

# Part Four, Section J

## Contract Procedure Rules

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#### **0. Statement of Principles**

- 0.1 The Contract Standing Orders provide the framework rules for the Council's procurement of works, goods and services. Following them will assist to ensure value for money, propriety and the proper spending of public money.
- 0.2 The Procurement Code of Practice provides more detail and shall govern Council tendering and contract procedures. The Head of Procurement shall maintain and issue the Procurement Code of Practice. Any procurement activity shall proceed in accordance with the Contract Standing Orders and the Procurement Code of Practice and all such other guidance issued by the Head of Procurement.
- 0.3 The Head of Procurement shall make the latest version of the Contract Standing Orders and the Procurement Code of Practice available to every Director, Member and officer of the Council. Directors, or officers acting on their behalf, shall apply the requirements of the Contract Standing Orders and the Procurement Code of Practice when engaging in any procurement activity.
- 0.4 Procurement activity shall be used (amongst other things) to achieve Best Value in accordance with the Council's statutory or approved objectives. This should include an innovative approach to building partnerships with the private and not-for-profit sectors and collaborating with other public sector bodies within a robust contractual framework. Officers with responsibility for procurement shall ensure that they are able to demonstrate achievement of Best Value with regards the optimal combination of economy, efficiency and effectiveness.
- 0.5 Every contract or official order for works, goods or services made by the Council shall be for the purpose of achieving the Council's statutory or approved objectives and shall conform to all relevant law of England and Wales and of the European Union.
- 0.6 Directors shall ensure that the Cabinet or an appropriate Member of the Cabinet is consulted on any procurement activity prior to its publication in the Council's Forward Plan.
- 0.7 Directors must ensure that audit trails are in place for all procurement activity in accordance with the Procurement Code of Practice.
- 0.8 No Member of the Council shall enter into any contract on the Council's behalf.
- 0.9 No Member of the Council shall be permitted to become security under any agreement between the Council and a contractor employed by it.

## **CONTRACT STANDING ORDERS**

### **1. Introduction**

- 1.01 Procurement decisions are among the most important decisions a manager will make because the money involved is public money and the Council is required to ensure that Best Value works, goods and services are provided. Efficient use of resources in order to achieve Best Value is therefore an imperative. The Council's reputation is equally important and should be safeguarded from any imputation of dishonesty or corruption.
- 1.02 For these reasons it is a disciplinary offence to fail to comply with Contract Standing Orders and the Procurement Code of Practice when letting contracts and raising orders with suppliers. Employees have a duty to report breaches of Contract Standing Orders to an appropriate senior manager and the Head of Audit & Risk Management.
- 1.03 Unless otherwise provided within these Contract Standing Orders or the Procurement Code of Practice or with the express approval of the Head of Procurement, all procurements should be conducted via the Corporate Procurement Systems, regardless of value.
- 1.04 Reference should be made to the Procurement Code of Practice for more detailed procurement procedures.

### **2. Definitions and Interpretation**

- 2.01 These Contract Standing Orders are made pursuant to section 135 of the Local Government Act 1972 and shall come into force with this Constitution.
- 2.02 Unless the context otherwise requires, in these Contract Standing Orders the terms below shall have the meanings ascribed to them.
- a) **“Approved Electronic Means”** means such electronic means of authenticating the formation of a contract, which may include the use of electronic signatures, as may be expressly approved by the Assistant Director of Corporate Governance from time to time or for a specific contract;
- b) **“Bids”** means Tenders and Quotations;

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- c) **“Concession Contracts Regulations”** means the Concession Contracts Regulations 2016 (SI 2016/273), as amended from time to time;
- d) **“Contracts Finder”** means a web-based portal provided by or on behalf of the Cabinet Office;
- e) **“Corporate Procurement Systems”** means any one of the following:
- the Corporate Contract Repository being the Wax Digital Contract Management and Supplier Relationship Systems;
  - the Corporate Dynamic Purchasing System (DPS) being the Council’s web-based dynamic purchasing system currently provided by adam HTT (as amended);
  - the Corporate Sourcing Solution being the Wax Digital Sourcing Solution;
  - or such other systems as may be approved by the Head of Procurement from time to time;
- f) **“Director”** means an employee of the Council holding a post designated as:
- The Chief Executive
  - A member of the Strategic Leadership Team
  - A Director or Assistant Director;
- g) **“EU”** means the European Union;
- h) **“Public Contract Regulations”** means the Public Contracts Regulations 2015 (SI 2015/102), as amended from time to time;
- i) **“Regulations”** means the Concession Contracts Regulations and the Public Contracts Regulations, as amended from time to time.
- 2.03 In the event of any conflict between EU law, the law of England and Wales and Council policy, the requirements of EU law shall prevail over the law of England and Wales and the requirements of law of England and Wales shall prevail over Council policy.
- 2.04 In the event of any doubt as to the interpretation of these Contract Standing Orders or the Procurement Code of Practice, or as to the proper procedure to be followed, clarification should be sought from the Head of Procurement.

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#### **3. Roles & Responsibilities**

##### **3.01 The Cabinet (and Pensions Committee where relevant) will:**

- a) hold Directors accountable for any decisions they make under their delegated authority or under these Contract Standing Orders;
- b) approve awards of contract valued at £500,000 (five hundred thousand pounds) or more;
- c) approve any variation or extension valued at £500,000 (five hundred thousand pounds) or more, whether or not such variation or extension was included in the original award in b) above;
- d) ensure that the award of any contract and any extension or variation with an aggregated value at £500,000 (five hundred thousand) or more is treated as a 'key decision' and as such must be in the Council's Forward Plan and comply with the other procedures in that regard set out in the Constitution.

##### **3.02 Directors**

Each Director has responsibility for all contracts let under his/her control. he/she is accountable to the Cabinet for the performance of his/her duties in relation to contract letting and management, which are:

- a) to ensure compliance with EU law, the law of England and Wales and Council Policy;
- b) to ensure value for money in all procurement matters;
- c) to ensure compliance with Contract Standing Orders and the Procurement Code of Practice;
- d) to maintain a departmental scheme of delegation;
- e) to ensure that all relevant officers are familiar with the provisions of Contract Standing Orders and the Procurement Code of Practice and that they receive adequate training on their operation;
- f) to ensure compliance with any guidelines issued in respect of these Contract Standing Orders;
- g) to take immediate action in the event of a breach of Contract Standing Orders or the Procurement Code of Practice within his or her area;

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- h) to keep: (i) copies of all concluded contracts as required by Regulation 83 of the Public Contract Regulations, and ensure electronic copies of such contracts are stored in the Council's Corporate Contract Repository, and (ii) proper records of procurement procedures sufficient to justify decisions taken at all stages of the procurement procedure for a period of at least three years from the date of award of the contract, as required by Regulation 84 of the Public Contract Regulations;
- i) to keep records of waivers of any provision of these Contract Standing Orders and forward a copy of such records to the Corporate Procurement Unit;
- j) to make appropriate arrangements for the opening of bids and their secure retention so as to protect the integrity of the procurement process;
- k) to ensure that the Council's seal is affixed to any document required to be executed as a deed and that where a document is not expressed to be under seal, it is either signed by two people or authenticated by Approved Electronic Means as provided for in these Contract Standing Orders;
- l) to ensure original sealed contract documents are held by the Assistant Director of Corporate Governance for safekeeping;
- m) to record all contracts valued at £10,000 or more in the Corporate Contracts Repository;
- n) to ensure effective management of all contracts under his/her control and to a level deemed appropriate in regard to risk or value of each contract.
- o) to ensure that no contract is let unless the expenditure involved has been fully considered and approved beforehand and sufficient money has been allocated in the relevant budget.

#### 3.03 Pensions Committee

The Pensions Committee shall have the same powers and duties of the Cabinet specified in these Contract Standing Orders but limited to procurement decisions and award of contracts relating to the Pension Fund.

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#### 4. Scope of Contract Standing Orders

4.01 These Contract Standing Orders shall apply to all contracts for the procurement by the Council of works, goods and services (including concessions) unless otherwise expressly stated or these requirements are waived in accordance with Contract Standing Order 10.

4.02 Where the Council:

- a) secures funding from an external funding body, or
- b) intends to assign grant funding to an external body;

Contract Standing Order 17 and the forming of necessary agreements shall apply.

4.03 These Contract Standing Orders shall **not apply** to contracts falling within Regulation 10 of the Public Contract Regulations. For the avoidance of doubt, this exclusion applies to (amongst other things) contracts of employment, certain contracts for legal services, certain financial services and debt finance and agreements for the sale of land (including leases).

4.04 These Contract Standing Orders shall **not apply** to contracts falling within Regulation 10 of the Concession Contracts Regulations. For the avoidance of doubt, this exclusion applies to (but not limited to) air transport and passenger transport services, certain contracts for legal services, certain financial services and debt finance and agreements for the sale of land (including leases).

#### 5. EU Public Procurement Directives

5.01 Where the value of a works, goods or services contract is equal to, or exceeds, the applicable threshold in relation to the Regulations, the provisions of those Regulations shall govern the tendering process and shall take precedence over the provisions of these Contract Standing Orders in the event of any conflict.



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#### **6. Contract Value and Aggregation**

- 6.01 Directors must ensure that a pre-tender estimate of the total contract value is prepared and recorded in writing and in order to determine whether the thresholds under the Regulations apply.
- 6.02 Unless otherwise specifically provided and subject to Contract Standing Order 6.04, reference to total contract value or an estimated total contract value in these Contract Standing Orders means the aggregate value payable in pounds sterling exclusive of Value Added Tax over the entire contract period, including any extension periods as anticipated in the proposed contract.
- 6.03 A contract's value must not be artificially under or over estimated or divided into two or more separate contracts with the intention of avoiding the application of Contract Standing Orders or the Regulations.
- 6.04 In the case of Concession Contracts these are to be calculated in accordance with Regulation 9. (3) – (11) of the Concession Contract Regulations.

#### **7. Framework, Consortia and Joint Procurement Arrangements**

- 7.01 Subject to the provision of Contract Standing Order 7.02, these Contract Standing Orders shall **not apply** where the Council procures particular works, goods and/or services:
- a) as part of a group of public sector bodies contracting with one or more contractors (consortium arrangement), provided the contract standing orders of one of the public sector bodies constituting the group and/or where applicable the Regulations have been followed; or
  - b) by selecting one or more contractors from a Framework or similar arrangement (including approved lists and dynamic purchasing systems), established by a public sector body in accordance with the contract standing orders of that public sector body and/or where applicable the Regulations; or
  - c) by selecting one or more contractors from ConstructionLine in accordance with the criteria applicable to the project.
- 7.02 The Council's decision to enter into a contract with the recommended Contractor must be made in accordance with Contract Standing Order 9.07.

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- 7.03 The Council shall observe these Contract Standing Orders where it procures works, goods and/or services for the benefit, or on behalf of, other public bodies.
- 7.04 Where the Council is considering leading on any joint procurement activities with other contracting authorities, approval must be obtained in advance of any commitment to do so and on the basis of a robust business case from:
- a) the Cabinet where the joint procurement is liable to result in a contract award that would involve a 'key decision' by the Council;
  - b) the Chief Operating Officer, after consultation with the Leader of the Council, in other cases.

#### **8. Procedure for Contracts under £160,000**

- 8.01 Contracts for works, goods and/or services with an estimated value below £160,000 (one hundred and sixty thousand pounds) must be procured via the Corporate Sourcing Solution except whereby Contract Standing Order 7.01 applies or where an alternate e-sourcing solution is used that has been pre-approved in writing by the Head of Procurement.
- 8.02 Where a contract for works, goods and/or services has an estimated value of less than £10,000 (ten thousand pounds), the relevant Director should act in the manner most expedient to the efficient management of the service, having kept a record for so doing.
- 8.03 Where a contract for goods or services has an estimated value of £10,000 (ten thousand pounds) or more, but less than £160,000 (one hundred and sixty thousand pounds), at least three competitive quotations should be obtained via the Corporate Sourcing Solution without the need for an advertisement or to follow the tender procedure. This activity will be undertaken under the management of the relevant Director without the need for the Head of Procurement to lead on it.
- 8.04 Where a contract for works has an estimated value of £10,000 (ten thousand pounds) or more, but less than £160,000 (one hundred and sixty thousand pounds), at least three competitive quotations should be obtained via the Corporate Sourcing Solution or via ConstructionLine without the need for an advertisement or to follow the competitive tender procedure. This activity will be undertaken under the management of the relevant Director without the need for the Head of Procurement to lead on it.

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- 8.05 The quotation procedure shall comply with Contract Standing Orders 9.02 to 9.05 and be managed by the relevant Director.
- 8.06 Where a pre-qualified Framework arrangement (including approved lists) exists in respect of the subject matter and prices have yet to be determined then CSO 9.01.2f applies.
- 8.07 The Head of Procurement may decide that processes in CSO 8 are not appropriate in order to secure value for money for the Council and to ensure general EU procurement law principles are complied with. If that is the case, he/she may determine another process of selecting a contractor which will meet best value criteria and/or ensure compliance with EU procurement law. The decision and process must be properly documented.
- 8.08 Where a contract with an estimated value of £25,000 (twenty five thousand pounds) or more is advertised, the contract opportunity must be published on Contracts Finder within 24 hours of the first advertisement. The Contracts Finder publication will comply with Regulation 110 of the Public Contract Regulations as applicable.

### **9. Procedure for Contracts valued at £160,000 or more**

- 9.01 Except as otherwise expressly permitted by or under these Contract Standing Orders, in the case of contracts for works and contracts subject to the Light Touch Regime (Regulation 74 of the Public Contract Regulations or Regulation 19 of the Concession Contracts Regulations as applicable) with an estimated value of £160,000 (one hundred and sixty thousand pounds) or more but less than £500,000 (five hundred thousand pounds), at least three competitive quotations should be obtained via the Corporate Sourcing Solution or via ConstructionLine, without the need for an advertisement or to follow the competitive tender procedure. This activity will be managed by the Head of Corporate Procurement.
- 9.01.1 Except as otherwise expressly permitted by or under these Contract Standing Orders, contracts for goods and/or services with an estimated value of £160,000 (one hundred and sixty thousand pounds) or more as well as contracts for works and contracts subject to the Light Touch Regime (Regulation 74 of the Regulations or Regulation 19 of the Concession Contracts Regulations as applicable) which have an estimated value of £500,000 (five hundred thousand pounds) or more must be let following publication of an appropriate (tender) advertisement.

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9.01.2 Where tenders are to be invited the procedure to be followed shall be determined prior to advertising and be managed by the Head of Procurement and shall be one of the following:

- a) open tender procedure (all interested contractors submit a tender in response to an advertisement);
- b) restricted procedure, 2 (or more) stage process involving expressions of interest from contractors in response to an advertisement, with a selection of those contractors subsequently being invited to submit a tender;
- c) competitive procedure with negotiation, 2 (or more) stage process involving expressions of interest from contractors in response to an advertisement, with a selection of those contractors being invited to negotiate;
- d) competitive dialogue procedure, 2 (or more) stage process involving expressions of interest from contractors in response to an advertisement, followed by dialogue with a selection of those contractors to identify a solution (or solutions) which meets the Council's requirements, and an invitation to the selected contractors to submit tenders based on the solution/s resulting from the dialogue;
- e) innovation partnership procedure 2 (or more) stage process involving expressions of interest from contractors in response to an advertisement, followed by a competitive award procedure aimed at the development, and subsequent purchase, of an innovative product, service or works;
- f) where it is proposed to award a specific contract based on a framework agreement in which all the terms of the proposed contract are not laid down, a mini-competition shall be held in which tenders shall be invited from all members of the framework agreement that are capable of carrying out the requirements of the specific contract;
- g) negotiated procedure without prior publication of an advertisement where the requirements of Regulation 32 of the Public Contract Regulations are made out. The Head of Procurement must first be consulted before this procedure is used.

9.01.3 Procurements requiring use of a qualitative selection questionnaire must comply with the Crown Commercial Services (CCS) guidance on the use of these questionnaires including any applicable guidance on the use of

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the European Single Procurement Document (ESPD) provided for in Regulation 59 of the Public Contract Regulations.

9.01.4 Prior approval must be obtained from the Head of Procurement to derogate from the CCS guidance referred to in 9.01.3. Any such derogation must be disclosed to the Cabinet Office.

#### **9.02 Electronic communications, procurement documents, division into lots and receipt and opening of bids**

9.02.1 Subject to the terms of Regulation 22 of the Public Contract Regulations, all communication and information exchange in relation to procurement shall be performed using electronic means of communication.

9.02.2 Subject to the terms of Regulation 53 of the Public Contract Regulations or 34 of the Concession Contract Regulations as applicable, the Council will provide unrestricted and full electronic direct access free of charge to the procurement documents from the date of publication of the advertisement, or the date on which an invitation to confirm interest was sent.

9.02.3 The Council may award a contract in the form of separate lots and may determine the size and subject-matter of such lots. Where a contract is subject to the Public Contract Regulations, if the Council determines that it should not be subdivided into lots then in compliance with Regulation 46(2) of the Public Contracts Regulations it shall provide and retain an indication of the main reasons for its decision.

9.02.4 The approval of contract awards, variations and extensions may be evidenced within the Corporate Procurement Systems by electronic copies of signatures.

9.02.5 Due to the nature of works documentation, if Bids cannot be submitted electronically, contractors must be informed that their Bids will only be considered if they are:

- a) sent in a plain envelope or parcel with a label on which is printed either with the word "Tender" or "Quotation" followed by the subject of the contract; and
- b) contained in a sealed envelope or parcel which does not show the identity of the contractor in any way; and
- c) delivered to the place and by the date and time stated in the invitation.

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- 9.02.6 Bids must be kept safe until the date and time for their opening by the officers given this duty by the Director or Head of Procurement, whichever is responsible for managing the process.
- 9.02.7 Non-electronic Bids must be opened at the same time in the presence of two officers, one of whom has had no involvement in the process. These officers shall be responsible for properly recording the price, duration of any works and all other relevant details of each opened Bid.
- 9.02.8 Electronic Bids received securely may be opened at the appointed date and time by one officer or appointed consultant.
- 9.02.9 The Head of Procurement must approve the training and seniority of all officers employed to open Bids and also the arrangements for ensuring the independence of such officers from the teams involved in the competitive process.

### **9.03 Abnormally Low, Late or Non Compliant Bids**

- 9.03.1 In respect of any contract that is subject to the Regulations, if the Council determines that a Bid is abnormally low then it shall ask the bidder to explain the prices or costs proposed in its Bid.
- 9.03.2 Records of any non-compliant Bids and of the date and time of receipt of any late tenders must be kept by officers.
- 9.03.3 Bids received late may only be considered if the other Bids have not yet been opened and:
- a) failure to comply is the Council's fault; or
  - b) it is clear that the Bid was sent in such a way that in the normal course of events it would have arrived on time.

### **9.04 Dynamic Purchasing Systems**

- 9.04.1 In appropriate cases, a Dynamic Purchasing System (DPS) may be used to carry out procurements in accordance with Regulation 34 of the Public Contract Regulations, with the prior approval of, and in accordance with a procedure specified by, the Head of Procurement.
- 9.04.2 Where a DPS is to be used to carry out a procurement this must be done through the Corporate DPS unless prior written agreement from the Head of Procurement has been obtained.

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9.04.3 Electronic formation of individual contracts within the DPS is permitted, subject to Contract Standing Orders 9.08.8. and 9.08.9.

#### **9.05. E-Auctions**

In appropriate cases, the submission of prices for a bid may be conducted by e-auction in accordance with Regulation 35 of the Public Contract Regulations, with the prior approval of, and in accordance with a procedure specified by, the Head of Procurement.

#### **9.06 Post Tender Clarifications/Confirmations**

9.06.1 Except where the competitive procedure with negotiation referred to in Contract Standing Order 9.01.2c and 9.01.2g applies, negotiation after receipt of formal bids and before the award of contract is only permitted:

- a) in circumstances which do not put other contractors at a disadvantage, distort competition or adversely affect trust in the competitive process, and
- b) if the prior authority of the Head of Procurement has been obtained.

9.06.2 All communication with contractors under this Contract Standing Order 9.06.1 must be in writing or recorded in writing.

#### **9.07 Bid Acceptance, Contract Award and Letters of Intent**

9.07.1 Bids are to be accepted on the basis:

- a) either, if the contract value is above the applicable threshold pursuant to the Regulations, of the most economically advantageous tender as determined by the application of the published award criteria (“MEAT”); or
- b) if the contract value is below the applicable threshold pursuant to the Regulations, of either (i) MEAT, or (ii) lowest cost.
- c) A Director may award, assign, or novate contracts valued less than £500,000 (five hundred thousand pounds).
- d) All contracts valued at £500,000 (five hundred thousand pounds) or more at the time of award may only be awarded, assigned, or novated by the Cabinet.
- e) The award of any contract valued £500,000 (five hundred thousand pounds) or more is a 'key decision' and as such must be in the

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Council's Forward Plan and comply with the other procedures in that regard set out in the Constitution.

- f) In accordance with Part 5 Section C of the Constitution, the award of spot contracts for care packages and contracts for the supply of energy to the Council are not “key decisions”.

9.07.2 Where a contract has been awarded, including by way of a call off from a Framework (but not by way of a contract placed under a DPS), with an estimated value of £25,000 or more, the award must be published on Contracts Finder.

9.07.3 Where the provision of works, goods or services under a contract is required to commence prior to the issuance and execution of a formal contract, a Director, if satisfied that it is in the Council's best interest in the particular circumstances, may approve issuance of a Letter of Intent pending the issuance and execution of a formal contract. However, the maximum cover afforded by any Letter of Intent shall not exceed £100,000 or 10% of the total contract price, whichever is the higher value.

#### **9.08. Conditions Applying to All Contracts:**

9.08.1 The tender documents in respect of every contract to which the Regulations apply shall provide for the contract to include provisions enabling the Council to terminate the contract in each of the circumstances set out in Regulation 73 of the Public Contract Regulations or Regulation 44 of the Concession Contracts Regulations, as applicable.

9.08.1A The tender documents in respect of every contract to which the Regulations apply shall include a requirement that the Council may require the successful contractor to enter into a collateral contract in a form approved by the Assistant Director of Corporate Governance which provides for the allocation of risks between the parties where the contract has been declared ineffective by a court.

9.08.1B The decision as to whether or not a collateral contract will be required in respect of a contract will ultimately be made, before the formal contract is issued and executed, by the Assistant Director of Corporate Governance or an officer acting under his/her delegated authority.



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#### **Valued £10,000 or more:**

- 9.08.2 All contracts valued at £10,000 (ten thousand pounds) or more must be in writing by way of a document prepared, or on a basis approved, by the Assistant Director of Corporate Governance.
- 9.08.3 Every contract valued at £10,000 (ten thousand pounds) or more shall specify:
- a) the works, goods or services to be provided or executed;
  - b) the price to be paid or the precise method of its ascertainment and a statement of any discounts or other deductions; and
  - c) as appropriate, the start and finish dates, or delivery dates, and any maintenance or defects liability period;
  - d) compliance with the Council's insurance requirements. The requirement to comply with the Council's standard insurance requirements may only be waived with the Chief Finance Officer's approval;
  - e) compliance with the Council's equality policy;
  - f) compliance with regards to the protection of personal data.
- 9.08.4 All contracts for the provision of services which may entail members of the service provider's staff (including agents, sub-contractors and assigns) carrying out a role that involves contact with children and/or vulnerable adults or access to their personal records shall contain a provision requiring the service provider to undertake in respect of each staff member the appropriate level of Disclosure and Barring Service check for which his/her role is eligible prior to provision of the services being carried out by the relevant staff member and at appropriate intervals thereafter.
- 9.08.5 All computer software contracts shall contain a clause to the effect that use of the software by the Council's contractors shall not amount to use by a third party for which an additional software licence might otherwise be required.

#### **Valued £50,000 or more:**

- 9.08.6 Every contract with a value of £50,000 (fifty thousand pounds) or more must, unless the Assistant Director of Corporate Governance and Chief

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Finance Officer agree to the contrary, contain clauses to cover the following:

- a) compliance with all applicable legislation;
- b) a prohibition on assignment and/or subletting without the written consent of the Director;
- c) a provision allowing the Council to cancel the contract and recover any resulting loss from the contractor if the contractor does anything which is contrary to the Bribery Act 2010 or incites breach of Section 117 (2) of the Local Government Act 1972;
- d) a provision to ensure the Council is protected against the contractor's defective performance by default provisions which are appropriate to the contract;
- e) if the contractor is in breach of contract the Council can do any or all of the following:
  - i. determine all or part of the contract or determine the contractor's appointment;
  - ii. itself perform the contract in whole or in part;
  - iii. recover from the contractor any additional cost resulting from the completion or cancellation of the contract;
- f) If the contractor has obtained or received by whatever means any information which gives or is intended or likely to give the contractor any unfair advantage over any other tenderer (including the Council's own workforce) in relation to the tendering for, and award of, any works/services contract, that the Council shall be entitled to terminate that contract;
- g) It shall be a condition of any contract between the Council and any person (not being an Officer of the Council) who is required to manage a contract on the Council's behalf that, in relation to such contract, he/she shall comply in all respects with the requirements of these Contract Standing Orders as if he/she were an employee of the Council.

9.08.7 A contract valued at less than £250,000 (two hundred and fifty thousand pounds) does not require sealing and should either be signed on behalf of the Council, by both the relevant Director and by the Head of the relevant business unit, or authenticated by Approved Electronic Means. However, if the nature of the works, goods or services is such as to pose

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a high risk of significant latent defects, then the Head of Procurement may decide to have the contract executed under seal as a deed.

#### **Valued £250,000 or more:**

9.08.8 A contract valued at £250,000 (two hundred and fifty thousand pounds) or more must be executed on behalf of the Council under seal as a deed. Where appropriate this may be undertaken electronically.

9.08.9 Every contract valued at £250,000 (two hundred and fifty thousand pounds) or more must contain clauses to cover the following:

- a) if it is a contract for works, that the Council may require the contractor to provide security for completing the contract in the form of a bond;
- b) that where the contractor is a subsidiary or group company, the contractor may be required to provide a parent or group company guarantee.

9.08.10 The decision as to whether or not a bond or parent company guarantee will be required in respect of a contract valued at £250,000 or more will ultimately be made by the Chief Finance Officer or an officer acting under his/her delegated authority.

## **10. Waivers, Variations, Extensions and Novations**

### **10.01 Waivers**

10.01.1 Contract Standing Orders other than Contract Standing Order 5 (which relates to the Regulations) may be waived on the basis set out in CSO 10.01.2 by:

- a) the Cabinet where the contract value is £500,000 (five hundred thousand pounds) or more;
- b) a Director where the contract value is less than £500,000 (five hundred thousand pounds) (save that the Director shall not have authority to waive CSO 9.08).

10.01.2 A waiver may be agreed after considering a written report that demonstrates:

- a) the contract is one entered into between entities within the public sector in circumstances permitted by Regulation 12 of the Public

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Contract Regulations or Regulation 17 of the Concession Contract Regulations as applicable; or

- b) the contract is one that the Council is permitted to reserve for certain economic operators in circumstances permitted by Regulation 77 of the Public Contracts Regulations or Regulation 24 of the Concession Contracts Regulations; or
- c) the circumstances of the proposed contract award are covered by a relevant legislative exemption (whether under EU law or the law of England and Wales); or
- d) the value of the contract is below the applicable threshold pursuant to the Regulations and:
  - i. the nature of the market for the works to be carried out or the goods or services to be provided has been investigated and is such that a departure from the requirements of Contract Standing Orders is justifiable;
  - ii. it is in the Council's overall interest; or
  - iii. there are other circumstances which are genuinely exceptional.

10.01.3 Waiver requests must be approved before any related contract awards, variations or extensions.

10.01.4 A record of the decision approving a waiver and the reasons for it must be kept and an entry made in a central register maintained and monitored by the Head of Procurement.

10.01.5 Where an additional waiver of Contract Standing Orders is sought in relation to the same individual contract, whereby the aggregated value of the contract increases to £500,000 (five hundred thousand pounds) or more, the waiver must be agreed by the Cabinet.

### **10.02 Variations and Extension**

10.02.1 Subject to the provisions of CSO 3.01 and the Regulations (in particular Regulation 72 of the Public Contract Regulations or Regulation 43 of the Concession Contracts Regulations (as applicable), compliance with Financial Regulations and subject to satisfactory outcomes of contract monitoring; the following may authorise an extension or variation to a contract:

- a) a Director provided the value of the extension or variation is less than £500,000 (five hundred thousand pounds);

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- b) the Cabinet where the value is £500,000 (five hundred thousand pounds) or more.

10.02.2 All variations and extensions must be recorded in writing and an electronic copy maintained within the Council's Corporate Contract System.

#### **10.03 Novations (Transfers)**

In circumstances permitted in Regulation 72 of the Public Contract Regulations or Regulation 43 of the Concession Contracts Regulations or where the value of a contract is below the applicable threshold pursuant to the Regulations the Council may agree to the novation or assignment of a contract.

### **11. Contract Termination**

11.01 In the event of a supplier being declared bankrupt, going into administration, receivership or liquidation then a Director may terminate any associated contract(s) and initiate alternative arrangements as may be required taking into account Contract Standing Order 10.03 in cases of novation or Contract Standing Order 4.01 in cases that warrant the re-letting of the contract(s).

11.02 The decision to terminate a contract early in all other circumstances must be approved by a Director.

11.03 In all cases of contract termination for whatever reason where the awarded contract value was £500,000 (five hundred thousand pounds) or more a report must be presented at the earliest opportunity to Cabinet.

### **12. Schools**

In accordance with the requirements of the Council's Scheme for Financing Schools and the Financial Regulations for Schools, where a school acts as an agent for the Council, these Contract Standing Orders apply to all schools within the London Borough of Haringey with the exception of Academy and Trust Schools. A school's governing body shall have the powers and duties of the Cabinet specified in these Contract Standing Orders, except in relation to waivers (CSO 10.01).

**13. Care Contracts for Individuals**

Subject to Regulation 74 of the Public Contract Regulations and Regulation 19 of the Concession Regulations as applicable, Adults & Housing Services and the Children & Young People’s Service care contracts may be 'block' contracts (where a number of beds, places or services are provided by the contractor at pre-agreed pricing schedules, to which the Council may refer users over the contract period) or 'spot' contracts (one-off contracts meeting an individual user's needs, or contracts where a number of beds, places or services are provided by the contractor without pre-agreed prices, such prices to be agreed upon each referral of a user over the contract period). The Directors of the Adult & Housing Services and the Children & Young People’s Service will seek to optimise overall best value for the Council. The following provisions shall apply to the Adults & Housing Services and the Children & Young People’s Service care contracts:

- a) All Contract Standing Orders apply to block contracts;
- b) Where a spot contract has an estimated value of less than £160,000 (one hundred and sixty thousand pounds), CSO 8.02 and CSO 8.03 shall not apply, and the relevant Director should act in the manner most expedient to the efficient management of the service, having kept a record for so doing.
- c) Where a spot contract has an estimated value of £160,000 (one hundred and sixty thousand pounds) or more, CSO 9.01 shall apply.

**14. Alexandra Palace and Park**

These Contract Standing Orders apply to the procurement of works, goods and services by or on behalf of Alexandra Palace and Park Charitable Trust on the following basis:

- a) The Chief Executive of APPCT shall have the powers and duties of a Director specified in Contract Standing Orders;
- b) The Alexandra Palace and Park Board and Panel shall have the powers and duties of the Cabinet and a Cabinet Member specified in these Contract Standing Orders;
- c) In the event of any conflict, the requirements of the Charities Act 1993, any regulations made under that Act or charity law in general shall prevail over the provisions of Contract Standing Orders.

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#### **15. Disposal of assets**

- 15.01 Where Council assets (other than land & buildings) are to be disposed of because they are surplus to requirements, damaged or obsolete, reasonable endeavours must be undertaken to realise the residual value of the assets.
- 15.02 Assets having little or no realisable value may be disposed of as waste with the approval of the relevant Head of Business Unit, provided that the disposal shall be in favour of recycling wherever possible.
- 15.03 In respect of assets to be disposed of having an estimated value of less than £10,000 (ten thousand), the Director concerned should act in the manner most expedient to the efficient management of the service, having kept a record for so doing.
- 15.04 Assets recommended for disposal with an estimated value of £10,000 (ten thousand pounds) or more, shall be disposed of in such a manner as to secure best value.
- 15.05 Disposal of assets valued at £250,000 (two hundred and fifty thousand pounds) or more must be reported to the Cabinet.
- 15.06 Under no circumstances shall disposal of Council assets be made to employees or Members of the Council without the prior approval of the relevant Director.

#### **16. Urgent Decisions/Decisions Required in-between Cabinet Meetings**

- 16.01 These provisions apply where action needs to be taken between meetings of the Cabinet or in cases of urgency and that action would be outside the powers given to a Director under these Contract Standing Orders.
- 16.02 Decisions reserved to members under these Contract Standing Orders will ordinarily be taken at a Cabinet meeting. Notwithstanding this, the Leader may take any such decision between meetings of the Cabinet, including decisions that have become urgent, and the Leader may also allocate any such decision whether urgent or not to the Cabinet Member having the relevant portfolio responsibilities or to a Committee of the Cabinet.
- 16.03 The provisions of the Access to Information Procedure Rules at Part 4 of this Constitution will apply. All key decisions should be listed on the forward plan accordingly. Where a decision is urgent, rules 16 and 17 within the Access to Information Procedure Rules will apply.

**17. Application of CSOs to Grants**

**Approval for Receipt of Grants by the Council from External Bodies**

- 17.1 Where the Council receives a grant from an external body, the process for approving or varying the agreement for the grant shall be the same as that set out in CSO 9.07 (i.e. the Director may approve receipt of a grant valued less than £500,000. For approval of receipt of grants valued at £500,000 or more, a Cabinet decision is required).
- 17.2 The Council's requirements in respect of execution of contracts as deeds (CSO 9.08.9) shall not apply in respect of grants which the Council receives, and subject to the requirements of the funder, they may be signed by the relevant Director and Head of the Business Unit or authenticated by Approved Electronic Means.

**Approval for Payment of Grants from the Council to External Bodies**

- 17.3 Where the Council awards a grant to an external body, the process for approving or varying the agreement for the grant shall be the same as that set out in CSO 9.07 (i.e. the Director may approve awards of grants valued less than £500,000. For approval of award of grants valued at £500,000 or more, a Cabinet decision is required).