service provision; and
  - there is no independent or private sector partner involved in the collaborative arrangement.
- 2.4.5 Where it can be clearly demonstrated that goods or services can only be provided by a single source, an exemption to advertising requirements may be requested via the waiver to CSOs process (2.6).

In all instances, advice should be sought from the council's Legal Services or the Procurement

Office.

## 2.5 Approvals

- a) Procurement can only occur if there is a budget allocation or express approval by the relevant Committee. All Contracts must be appropriately authorised by the relevant Committee or in accordance with the council's Scheme of Delegation before a procurement process is begun.
- b) For procurements with a value in excess of £100,000.00:
  - i. Contract Managers must seek approval from the relevant Committee for the procurement route and estimated total Contract value prior to the procurement exercise commencing;
  - ii. if, after evaluation of tender responses, the actual Contract value is less than or equal to that agreed by Committee for the procurement, Contract Managers must report to the relevant Committee the award of the Contract to the successful tenderer as information only;
  - iii. if, after evaluation of tender responses, the actual Contract value is greater than that agreed for the procurement or there has been a substantial modification to the specification or terms and conditions of Contract, Contract Managers must request the approval of the procurement outcome at the relevant Committee prior to Contract award notification.
- c) All Contracts must be in written form and once the terms and conditions are agreed should be submitted to the appropriate person for signature. The written formalities must be completed before the Contract is due to start.

## 2.6 Exemptions

- 2.6.1 Subject to any legal requirements, any requirement of these CSOs may be waived with the consent of the relevant Committee or via the waiver to CSO process. The Procurement Office administers the process and further information is available in the Procurement Toolkit. The Procurement Manager will assess waiver applications and if the grounds for the waiver are deemed appropriate, waivers will be approved by either the Procurement Manager or the Corporate Head of Law and Governance. Additional approval as detailed in the process may be required from the Chief Executive or the Assistant Chief Executive who may authorise other officers to exercise all or part of these powers on their behalf.
- 2.6.2 An application for a waiver shall:
  - (a) be submitted in writing to [corporateprocurement@runnymede.gov.uk](mailto:corporateprocurement@runnymede.gov.uk);
  - (b) set out clearly the reasons for requiring the waiver and indicate the time period the waiver will apply for;
  - (c) provide an action plan to resolve the requirement for a further waiver at the end of the time period;
  - (d) show how the proposal complies with any applicable law, demonstrates propriety, value for money and support for the council's objectives.
- 2.6.3 Where an exemption from competition requirements is necessary because of an unforeseeable emergency involving immediate risk to persons, property or serious disruption to council services, the relevant Officer must report as soon as practicable following the event to the Procurement Office ([corporateprocurement@runnymede.gov.uk](mailto:corporateprocurement@runnymede.gov.uk)) and one of the following, the Chief Executive, Assistant Chief Executive or the Corporate Head of Law and Governance. Any Contract entered into for these purposes should be the minimum required to

remove the immediate risk to persons or property or to reduce the disruption to council services to a manageable level.

## 2.7 Contract Formalities, Sealing and Register

2.7.1 Where a Purchase Order is used as the Contract using the council's Terms and Conditions for values under ~~£25,000~~~~20,833~~.00, the authoriser of the Purchase Order must have the required delegated authority for the Contract value as required by the Financial Regulations.

2.7.2 All other Contracts shall be signed by the council as follows:

Contracts up to  
~~£25,000~~~~20,833~~.00

Signed by the relevant Head of Service or above.

All Deeds and Contracts over  
~~£25,000~~~~20,833~~.00 or  
circumstances under 2.7.4  
below

Under the common seal of the council and witnessed (signed) by  
the Chief Executive or Corporate Head of Law and Governance.

2.7.3 All Contracts must be concluded formally in writing and signed by both parties before the supply, service or construction work begins, except in exceptional circumstances, and then only with the consent of the Chief Executive, Corporate Head of Law and Governance or Assistant Chief Executive.

2.7.4 The council's Legal Services are responsible for securing signature of the Contract and must ensure with the assistance of the Contract Manager that the person signing for the other contracting party has authority to enter into a legal agreement.

2.7.5 A Contract must be sealed where:

- the council wishes to enforce the Contract more than six years after its end;
- there is no consideration or the price paid or received under the Contract is nominal and does not reflect the value of the goods or services.

2.7.6 Following award of any Contract, in excess of £5,000.00 the Contract Manager must provide Contract information required by the council's Procurement Office for entry onto the Contracts Register which is found on the council's website.

- If the Contract has been procured via the e-tendering system, the Contract Manager must provide the Contract Information by entry within the system.
- If a waiver to use the e-tendering system has been approved, Contract information must be provided to the Procurement Office on Contract award.

## 2.8 Contract Documents

2.8.1 All Contracts irrespective of value, shall clearly specify:

- details of supply/service or work;
- the price to be paid and the timing/frequency;
- Contract start and end date including any provision for extension; and
- liquidated damages (if applicable) and termination provisions.

2.8.2 The terms and conditions of all Contracts over £5,000.00 must have been either drafted or approved by the council's Legal Services unless using the council's Terms and Conditions fulfilled by a Purchase Order. Standard Form Contracts should be reviewed and updated annually by the Corporate Head of Law and Governance to ensure compliance with any legal changes and that they meet the council's needs.

## 2.9 Record Keeping:

Contract Managers shall ensure that the following records are kept:

2.9.1 successful Tenders - the Contract and any relevant correspondence and records (e.g. any documents which might have a bearing on the way the Contract is interpreted) for at least 6 years after the Contract comes to an end. If made as a deed / under seal they must be kept for at least 12 years;

2.9.2 unsuccessful or late Tenders – for at least 3 years from the date of award of the Contract;

2.9.3 original Contracts – unless they are in the council's Standard Form or a Purchase Order, Legal Services shall be responsible for retaining original Contracts. Standard Form Contracts shall be retained by Contract Managers for 6 years after the Contract comes to an end.

## 2.10 Contract Management, Evaluation and Review

2.10.1 For all Contracts, Contract Managers should:

- ensure that appropriate risk assessments are in place at all times during the life of the Contract;
- for any risks identified as part of the risk assessment, ensure appropriate actions are put in place to manage them;
- regularly monitor performance;
- regularly monitor compliance with programme, specification and Contract;
- regularly monitor estimated final cost compared to budgets;
- regularly monitor any value for money requirements;
- regularly monitor user satisfaction and risk management;
- review and action Contract end dates in a timely manner to allow sufficient time to review options for Contract extension or to run a procurement exercise prior to the end date.

2.10.2 If any Contract requires a project management role the Contract Manager must discharge that role or appoint a named person to carry out that role.

2.10.3 Officers involved in any construction/building related procurement must check to determine whether the Construction (Design and Management) Regulations 2015 (CDM 2015) apply and comply with those requirements accordingly.

## 2.11 Insurance

2.11.1 Contractors must provide a copy of the relevant insurance schedule or a letter from their insurance broker as evidence that the required policy(ies) is in date and has the required limit of liability.

2.11.2 If a Contract is continuing after expiry of the initial policy, Contract Managers must request evidence of the updated policy in the form stated in 2.11.1 above.

#### 2.11.3 Public Liability Insurance

All contractors must have a current policy of public liability insurance in place with a minimum limit of liability of £5million. In the case of building or construction work Contracts, the minimum limit of liability should be £10million. In exceptional circumstances, lower limits may be considered in consultation with the council's Insurance Officer who will advise accordingly.

2.11.4 A contractor's insurance policy must include an "Indemnity to Principal" clause. This ensures that the Principal i.e. the council, is indemnified as if it were the insured.

#### 2.11.5 Employers' Liability Insurance

The Employers' Liability (Compulsory Insurance) Act 1969 states that all employers are required to have a minimum limit of liability of £5million. In practice, most insurance companies write employers' liability policies with a minimum limit of £10million. However, contractors should be required to have at least the statutory minimum of £5million.

#### 2.11.6 Professional Indemnity Insurance

Professional Indemnity insurance indemnifies a contractor against claims for financial loss arising out of a Contract which may occur as a consequence of poor or incorrect advice or errors or omissions committed by the contractor. We will require this from contractors whose service comprises or includes the giving of professional advice e.g. consultants.

2.11.7 If Professional Indemnity insurance is needed, a limit of £1million may be sufficient. However, when considering the level of Professional Indemnity insurance required, Officers must consider the potential financial loss to the council in the event that the contractor commits an act or omission leading to a claim. The actual value of a Contract does not necessarily have a direct correlation to the nature and size of a claim that might arise. If Officers are in doubt, they must seek the advice of the council's Insurance Officer.

2.11.8 Additional types of insurance cover may also be required, for example, Product Liability cover where food or materials are supplied by a contractor, it would be normal for a contractor to have a "combined liability" policy which covers both public and products liability. If Products liability is a stand-alone policy, a minimum limit of liability of £2 million would be required.

2.11.9 Officers must seek the advice of the council's Insurance Officer if they are in any doubt regarding insurance requirements.

Summary of minimum insurance levels required:

- Public Liability £5m (unless filming on RBC owned land; then £10m)
- Employer liability £5m
- Professional Indemnity £1m
- Product Liability £2m
- Official Indemnity £1m

## **SECTION B Officers' Responsibilities**

### **3.1 General**

3.1.1 All Officers and any Agents or Consultants acting on their behalf must comply with these CSOs, Financial Regulations, the Code of Conduct for Staff and with all legal requirements. They must also comply with any Codes of Practice, guidance and instructions, which may be issued regarding contractual arrangements by the Procurement Office, Chief Executive, Assistant Chief Executive or Corporate Head of Law and Governance.

3.1.2 All Officers must have regard in particular to paragraph 12 (gifts and hospitality) in the Code of Conduct for staff 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 show that anything received was not received corruptly. High standards of conduct are obligatory. Corrupt behaviour is a crime, which may lead to prosecution and will lead to disciplinary proceedings and possible dismissal.

3.2 Contract Managers must, in relation to Contracts for which they are responsible:

- (a) ensure they have all appropriate approvals before seeking any quotes or tenders or awarding a Contract;
- (b) seek all necessary legal, procurement, financial, risk management and technical advice in good time;
- (c) ensure there is sufficient budgetary provision before awarding any Contract;
- (d) comply with the requirements of these CSOs and observe any Codes of Practice, guidance or instructions relating to contracting matters issued by the Procurement Office, Chief Executive, Corporate Head of Law and Governance and Assistant Chief Executive;
- (e) ensure council suppliers have sufficient insurance cover appropriate to the Contract (see paragraph 2.11 above) and the advice of the council's Insurance Officer;
- (f) ensure a record is kept for every Contract of the method for obtaining bids/tenders' and the reasons for it; any exemption from CSOs together with the reasons for it; and the award criteria;
- (g) ensure that where an employee of the council or its contractor may be affected by any transfer arrangement, TUPE and related issues are considered before proceeding with inviting Tenders or quotations;
- (h) upload Contract information on the e-tendering system including name and nature of the Contract, the proposed date of award, duration and value. This provides the data required by the Transparency Code 2015 and is mandatory for all Contracts above £5,000.00;
- (i) review Contract end dates and action as appropriate to ensure contractual arrangements are in place at all times during the supply period or period of service provision.

3.3 Corporate Heads must in relation to their Service:

- (a) ensure all Contract Managers:
  - comply with CSOs;
  - are sufficiently skilled in procurement matters to fulfil the duties of their post;

- complete any required learning and development.
- (b) ensure there are effective systems in place to control budgets properly;
- (c) ensure there are effective Contract management arrangements in place for all Contracts;
- (d) provide any information requested by the Procurement Office, Assistant Chief Executive or the Corporate Head of Law and Governance regarding their Contracts.

#### 3.4 Codes of Practice and training

The Procurement Office, Chief Executive, the Corporate Head of Law and Governance and the Assistant Chief Executive may:

- (a) issue Codes of Practice, guidance and instructions on any matters which are relevant to contracting arrangements;
- (b) specify the approved learning and development requirements in procurement matters that Officers must complete to meet the minimum competency standards to fulfil their duties under CSOs.

#### 3.5 Record keeping

The Corporate Head of Law and Governance shall:

- maintain central registers of all Contracts completed underhand or seal and arrange for the safekeeping of such Contracts on council premises.

Corporate Heads/Directors shall:

- arrange for the safe-keeping of Contracts signed under their delegated authority.



## SECTION C – The Contracting Process

This section sets out in more detail the requirements to be met when dealing with a Contract that has a value exceeding £5,000.00:

### 4. Steps Prior to Purchase (reference Procurement toolkits and process flowcharts)

4.1 Before beginning a procurement exercise, Contract Managers must:

- (a) consult the Procurement Office before commencing a procurement exercise;
- (b) assess the need for the expenditure;
- (c) define the objectives of the procurement;
- (d) calculate the Total Value of the Contract (refer to 2.1) by completing the Sourcing Plan to establish the value. If above ~~£25,000~~20,833.00, it must be submitted to Procurement for consideration by the Procurement Board prior to a Procurement exercise being undertaken;
- (e) Ensure that the appropriate authority is in place to start the process (refer to 2.5) and that the budget covers the whole-life financial commitment being made (including any Consultant's or other external charges or fees);
- (f) ensure sufficient legal, procurement, finance, risk management and technical support is available throughout the entire procurement process;
- (g) ensure sufficient resources will be available (i.e. people with sufficient skills and capacity) to manage the Contract once it has been let, and
- (h) draft a specification setting out details of the goods and/or services required; how and when they shall be supplied;
- (i) ensure that an Invitation to Tender is drafted.

4.2 Contract Managers in collaboration with the Procurement Office must:

- (a) where no suitable council services are available, carry out an options appraisal to decide the best way to achieve the purchasing objective, including internal or external sourcing, partnering, and collaborative procurement arrangements with another public authority or government department;
- (b) consult users where appropriate about the proposed procurement, Contract standards, performance and user satisfaction monitoring;
- (c) assess the risks and how to manage them; and
- (d) agree with the Corporate Head of Law and Governance, the approved form of Contract to be used for the type of transaction and the terms and conditions that are to apply to the proposed Contract. Wherever possible, the council should determine the standard form of Contract to be used or use terms and conditions of Contract drafted by the council's Legal Services.

#### Pre-Tender Market Research and Consultation

4.3 Contract Managers in collaboration with the Procurement Office may consult potential suppliers prior to the issue of an Invitation to Tender in general terms about the nature, level and standard of the supply, Contract packaging and other relevant matters. Records must be kept of this consultation.

4.4 Contract Managers may seek or accept technical advice on the preparation of a specification from anyone who may have a commercial interest in bidding/tendering for the Contract provided that it does not prejudice the equal treatment of all potential Tenderers and distort competition. Records must be kept of this consultation until the expiry of the Contract.

## **Prevention of Corruption**

- 4.5 An anti-bribery and corruption clause must be inserted into every Contract. The wording of the clause is to be advised by the council's Legal Services.

Every written Contract must state that the council may cancel the Contract and recover any resulting loss from the contractor, if the contractor or anyone acting on his behalf, or his employees (with or without his knowledge):

- i. has improperly offered, given or agreed to give anything to any person in return for doing or refraining to do anything in connection with the obtaining or execution of the Contract or any other Contract with the council, or in return for showing or refraining from showing favour or disfavour to anyone in relation to the Contract or any other Contract with the council;
- ii. has, in relation to any Contract with the council, committed an offence under the Bribery Act 2010, or has given any fee or reward the receipt of which is an offence under Section 117 (2) of the Local Government Act 1972.

- 4.6 A non-collusive tendering certificate is to be included with all procurement documentation which must be signed by Tenderers and included with their Tender.

## **5. Advertising and Assessing Potential Suppliers**

### **5.1 Advertising**

5.1.1 All proposed Contracts where the Total Value of the Contract is expected to exceed ~~£25,000~~~~20,833~~.00 (excl of VAT) must be advertised on the council's website. The minimum advertising requirements are:

- (a) all Contracts above ~~£25,000~~~~20,833~~.00 must be published on the council's website and Contracts Finder;
- (b) all Contracts exceeding the applicable Public Procurement thresholds must be published to the Find a Tender Service (FTS);

Advertisements for Contracts exceeding the applicable EU threshold should not appear on the council's website until after they have appeared in the FTS.

5.1.2 Where Contracts above an estimated total contract value of ~~£30~~~~25~~,000.00 (incl of VAT or ~~£25,000~~ ~~20,833~~—excl VAT at 20%) are advertised, the PCR 2015 (as amended) require that they must also be advertised on Contracts Finder.

### **5.2 Assessing potential suppliers or contractors**

5.2.1 Contract Managers are responsible for ensuring that all Tenderers for a Contract are suitably assessed. The assessment process shall establish that all potential Tenderers have sound economic and financial standing and sufficient technical ability and capacity to fulfil the requirements of the council.

## **6 Framework Agreements**

6.1 Seek procurement advice before considering the use of a Framework or prior to approaching a Framework provider.

6.2 The term of any Framework Agreement must not exceed four years without the written consent of the Corporate Head of Law and Governance.

6.3 For Contracts of any value, in the case where more than one framework agreement could be used for the Contract award, the Procurement Office must be consulted in order to conduct a due diligence exercise of the options available and provide a recommendation on the route to take.

6.4 Contracts based on Framework Agreements must be awarded in accordance with the terms laid down in the Framework Agreement whilst ensuring compliance with these Standing Orders and PCR 2015 (as amended). If there is any doubt, contact the Procurement Office or the council's Legal Services.

6.5 The Government's Crown Commercial Service may be used as a source to look for appropriate Framework Agreements with the advice and assistance of the council's Procurement Office.

## **7. The Appointment of Consultants to Provide Services**

7.1 Consultants are subject to the same competition requirements as any other type of Contract and must be selected and commissions awarded in accordance with these CSOs.

7.2 The engagement of a Consultant requires contractual terms and conditions and a specification that adequately describes the scope of the services to be provided, the total cost to be paid and any stage payment arrangements. The engagement shall also be subject to completion of a Contract of appointment.

7.3 Consultants shall be required to provide evidence of and maintain professional indemnity insurance policies to the satisfaction of the council's Insurance Officer for the periods specified in the respective agreement.

7.4 Seek guidance from Procurement or Legal services when considering appointment of Consultant/s to provide services.

## **8. The Council as a Supplier - providing works, goods or services to external organisations**

8.1 The Corporate Director of Resources and the Corporate Head of Law and Governance must be consulted where Contracts to work for organisations other than the council are contemplated.

8.2 Contract Managers shall produce robust business cases for the council acting as a supplier which fully takes into account the costs to the council of delivering the goods, works or services concerned. The financial viability of such business cases must be approved by the Chief Executive and Assistant Chief Executive.

8.3 Contract Managers shall liaise with the council's Insurance Officer to ensure any potential liabilities are sufficiently covered by the council's insurance policies.

8.4 Where the proposed Contract value is likely to be funded by a supplementary estimate outside of the annual planning cycle, before tenders are prepared the Chief Executive, Assistant Chief Executive and the Corporate Head of Law and Governance must jointly approve the business case (unless the Chief Executive Officer has expressly agreed that no Business case is required) including:

- (a) confirming the council can legally enter into the Contract;
- (b) accepting the legality of the charging arrangements; and
- (c) approving the terms and conditions of the proposed Contract.

## **9. Collaborative and partnership arrangements**

9.1 In order to secure value for money the council may enter into collaborative procurement arrangements with other local authorities. The Contract Manager must consult the Corporate Head of Law and Governance and the Procurement Office where the supply of goods and/or services is to be made using collaborative procurement arrangements.

9.2 Collaborative and partnership arrangements include joint working where one partner takes the lead and awards Contracts on behalf of the other partners, long term collaborative partnerships, pooled budgets and joint commissioning.

- 9.3 Collaborative arrangements between public authorities for shared services where the aim of the arrangement is for the participating authorities to be provided with services by each other or through a company wholly owned by the participating authorities rather than by an external provider may fall outside the need for competition.

## **10. Setting Standards and Award Criteria**

- 10.1 The Contract Manager must, before seeking prices, define Selection Suitability and Award Criteria that are appropriate to the procurement and designed to secure an outcome giving best value for money for the council. The basic criterion shall be:

- (a) "most economically advantageous tender, where considerations other than price also apply, for example, quality of goods or services. Although if tendering for simple Contracts where price really is the overall factor, it is possible to use price alone to establish which the most economically advantageous tender is; or
- (b) "highest price" if payment is to be received.

If the first criterion is adopted, it must be further defined by reference to sub-criteria which may refer only to relevant considerations. These may include aspects of Whole Life Costs such as price, service, quality of goods, running costs, technical merit, delivery date, cost effectiveness, quality, relevant environmental considerations (including disposal and recycling costs), aesthetic and functional characteristics (including security and control features), safety, after-sales services, technical assistance, social value and any other relevant matters.

- 10.2 Selection Suitability and Award Criteria must not include:

- non-Commercial Considerations; *or*
- matters which discriminate against suppliers from signatories to the Government Procurement Agreement.

- 10.3 The regulations prohibit the use of a two stage procurement process for Contracts for Supplies and Services with an estimated value below the Threshold for Supplies and Services (see table in 2.3b).

- 10.4 Any Contracts for Works with a value over the Supplies and Services threshold but under the Threshold for Works may still use a two stage process. In these circumstances Contract Managers must use the PAS 91 Pre-Qualification Questionnaire (PQQ).

- 10.5 Where any other two stage process is permitted, Contract Managers must have regard to the Crown Commercial Service (CCS) guidance for the use of a Selection Questionnaire (SQ) and the CCS SQ template; re-wording of questions is not permitted within Parts 1 and 2 under any circumstances, within Part 3 it is possible to delete questions that are not relevant to the procurement and add questions where necessary.

- 10.6 The Single Procurement Document (SPD) is a reduced format SQ which can be used by tenderers in place of a SQ. It cannot be amended and additional questions cannot be added. It must be accepted if submitted by a tenderer and a tenderer cannot be penalised for submitting the SPD instead of the SQ document issued with the tender documents. The SQ documents issued as part of a tender must highlight areas within them that are not included within the SPD document so that tenderers can respond separately to those questions not covered by the SPD. Regulation 59 of the PCR 2015 (as amended) provides further guidance on the SPD

- 10.7 Full details about the scoring of a SQ, including any weighting and sub-criteria, must be

made known to suppliers at the time of going out to tender, as must any “pass mark” for the SQ. Suppliers should be given details if an unsatisfactory answer to any SQ questions may lead to exclusion, irrespective of the score on the rest of the SQ.

- 10.8 The Contract Manager must notify those Tenderers who are eliminated at the Pre-Qualification (Selection) stage of the process. The letter needs to give reasons why the tenderer was unsuccessful and should be transmitted electronically using In-tend.
- 10.9 Suitability Assessment questions are permitted for all procurements below the Threshold where a two stage process is no longer permitted as long as the following conditions are met:
- must be relevant to the subject matter of the procurement;
  - must be proportionate;
  - can only be used to assess whether minimum standards are met.

It is mandatory for a potential supplier to complete Part 1 and Part 2 of the standard SQ, or the SPD template, for all procurements above Thresholds, therefore Parts 1 and 2 must form the basis of any Suitability Questionnaire used in the Open Procedure.

## **11. Invitations to Tender / Quotations**

- 11.1 All Invitations to Tender or Quotation must:
- a) Specify the goods, service or works that are required, together with the terms and conditions of Contract that will apply; and.
  - b) State that the council is not bound to accept any Quotation or Tender.
- 11.2 All Tenderers invited to Tender or Quote must be issued with the same information at the same time and subject to the same conditions. The PCR 2015 (as amended) state that all procurement documents should be made available by means of the internet from the date of publication of the procurement exercise. In-tend allows for this requirement. Any supplementary information must be given on the same basis.
- 11.3 All Invitations to Tender shall include:
- (a) clear instructions on how and where Tenders are to be submitted, together with the date and time by which they are to be received;
  - (b) a specification that describes the council's requirements in sufficient detail to enable the submission of competitive offers;
  - (c) terms and conditions on which the Contract is let which shall be either in the council's Standard Form Contract, the council's Terms and Conditions by issue of a Purchase Order or a bespoke Contract appropriate to the procurement;
  - (d) a description of the Award Procedure and details of the Award Criteria in objective terms;
  - (e) an outline of the method by which any arithmetical errors discovered in the submitted tenders are to be dealt with. In particular, whether the overall price prevails over the rates in the tender or vice versa; and
  - (f) information on the council's requirement on:
    - i. Confidentiality and Freedom of Information;
    - ii. Publicity;
    - iii. Tenderer Conduct and Conflicts of Interest;

- iv Authority rights;
- v Bid costs;
- vi Guarantees; and
- vii Data protection guidance.

11.4 All Invitations to Tender shall state that any Tender received after the closing date and time stipulated in the Invitation to Tender will be rejected and not considered.

11.5 All Invitations to Tender shall include requirements for Tenderers to:

- (a) 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 e.g. legal, financial advice etc.); and
- (b) complete fully and sign all tender documents including a form of tender and certificates relating to canvassing and non-collusion;
- (c) submit Tenders to the council on the basis that they are compiled at the Tenderer's expense.

11.6 No tender will be considered unless submitted through the e-tendering system.

## **12. Submission, Receipt and Opening of Tenders/Quotes**

12.1 Tenderers must be given an adequate period in which to prepare and submit a Tender, consistent with the complexity of the Contract. The Public Procurement Procedure lays down specific time periods.

12.2 All Tenders estimated to be worth £~~25,000~~~~20,833~~.00 or more must be returned in accordance with the system requirements of the e-tendering system. Any tender received outside of the e-tendering system must be rejected and excluded from evaluation.

12.3 All tenders received in the e-tendering system will be locked from access until after the closing date and time. The e-tendering system allows for all bids to be opened and recorded within the system alleviating the need to employ a bid opening committee to sign and witness the opening of bids. For the avoidance of doubt, the Buying Manager or Procurement Officer running the procurement exercise can proceed to open the bids using the electronic opening ceremony independently.

12.4 The arithmetic in compliant Tenders must be checked. If mathematical errors are found, the council must seek clarification from the Tenderer and provide them with an opportunity to amend the error and resubmit the tender.

12.5 The e-tendering system will not allow Suppliers to upload any documents after the stipulated time and date for submission even if they have started to upload their submission if they have not finished it will reject the outstanding information.

## **13. Clarification Procedures and Post-Tender Negotiations**

13.1 Providing clarification of an Invitation to Tender to potential or actual Tenderers or seeking clarification of a Tender whether in writing or by way of a meeting is permitted. All clarifications must be managed through In-tend.

13.2 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) are not permitted. In particular, such negotiations must not be conducted in a Public Procurement Procedure (other than within the provisions of the negotiated, competitive dialogue and innovation partnership procedures) without the agreement of the Corporate Head of Law and Governance.

- 13.3 If, in exceptional circumstances, post tender negotiations appear necessary after a single stage tender or after the second stage of a two-stage tender, then you should take legal advice on whether negotiations are permissible. Normally such negotiations should be undertaken with all those who have met the selection criteria in the original process. During negotiations, the council's requirements set out in the original procedure should not be substantially altered. The prior approval of the Corporate Head of Law and Governance is required to any proposal to negotiate in other circumstances.

#### **14. Evaluation, Award of Contract and Debriefing Tenderers**

- 14.1 Apart from the debriefing required or permitted by these CSOs, the confidentiality of Quotations, Tenders and the identity of Tenderers must be preserved at all times and information about one Tenderer's response must not be given to another during the evaluation process.

- 14.2 Quotations and Tenders must be evaluated in accordance with the Award Criteria. During this process, Buying Managers shall ensure that submitted tender prices are compared with any pre-tender estimates and that any significant differences are examined and resolved satisfactorily.

- 14.3 Where the Total Value of the Contract is ~~£25,000,000.00~~ £25,000,833.00 or more, Buying Managers must advise all Tenderers in writing of their award decisions. For Contracts that are subject to the Find a Tender Service, this must be in the form of intention to award letters (award notification letters) that are issued simultaneously to all Tenderers using the e-tendering system advising them of the intention to award the Contract to the successful Tenderer and providing them with a mandatory 'standstill period' of at least 10 days in which to challenge the decision before the Contract award is confirmed. Guidance should be sought from the Procurement Office or Legal Services as to what constitutes the start and finish of the standstill period.

- 14.4 Award notification letters must include the following debriefing information, and no additional details should be given without taking the advice of the Corporate Head of Law and Governance:

- (a) how the award criteria were applied;
- (b) the name of the successful Tenderer(s);
- (c) the score/price of the Tenderer, together with the score/price of the successful Tenderer;
- (d) details of the reason for the decision, including the characteristics and relative advantages of the successful Tender; and
- (e) confirmation of the date before which the council will not enter into the Contract (i.e. the date after the end of the 'standstill period').

- 14.5 If a decision is challenged by an unsuccessful Tenderer, after the issue of an award notification letter, then the Contract Manager shall not award the Contract but shall immediately inform the Assistant Chief Executive and the Procurement Office and seek the advice of the Corporate Head of Law and Governance.

#### **15. Local lists**

The council does not operate local lists.

All suppliers should be invited to join the South East Shared Services e-sourcing portal (<https://www.sesharedservices.org.uk/esourcing>) which is the supplier's interface with the e-tendering

system. Once registered, local suppliers will be available in the e-tendering system for Contract Managers to select for quotation requests using the Quick Quotes facility.

## **16. Constructionline**

- 16.1 Under these CSOs, Contract Managers requiring construction services who can demonstrate that the response to an open advertisement would generate such a large number of responses that the time spent in evaluating such tenders would be disproportionate to the value of the Contract can use Constructionline to select a restricted number of tenderers to be invited to submit tenders.
- 16.2 Inclusion on the Constructionline register is not guarantee of a contractor's suitability and therefore Contract Managers must carry out independent checks during the tender process.
- 16.3 Officers must rotate the contractors used on Constructionline.
- 16.4 Officers must invite three contractors to tender for Contracts under £~~25,000~~20,833.00 and where the value exceeds £~~25,000~~20,833.00, a sufficient number of contractors to be able to demonstrate that value for money is being obtained.

## **17. Liquidated Damages and Security**

- 17.1 The relevant Contract Manager must consider the following matters before tenders are invited.
- 17.2 If a Contract has a value of £~~25,000~~20,833.00 or more or there are concerns with the potential performance of the services required under the Contract, the relevant Corporate Head must consider whether a liquidated damages clause is necessary. For this purpose, he may consult the Corporate Head of Law and Governance and Assistant Chief Executive.
- 17.3 If the relevant Corporate Head requires, and if the Corporate Head of Law and Governance considers it legally practicable, such a Contract must provide for the contractor to pay liquidated damages if he fails to complete it in the stated time. The method of calculating damages is to be fixed by the Corporate Head of Law and Governance after considering advice from the relevant Contract Manager and the Assistant Chief Executive.
- 17.4 The council may require a contractor to give security via a performance bond or parent company guarantee for the performance of any Contract.

## **18. Requirements for Contracts**

- 18.1 Every Contract to which these CSOs apply must:
- (a) be in writing in a Purchase Order, Standard Form Contract or bespoke Contract form approved by the Corporate Head of Law and Governance. The Corporate Head of Law and Governance may require this document to be under seal;
  - (b) state what is to be supplied or done, the price and any discount or deductions, the time within which the Contract is to be performed, and any other agreed terms;
  - (c) state that if the contractor fails to perform his obligations within the time allowed, the council in addition to any other remedies, may:
    - i) determine the Contract, either wholly or partly, and
    - ii) do whatever is necessary to make good the contractor's default, and
    - iii) recover from the contractor the expense of doing so, to the extent that it exceeds the Contract sum.
- 18.2 In the case of Contracts for physical works or services the Contract Manager must ensure that the Contract requires the contractor to advise the council as to whether the contracted works or



services (“the Contract”), and any facility, system or equipment used by the council to which the Contract relates, accord with the requirements of best modern safety practice.

## **19. British Standards**

- 19.1 Every Contract for goods, materials or work must comply with any relevant standards or ISO Standards or Standard Code of Practice in force at the date of tender. Relevant required Standards should form part of the Specification.

## **20. Additional Work not contracted for**

- 20.1 If the relevant Corporate Head/Director is satisfied that a need for additional works, service or supply has arisen due to unforeseen circumstances during the carrying out of a Contract, and that:

- (a) works, service or supply can be procured under the terms of the existing Contract;
- (b) it is nevertheless of the same type as that being provided by the existing contractor, and has arisen as part of the same set of circumstances as gave rise to the existing Contract;
- (c) the additional works, service or supply is necessary, is correctly specified, and does not amount to more than 15% of the existing Contract sum for the works and 10% of the existing Contract sum for the service or supply in estimated value;
- (d) the existing contractor is to carry out the works, service or supply to the required standard;
- (e) it is in the best interests of the council to agree with the existing contractor for the new works, service, or supply; and
- (f) budgetary provision exists;

then a waiver to CSOs is not required.

- 20.2 In the event the additional works amount to more than 15% of the existing Contract sum, or additional service or supply amounts to more than 10% of the existing Contract sum, AND/OR the additional works, service or supply do not comply with all of para 20.1 above, then a waiver must be sought (para 2.6) and subject to approval, the council may negotiate the terms with the existing contractor to carry out the new works, service or supply. The advice of the Corporate Head of Law and Governance must be followed as to how best to document the new contractual terms.

- 20.3 After the waiver is approved following compliance with para 20.2 and the Contract is modified by Legal, the relevant Corporate Head/Director must advise Corporate Procurement who will send a notice to that effect in accordance with Regulation 51 of PCR 2015 (as amended) for publication in OJEU/FTS (Find a Tender) if the existing Contract was tendered using OJEU/FTS tender process.

## **21. Nominated Sub-contractors and suppliers**

Where a sub-contractor or supplier is to be nominated to a main contractor and the estimated value of the sub-Contract, or goods to be supplied, is more than £25,000~~20,833~~.00 then:

- (a) at least three tenders for the nomination must be invited in accordance with one of the methods set out in these CSOs;
- (b) the provision of these CSOs relating to insurance, bribery and corruption apply to such tenders;

- (c) the invitation to tender must require the tenderer to undertake that he will enter into a Contract with the main contractor which includes an obligation to indemnify the main contractor in respect of matters included in the sub-Contract;
- (d) any Contract shall contain a term that the main contractor shall make available on demand to the council all documents associated as to the appointments of any sub-contractor.

However, where in the reasonable opinion of the relevant Corporate Head of Law & Governance and the Assistant Chief Executive it is not practicable to obtain such competitive tenders, this CSO will not apply.

## **22. Authorisation of payments, claims etc.**

In relation to Contracts for building, constructional or engineering work:

- 22.1 payments to contractors on account of Contracts may be made only on a certificate issued by an Officer (or private architect, engineer or Consultant) authorised by the council to do so. Payments must not be made before Contract documentation has been executed except with the agreement of the Corporate Head of Law and Governance and Assistant Chief Executive.
- 22.2 subject to the provisions of the Contract, every extra or variation must (unless otherwise evidenced to the satisfaction of a duly authorised Officer) be authorised in writing by the duly authorised officer (or private architect, engineer or Consultant) or other person who may be nominated for the council under the Contract. The authorisation must state the cost of the extra variation or, if this is impossible, an enforceable mechanism (such as a schedule of rates) by which the cost will be calculated. If the estimated cost of the Contract is likely to exceed the authorised budget by more than £1,000.00, the relevant Corporate Head/Director must report this to the relevant Committee as soon as practicable. Officers should note the need to seek authorisation for additional expenditure from the relevant Committee;
- 22.3 the final certificate of completion of any Contract must not be issued until the duly authorised Officer, private architect, engineer or Consultant has produced to the Assistant Chief Executive a detailed Contract payment proforma in the form required by the Assistant Chief Executive, and has produced all documents required by the Assistant Chief Executive.

Applicable to all Contracts:

- 22.4 in any case where the value of the Contract exceeds £100,000.00 and the total cost will exceed the approved Contract sum by more than 5%, the relevant Corporate Head must before payment submit the final account to the Assistant Chief Executive, who will arrange for its examination and make all such enquiries and receive such information and explanations as may be required in order to be satisfied as to the accuracy of the account. It is the responsibility of the relevant Corporate Head to provide all necessary papers and information for this purpose, to the requirements of the Assistant Chief Executive and in good order;
- 22.5 where the total cost of any Contract exceeding £100,000.00 in value exceeds the approved Contract sum by more than 5%, the relevant Corporate Head must also report on the cost to the relevant Committee, after agreement of the final account. Where it is apparent earlier that this will be the case, the relevant Corporate Head must consider the advisability of reporting at that stage instead;
- 22.6 if a Contract has been awarded on a term or call-off basis, the relevant Corporate Head and Contract Manager must ensure that the cumulative cost is monitored and that any necessary variations or supplementary estimates are sought in accordance with the Financial Regulations reproduced in this Constitution;
- 22.7 claims from contractors in respect of matters not clearly within the terms of any existing Contract must be referred to the Corporate Head of Law and Governance for consideration of the council's legal liability. Where necessary, the Assistant Chief Executive must be consulted in respect of the financial considerations before a settlement is reached;

22.8 where completion of work or services due under the Contract is delayed beyond the Contract period, the relevant Corporate Head/Director must consult with the Corporate Head of Law and Governance and ensure that any necessary action is taken to claim liquidated damages.