

# Supplementary Council Agenda



**Epping Forest  
District Council**

## ***Council Tuesday, 13th December, 2005***

**Place:** Civic Offices, Epping  
**Room:** Council Chamber  
**Time:** 7.30 pm  
**Committee Secretary:** Council Secretary: Ian Willett  
Tel: 01992 564243 Email: [iwillett@eppingforestdc.gov.uk](mailto:iwillett@eppingforestdc.gov.uk)

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**7. REPORT OF OVERVIEW AND SCRUTINY COMMITTEE - REVIEW OF CONTRACT  
STANDING ORDERS (Pages 3 - 36)**

(Chairman of the Overview and Scrutiny Committee) Report attached.

**14. PETITION - COUNCILLOR T FARR**

Members are asked to note that the petition was signed by 354 members of the public from the Epping Forest District and elsewhere, not 274 as stated on the agenda.

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## ***Report to the Council***

**Committee:** Overview and Scrutiny

**Chairman:** Councillor Mrs D Collins

**Date:** 13 December 2005

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### **1. REVIEW OF CONTRACT STANDING ORDERS**

#### **Recommendations:**

... (1) That the proposed changes to Contract Standing Orders set out in the Appendix to this report be approved and published as part of the Council's Constitution.

(The draft revisions to Contract Standing Orders have been submitted to the Cabinet for comment and its views were that the proposed changes were supported but that provision should be made for electronic invitation and submission of tenders and quotations. This aspect has been investigated and the Overview and Scrutiny Committee will be considering an amendment to Standing Order C16(3). Provisional wording to be considered by the Committee is shown in the Appendix)

#### **Report:**

1. We have carried out a review of contract standing orders. This review has not sought to achieve a wholesale re-writing of current contract requirements but merely to bring the document up to date and to clarify certain points.
2. The majority of changes relate to the following:
  - (a) alterations arising from changes in legislation;
  - (b) alterations arising from changes in the top management structure of the Council in respect of post designations;
  - (c) updating of references to member bodies to take account of the Executive Constitution;
  - (d) general simplification of the wording where appropriate.
3. More significant changes are being proposed where practices and requirements have changed since these Contract Standing Orders were last examined in 2002. These points relate to the following:
  - (a) **C4 Contracts Not Exceeding £20,000**

The revised Contract Standing Order introduces a greater element of competitive tendering in respect of contracts up to £20,000 which are delegated to Heads of Service. At present, any contract under delegation may be let on the basis of an official order without the necessity for competitive quotations. In actual practice, Heads of Service often test the market among different contractors even though they

are not required to do so. The change therefore reflects existing practices and offer assurances about value for money in the procurement of services throughout the Council.

**(b) C16 Receipt and Custody of Quotations and Tenders**

Contract Standing Order C16(2) has been altered to reflect that contractors are increasingly wanting to submit tenders and quotations by electronic means. Currently C16(2) debars from consideration any electronic tender but it is felt that this provision is now outmoded. The replacement C16(2) allows the submission of electronic quotations and tenders subject to evidence of successful completion of transmission, proper recording and secure custody arrangements.

**(c) C16 Invitation of Quotations and Tenders**

Currently Contract Standing Orders make no provision for the manner in which the Council should invite tenders and circulate tender documents. This has caused difficulties in some cases where contractors have claimed that they did not receive tender documentation and this can sometimes result in a dispute concerning the credibility of tendering. A new C16(1) is proposed to add a further requirement that despatch of documentation will be traceable by use of service products provided by the Post Office and similar agencies. This will enable the Council to have clear evidence of documents being despatched at a certain time and received by the prospective tenderer at a precise time. The question of electronic tendering is under consideration at the time of writing this report.

**(d) C22 Contract Documentation**

C22(1) provides that contracts arising from the use of an official order rely on standard terms and conditions. Since the last review of Contract Standing Orders the Council has agreed a form of services contract which is available to all Heads of Service via the Council's website. C22(1) has therefore been amended to ensure that the terms and conditions of that service agreement are also covered as contract terms in the same way as the official order.

**(e) C22 Standard Contract Terms**

It has been proposed to add a fifth paragraph to this standing order in order to refer to a separate annex which will be published for the first time showing the standard conditions of contract prescribed by the Head of Legal, Administration and Estates Services as this should be an easy source of reference for Heads of Service and contractors as to the Council's expectations. The new paragraph also gives authority to the Head of Legal, Administration and Estates Services, authority to agree that the standard contract terms should be amended from time to time or adapted in particular cases if this is appropriate. This conforms to existing practice and the role of the Solicitor of the Council but it is helpful to have this stated clearly.

**(f) C28(1) Final Account**

Contract Standing Order C28(1) implies that there will be provision in the contract for a final account to be produced by the Head of Service concerned. This wording is confusing in that the final account is provided separately from the contract, and not as a contract term. The wording therefore needs to be clarified.

**(g) C31 Acquisition and Disposal of Land**

It is proposed to extend the wording of this Standing Order to make it clear that the terms “lease” and “disposal” involve a considerable range of related transactions which for the avoidance of doubt should be included in the Contract Standing Order.

The Standing Order continues to provide for Estates related transactions to be delegated if they represent up to £20,000 in amount.

**(h) Contract Standing Orders - Authority for Amendments**

There are many places throughout Contract Standing Orders where the Head of Legal Administration and Estates Services is the most appropriate person to issue amendments, for instance on changes to legislation, to changes in detailed contract terms and to the exercise of discretions where appropriate in order to fulfil the Council's legal requirements. In order to avoid wholesale amendments to the Constitution involving a Council decision on each occasion the Head of Legal Administration and Estates Services will be able to instruct that Contract Standing Order pages will be subject to clerical amendments of this sort. Major changes in policy would, of course, still remain to be dealt with by the Council as part of the Constitution.

**Approval of revisions to Contract Standing Orders:**

4. Contract Standing Orders are part of the Constitution and therefore these amendments must be approved by the full Council. As some of the changes relate to executive functions, we have consulted the Cabinet and their comments are set out above.
5. We recommend at the commencement of this report.

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## CONTRACT STANDING ORDERS

<p><b>C1 Compliance with Standing Orders</b></p>	<p>(1) Every contract made by the Council or on behalf of the Council except as hereinafter provided shall comply (where applicable) with:</p> <ul style="list-style-type: none"> <li>• Standing Orders</li> <li>• Financial Regulations</li> <li>• The Local Government Act 1972</li> <li>• The Local Government Act 1988, Part 2</li> <li>• The Local Government Planning and Land Act 1989, and supporting documentation</li> <li>• The Public Works Contracts Regulations 1991</li> <li>• The Public Services Contracts Regulations 1991</li> <li>• The Public Supply Contracts Regulations 1995</li> <li>• The Local Government (Contracts) Act 1997</li> <li>• The EU Regulations</li> <li>• Any relevant European Council Directive and any other current legislation for the time being in force</li> </ul> <p>Where there is a conflict between Standing Orders, Financial Regulations and any statutory requirements, the Council must comply with statutory requirements.</p>	<p><b>Amend</b> table of statutory requirements by adding the following:</p> <p>Local Government Act 1999</p> <p>Local Government Act 2000</p> <p>Local Government Act 2003</p> <p>Asset Management Plan</p> <p>Commonhold and Leasehold Reform Act 2002 and by deleting specific regulations.</p> <p><b>Reason:</b> updates the list of relevant statutes, and covers the fact that EU Contract Regulations regularly change.</p>
<p>(2)</p> <p>Before seeking quotations or inviting tenders in respect of any contract, a Chief Officer must establish whether a central contract exists which meets the requirement. If a central contract does exist then it must be used unless the appropriate Chief Officer in consultation with the Cabinet is able to demonstrate that there are specific advantages to be obtained via alternative arrangements. In such circumstances consideration shall be given to whether a new/revised central contract would be advantageous and appropriate.</p>	<p><b>Amend</b> by the addition of the following words after “Cabinet” in the 5<sup>th</sup> line.</p> <p>“or Portfolio Holder if authorised under the general scheme of delegation or specific regulation ...”</p> <p><b>Reason:</b> to reflect the executive constitution.</p>	

<p>(3) Where the Council is acting as agent for a Government Department, or for another authority under the terms of an agency agreement, nothing in these Standing Orders shall be taken to authorise or require any departure from the instructions or requirements of those departments or the terms of any Agency Agreement.</p>	
	<p><b>Add</b> the following after "Council" in the 3<sup>rd</sup> line:          "or the Cabinet or by a Cabinet Committee or Portfolio Holder if duly authorised under the general scheme of delegation or specific resolution ..."  <b>Reason:</b> reflects the executive constitution.</p>
<p>(4) No exception from any of the provisions of these Standing Orders other than those provided for within the Standing Orders themselves, shall be made otherwise than by direction of the Council, by the Cabinet where they are satisfied that the exception is of necessity and justified in special circumstances.</p>	<p><b>Add</b> the following after "Cabinet" in the 1<sup>st</sup> line:          "or the Cabinet or by a Cabinet Committee or Portfolio Holder if duly authorised under the general scheme of delegation or specific resolution ..."  <b>Reason:</b> reflects the executive constitution.</p>
<p>(5) The reasons for any exception so made by the Council, or the Cabinet shall be made only pursuant to a report of the relevant Chief Officer and the reasons for such an exception shall be recorded both in the report of the Chief Officer and in the minutes of the appropriate meeting.</p>	<p><b>Add</b> the following after "Cabinet" in the 1<sup>st</sup> line:          "or the Cabinet or by a Cabinet Committee or Portfolio Holder if duly authorised under the general scheme of delegation or specific resolution ..."  <b>Reason:</b> reflects the executive constitution.</p>
<p>(6) For the purposes of these Standing Orders, the expression "Chief Officer" means the Chief Executive, the Finance Director, the Corporate Directors and the Heads of Service (See also C15 re: the appointment of consultants</p>	<p>Amend paragraph (6): after "the expression" in the first line by adding:          (a) "Chief Officer" means a Joint Chief Executive or a Head of Service;          (b) "Cabinet" means a duly constituted and convened meeting of those Councillors appointed to serve as Cabinet members;          (c) "Cabinet Committee" means a duly constituted and convened meeting of those Councillors appointed by the Council to the Cabinet Committee concerned;          (d) "Portfolio Holder" means a Councillor appointed by the Council as a member of the Cabinet and to responsibility for particular portfolio of services.  <b>Reason:</b> amendment clarifies authorised bodies or individuals which are referred to in Contract Standing Orders.</p>



New paragraph (7)

**Add** new paragraph (to be numbered (7)) before existing paragraph (7) as follows:

(7) Unless otherwise specifically provided, where a value or an estimated value is given in these Contract Standing Orders, it means the aggregate payable in pounds sterling exclusive of VAT over the entire contract period.

Heads of Service must ensure that a pre-tender estimate of anticipated costs is prepared and recorded in writing. Where the EU Public Procurement rules apply, Heads of Service must also ascertain the value of a contract in accordance with those rules.

The value of orders which can be combined in one contract must be added together when deciding which tendering or quotation method is to apply. Contracts must not be artificially under or over estimated or divided into two or more separate contracts where the effect is to avoid the application of Contract Standing Orders.

Where the aggregate sum payable to one supplier of goods, works or services in a financial year is likely to exceed the limits of authority referred to in these Contract Standing Orders, the Head of Service must report to the Cabinet and seek a waiver of the Standing Order. It is the responsibility of the Head of Service to ensure that such a report is submitted prior to the limit of authority being breached.

**Reason:** clarifies definitions of contract values as referred to in Contract Standing Orders. In particular, sets out how combined contracts and recurring contracts should be dealt with.

(7) If any Officer is made aware of or becomes aware of an actual or potential breach of the procedures contained in these Contract Standing Orders or any other statutory requirement, that Officer shall report the breach immediately to the Chief Officer or the Chief Auditor as appropriate. It shall be a further requirement that any instances of serious non-compliance shall be reported by the Chief Officer concerned or the Chief Auditor to the Cabinet at the first available meeting.

<p>(8) The Contract Standing Orders are part of the Constitution of the Council and may only be varied at a Council Meeting on the recommendation of the Cabinet as part of the Constitution.</p>	<p><b>Renumber</b> existing (7) and (8) to (8) and (9) respectively.</p>
<p><b>C2 Council's Works Unit and Equivalent Organisations</b></p>	
<p>(1) The Council's Works Unit shall have authority to sub-contract works up to 20% of their annual turnover. In the main these will be works of a specialist nature outside the normal skills available to the organisation in question, but may also be works of a general nature when necessary to cover peak work flows or staff shortages.</p>	
<p>(2) The Works Unit will have its own list of approved contractors which shall be in addition to the main list. The Works Unit list will be compiled taking into account the requirements of Standing Order C11(4). The contractors on the Works Unit list, which shall be reported to and approved by the Cabinet will, generally speaking, be smaller companies or specialist contractors who would not in the normal course of events be included on Constructionline.</p>	<p><b>Insert</b> after C11(4) on 4<sup>th</sup> line "in respect of contracts in excess of £20,000". <b>Reason:</b> to clarify standing orders.</p>
<p>(3) Where works are sub-contracted in accordance with the provisions of these Standing Orders, the Council's Works Unit responsible for appointing the sub-contractor retains full responsibility for the quality, performance and completion of the works as though they had been carried out by direct employees of the Council.</p>	
<p>(4) The Chief Officer must be satisfied that any sub-contractor used is able to meet the requirements specified in Standing Order C11(4).</p>	<p><b>Delete</b> last line and add: "appointed in accordance with requirements of Standing Order C2(2)". <b>Reason:</b> C11(4) requires constructionline to be used in respect of all contracts over £20,000 but C2(2) relating to all appointments of contractors.</p>
<p>(5) The Chief Officer may in addition seek quotations and tenders for works not subject to a select list in order to enable the Works Unit to respond to any invitations to tender.</p>	

<p>(6) The Chief Officer may enter into contracts following receipt of such quotations and tenders subject to compliance with Standing Order C11(4) and reporting to the next meeting of the Cabinet.</p>	<p><b>Delete</b> third line of C11(4) and insert C2(2). <b>Reason:</b> C2(2) allows the use of a Works Unit List as well as constructionline but still requires all other provisions of C11(4) to be adhered to in respect of contracts over £20,000.</p>
<p><b>C3 Selection of Tendering Method</b></p> <p>(1) A Chief Officer is required, prior to the invitation of tenders or quotations, to determine the correct procurement procedure in accordance with the provisions of Standing Orders, based on the best estimate available at that time of the contract sum.</p> <p>(2) In the event that the value of tenders or quotations received exceeds the upper financial limit prescribed by the relevant Standing Order, the Chief Officer concerned shall report the circumstances to the Cabinet where the acceptance of any such tender or quotation will be considered.</p>	
<p><b>Page 61</b></p> <p><b>Contracts Not Exceeding £20,000</b></p> <p>(1) Each Chief Officer may by the issue of an official order in accordance with Standing Order C21(1) enter into a contract not exceeding £20,000 in value or amount.</p>	<p><b>Amend</b> (1) (first line) by adding the following after "Chief Officer may" "in respect of the service or services for which they are responsible" <b>Reason:</b> clarifies the services over which Chief Officers may exercise this authority. <b>Add</b> after 1<sup>st</sup> sentence of (1): "... other than a contract for services. In the case of a contract for services on the Council's human resources website, the intranet must be used." <b>Reason:</b> reflects current practice.</p>

	<p><b>Add</b> new sentence to (1) as follows:</p> <p>" ... Each Chief Officer shall at all times have regard to "best value" requirements in the procurement of services and entering into contracts which are set out in Financial Regulations."</p> <p><b>Amend</b> C21(1) to C22(1)</p>								
<p>[New paragraph (2) inserted]</p>	<p><b>Add</b> new paragraph to be numbered (2) as follows:</p> <p>(2) Written quotations must be obtained for contracts which have a value of up to £20,000. The minimum number of quotations needed is:</p> <table border="0"> <tr> <td><b>Contract Value:</b></td> <td><b>Number of Quotations</b></td> </tr> <tr> <td>Up to £5,000</td> <td>One, unless the price and terms are known in advance</td> </tr> <tr> <td>£5,001-£10,000</td> <td>Two</td> </tr> <tr> <td>£10,001-£20,000</td> <td>Three</td> </tr> </table> <p><b>Reasons:</b> introduces requirement competitive quotations within contracts let under delegated authority by Heads of Service and requires that these be recorded in writing. Provides better evidence of "best value" considerations are taken into account.</p>	<b>Contract Value:</b>	<b>Number of Quotations</b>	Up to £5,000	One, unless the price and terms are known in advance	£5,001-£10,000	Two	£10,001-£20,000	Three
<b>Contract Value:</b>	<b>Number of Quotations</b>								
Up to £5,000	One, unless the price and terms are known in advance								
£5,001-£10,000	Two								
£10,001-£20,000	Three								
<p>(2) Where the goods and/or services are of a repetitive and regular nature and not covered by a central contract as referred to in Standing Order C1(2) and annual contract or contract for such other period not exceeding four years as the Chief Officer shall consider appropriate shall be entered into for the supply of such goods/services and be in accordance with Standing Orders C12 or C14.</p>	<p><b>Renumber</b> paragraph (2) to (3) and add "works" after "goods" in first and fifth line.</p> <p><b>Reasons:</b> clarifies definition of tendered items.</p>								
<p>[New paragraph (4) inserted]</p>	<p><b>Add</b> new paragraph (4) as follows:</p> <p>"(4) The terms of the delegation set out in (1) - (3) above shall not be applicable if the requirements of Standing Order C11 apply."</p> <p><b>Reason:</b> sets a framework for the exercise of delegation.</p>								

<p><b>C5 Contracts Exceeding £20,000 but not exceeding £50,000</b></p>	<p><b>Delete:</b> “either” on last line. <b>Reason:</b> to reflect later changes to this Standing Order.</p>
<p>(1) In respect of contracts exceeding £20,000 but not exceeding £50,000 in value or amount the appropriate Chief Officer may, subject to the provisions of Standing Order C16, enter into a contract, provided that either:</p> <p>(a) at least three quotations plus any in-house bid shall have been obtained from those companies included on Constructionline, unless the required trade or profession is not served by Constructionline. In which case quotations shall be obtained from sources considered appropriate by the relevant Chief Officer. Such quotations will have been invited in such a way as to allow sufficient time, as determined by the relevant Chief Officer, to enable the parties quoting to submit competitive quotations, the receipt, custody and opening of such quotations to have been carried out as prescribed by Standing Orders C16, C17 and C18. Chief Officers will maintain a register of the selection criteria employed to obtain a tender list; or</p> <p>the proposed contract forms a continuation of an existing contract which is based on rates and prices obtained in accordance with these Standing Orders.</p> <p>(b) where the required trade or profession is not served by Constructionline, at least three quotations are obtained from sources considered appropriate by the relevant Chief Officer;</p> <p><b>Re-number</b> existing C5(1)(b), C5(1)(c).</p> <p>(d) all quotations under (a) and (b) above being invited in such a way as to allow sufficient time, as determined by the Chief Officer, to enable those companies to submit competitive quotations or tenders;</p> <p>(e) the receipt, custody and opening of such quotations or tenders being carried out as prescribed in Standing Orders C16, C17 and C18;</p> <p>(f) a register being maintained by Chief Officers of the selection criteria employed to obtain a tender list."</p> <p><b>Reason:</b> Clarification of wording.</p>	<p>(2) Where the goods and/or services are of a repetitive and regular nature and not covered by a central contract as referred to in Standing Order C1(2) an annual contract or contract for such other period not exceeding 4 years as the Chief Officer shall consider appropriate shall be entered into for the supply of such goods/services and be in accordance with Standing Orders C12 or C14.</p>

<p>(3) To satisfy the Council's Audit Requirements, Chief Officers will notify the Chief Auditor of all purchases and contracts, for goods and services over £20,000.00 in value. Similarly, the Chief Auditor should also be informed of goods and services purchased from one supplier which total over £20,000.00 in value during one financial year.</p>	<p><b>Delete</b> and substitute the following:</p> <p><b>C5(3)</b> Chief Officers will notify the Chief Auditor of all individual purchases and contracts for goods, works and services over £20,000 in value whatever the period of the contract. Similarly, the Chief Auditor should be notified of goods, works and services purchased from one supplier which total over £20,000 in value during one financial year.</p>
<p><b>C6</b> <b>Contracts Exceeding £50,000</b></p>	
<p>Where the estimated value or amount of a proposed contract for the supply of goods or services exceeds £50,000 or where the conditions of Standing Orders C4(2) or C5(2) apply, tenders shall be invited in accordance with Standing Orders C7, C8, C9, C10, C11 or C12. Standing Order C5(3) shall also apply.</p>	<p><b>Amend</b> third line C32 to C33.</p> <p><b>Reason:</b> to reflect other changes in Contract Standing Orders.</p>
<p><b>Restricted Tendering: Approved list</b></p>	
<p>(4) This Standing Order shall apply to projects with an estimated value not exceeding the limits specified in the EU Regulations and mentioned in Standing Order C32. A Chief Officer will resolve that invitation to tender for a contract be limited to those persons or bodies whose names are on Constructionline, the national qualification system, unless the trade or profession is not served by Constructionline.</p>	<p><b>Amend</b> C32 to C33.</p> <p><b>Reason:</b> to reflect other changes in Contract Standing Orders.</p>
<p>(2) The system will be administered by the Head of Environmental Services via the Contract Compliance Officer to whom comprehensive details shall be provided in respect of the contractor selection criteria applied, tenders invited and contracts awarded.</p>	<p><b>Add</b> additional sentence as follows:</p> <p>"All Chief Officers are placed under a duty to provide this information to the designated Contract Compliance Officer".</p> <p><b>Reason:</b> duty is not clearly stated.</p>

<p>(3) If any Chief Officer considers that any contractor should no longer be considered for any future invitation to tender, a report shall be made to the Cabinet. If approved, following a review of the circumstances by the Cabinet, then a report shall also be made to Constructionline.</p>	<p><b>Delete references to “Cabinet” and substitute “relevant portfolio holder”.</b></p> <p><b>Reason:</b> not a significant change requiring reference to the Cabinet.</p>
<p>(4) Invitations to tender shall be:</p> <p>(a) sent to not less than four Contractors selected from Constructionline;</p> <p>(b) where fewer than four are available, to all such Contractors.</p>	<p><b>Add Line 2 of (a) “unless the trade or profession is not served by Constructionline when the contractors selected in accordance with Standing Order C7(1) may be invited to tender.”</b></p> <p><b>Reason:</b> reflects contractors not included in Constructionline.</p>
<p><b>C8 Ad Hoc List</b></p>	
<p>(1) This Standing Order shall apply to projects;</p> <p>(a) with an estimated value in excess of £2 million;</p> <p>(b) where the Council has resolved that invitation to tender be made to persons who have replied to a public notice; and</p> <p>(c) where the EU regulations specified in SO (1) (d) apply.</p>	<p>Amend C8(1) by adding “or” at the end of sub paragraphs (a), (b) and (c).</p> <p><b>Reason:</b> clarifies that each condition applies individually.</p>
<p>(2) This Standing Order shall apply also to the provision of goods and services of an ad hoc nature that cannot be accommodated by Standing Order C7.</p>	
<p>(3) Where the EU Regulations apply:</p> <p>(a) as soon as possible after the decision to approve any works; and</p> <p>(b) in the case of services and supplies, as soon as possible after the commencement of the Council’s financial year,</p>	

<p>the Chief Officer shall send to the Official Journal of the European Communities (OJEC) a prior information notice in the form prescribed by the appropriate EU Regulations to alert prospective tenderers to the availability of Contracts during the next financial year.</p>	
<p>(4) In order that applicants will have a reasonable opportunity of expressing an interest, at least ten days public notice shall be given in one or more of the local newspapers circulating in the District and in trade journals circulating among persons who undertake such contracts.</p>	
<p>(5) Where required a contract notice must be placed in the OJEC stating the nature and purpose of the contract. The content of European Union Notices shall be agreed in advance with the Head of Legal and Administration Services by the appropriate Chief Officer and shall be published in the official journal at such a date prior to the letting of the contract which complies with EU public procurement legislation.</p>	
<p>After the expiry of the period specified in the public notice and the contract notice invitations to tender for the contract shall be sent to:</p> <ul style="list-style-type: none"> <li>(a) not less than four persons or bodies who have applied for permission to tender and who have been selected as suitable by the appropriate committee;</li> <li>(b) if this is a contract to which the EU regulations apply, to the number specified in the advertisement as the minimum number of tenderers to be invited apply; and</li> <li>(c) where fewer than four have applied, all those applicants considered suitable.</li> </ul>	
<p><b>C9 Open Tendering</b></p>	
<p>(1) This Standing Order shall apply where the Council have resolved that tenders for a contract are to be obtained by open competition.</p>	<p><b>Amend</b> references to “the Council” to “the Council, the Cabinet, a Cabinet Committee or a Portfolio Holder”.</p>



<p>(2) For the purposes of this Standing Order procedures should comply with the requirements of Standing Orders C8(2), (3), (4), and other Standing Orders as appropriate (e.g. C11, C16, C17, C18 etc).</p>	
<p><b>C10 Negotiated Tendering</b></p> <p>(1) This Standing Order shall apply where the Council has resolved that tenders need not be invited and that a contract may be negotiated in the following circumstances:</p> <ul style="list-style-type: none"> <li>(a) the subject matter of the contract is urgently required and that loss, injury or damage would result from a delay whilst advertising takes place;</li> <li>(b) the subject matter of the contract is of such a specialised nature that no advantage would accrue by inviting competitive tenders;</li> <li>(c) there is no effective competition for the subject matter of the contract because payment is fixed under statutory authority or because the subject matter is a patented or proprietary article or is available from only one source;</li> <li>(d) other tendering procedures have been used and resulted in: <ul style="list-style-type: none"> <li>(i) unacceptable or irregular tenders; or</li> <li>(ii) no tenders being received;</li> </ul> </li> <li>(e) where the tender sought is in respect of a continuation contract and the preceding contract was won in competition, subject to the tenderer's satisfactory performance on the previous phase; and</li> </ul>	<p><b>Add</b> the following after "Council" in the first line of paragraph (1):  "... the Cabinet, a Cabinet Committee or a Portfolio Holder."</p> <p><b>Reason:</b> reflects executive constitution.</p> <p><b>Amend</b> references to "the Council" (see C9).</p> <p><b>Add</b> to (e) the words "and to the approval not resulting in a contract which is for more than a four year period."</p> <p><b>Reason:</b> to make this requirement the same as that specified in EU Regulations.</p>

<p>(f) where the tender sought is in respect of specialist works or services, and the Council is satisfied that it is fair and reasonable in view of an existing relationship with a contractor to extend that relationship in regard to a new project, the reasons for proceeding by means of a negotiated tender shall be recorded in the minutes of the appropriate meeting.</p>	
<p>(2) If the value of the contract is such that EU regulations apply, then the negotiated tender procedure may only be used in the circumstances permitted by the regulations and public notice shall be given in accordance with EU requirements where applicable.</p>	
<p><b>C11 Contractor Selection</b></p>	
<p>(1) Subject to Standing Order C7(4), invitations to tender (other than those in accordance with the EU Regulations) shall be on a strict rotation basis as agreed in consultation with the Head of Environmental Services but shall include the two previous lowest tenderers in the appropriate list and if appropriate the Works Unit, provided that where a contract succeeds in winning more than two successive contracts in the same financial year by virtue of being the lowest tenderer, a report shall be made to the appropriate committee. If the contract is one that exceeds the thresholds mentioned in EU Procurement Regulations, then the invitations to tender will be sent to contractors who comply with those regulations.</p>	<p><b>Amend</b> wording of C11(1) as follows:</p> <p>(1) Subject to Standing Order C7(4), invitations to tender (other than those in accordance with EU Regulations) shall</p> <p>(a) be on a strict rotation basis as agreed in consultation with the Head of Environmental Services unless the contract is let in accordance with Standing Orders C4, C6, C7, C8, C9, C10 or if no previous contract has been let for this type of work, service or goods;</p> <p>(b) include the lowest and second lowest tenderers in the appropriate list, if any and if appropriate the Council's Works Unit list;</p> <p>(c) be subject to a report to the appropriate Council body if a contractor succeeds in winning more than two successive contracts in the same financial year as lowest tenderer;</p> <p>(d) be subject to the EU Procurement Regulations procedures for letting contracts if the contract exceeds the value thresholds prescribed by those regulations.</p> <p><b>Reason:</b> simplification.</p>

<p>(2) The results of all tenders received together with details of any contract awarded shall be notified in writing to the Head of Environmental Services and to the Chief Auditor prior to the commencement of the contract.</p>	<p><b>Add</b> additional sentence as shown under C7(2) <b>Reason:</b> See C7(2).</p>
<p>(3) In respect of a contract to which the EU Regulations apply, a Contract Award Notice must be sent to OJEC in the form prescribed by the EU Regulations within 48 days of the award of the contract.</p>	
<p>(4) For contracts in excess of £20,000, under no circumstances shall an invitation to tender be given to any person or body:</p> <ul style="list-style-type: none"> <li>(a) whose name does not appear on Constructionline unless the trade required is not included on Constructionline;</li> <li>(b) who has given advice to the Council on any matter relating to the proposed contract either in their own right, jointly with another firm or company or as agent, consultant or employee of such company; and</li> <li>(c) who has not met the requirements mentioned in the Contract Notice where the contract is one to which the EU Regulations apply.</li> </ul>	<p><b>Add</b> "or" at the end of (a). <b>Reason:</b> only one of these conditions needs to be met.</p> <p><b>Amend</b> (b) to delete "and" and add "or". <b>Reason:</b> only one of these conditions needs to be met.</p>
<p>(5) As part of the tender process, the details regarding the contractor's conference held on Constructionline or obtained from other sources, should be examined to ensure the suitability of the contractor to carry out the contract. This will include:</p> <ul style="list-style-type: none"> <li>(a) that the contractor's background and competence to carry out the task in question is still in accord with the entry on Constructionline;</li> <li>(b) evidence of satisfactory Employers and Public Liability Insurance cover, the amount and terms of which are to the satisfaction of the Finance Director;</li> </ul>	<p><b>Amend</b> first paragraph and (a) to read as follows: "As part of the tender process, the pre-qualification information held on Constructionline (or obtained from other sources) should be used in conjunction with pre-contract checks on any contractor as follows: (a) the contractor's background and competence to carry out the task in question;" <b>Reason:</b> Details of competency is not included with information held on Constructionline</p>

<p>(c) acceptable Health and Safety and Equal Opportunities policies;</p> <p>(d) details of any registration with a nationally recognised regulating body or its European equivalent as appropriate to the work and any guarantee schemes attached are satisfactory;</p> <p>(e) the qualification of the workforce and supervisors in relation to the proposed works is satisfactory;</p> <p>(f) the contractor's previous work record for the Council is considered satisfactory;</p> <p>(g) obtaining satisfactory banking references, statements of account or similar references by referees of sufficient standing. An entry in Constructionline may count as one reference; and</p> <p>(h) asking the contractor to attend for interview if considered necessary.</p>	<p>(b) delete "Finance Director" and substitute "Head of Finance".</p> <p><b>Reason:</b> reflects executive constitution.</p>
<p>Chief Officers may reduce any Long List produced by Constructionline to a Short List; using a priority rating system provided documentary justification is held. Priorities should include locality to the District, extent of relevant experience, previous working relationships with the Authority and any other relevant factors at the discretion of Heads of Service (e.g. qualification awards).</p>	
<p><b>C12 Serial Tenders</b></p>	
<p>(1) This Standing Order shall apply where the Council has resolved that the proposed contract forms part of a serial programme.</p>	<p><b>Amend</b> references to "the Council" as in C9 and C10.</p>

<p>(2) The terms of such contract shall be negotiated with the contractor on the basis of the rates and prices contained in an initial contract awarded competitively following an invitation to tender in accordance with the provisions of Standing Orders C7 or C8 and any such serial programme shall continue for a maximum of two years following the end of the financial year in which rates and prices are first obtained.</p>	<p><b>Amend</b> line 5 as follows: delete "two years" and substitute "four years".</p> <p><b>Reason:</b> EU regulations do not compel the Council to increase the number of years to four only set a maximum. If changing to 4 years must have another operational reason.</p> <p>E.g.: to make this requirement the same as that specified in EU regulations.</p>
<p><b>C13 Sub-Contractors and Nominated Suppliers</b></p>	
<p>(1) Tenders for sub-contracts to be performed or goods or materials to be supplied by nominated sub-contractors or suppliers shall be invited in accordance with the methods prescribed in these Standing Orders.</p>	
<p>(2) The Chief Officer concerned is authorised to nominate to the main contractor the sub-contractor, or supplier whose tender, obtained in accordance with the preceding sub-paragraph is, in his opinion, the most satisfactory; provided that, where the tender is not the lowest received or where the tender it is proposed to accept, exceeds by 10% the prime cost sum included in the main contract sum, the circumstances shall be reported to the next meeting of the appropriate committee.</p>	<p><b>Delete:</b> "appropriate Committee" in the last line and substitute "the Council, Cabinet, Cabinet Committee or Portfolio Holder as appropriate".</p> <p><b>Reason:</b> reflects executive constitution.</p>
<p><b>C14 Exception for Consortia, Public Supply Agencies etc.</b></p>	
<p>The procedures for invitation of tenders by the Council need not apply where special arrangements have been entered into by any consortium, collaboration or similar body of which the Council is a member or under which the Council is entitled to benefit by virtue of its status as a public authority. Where, however, tenders are invited by an officer of the Council, which includes any consortia or public supply agency as one of those invited to tender, then the delivery, opening and acceptance of tenders shall comply with the provisions of these Standing Orders.</p>	<p><b>Amend</b> C14 by the addition of the following sentence after "authority" in line 6:</p> <p>"The terms and conditions of any proposed contract must be acceptable to the Head of Finance and the Head of Legal, Estates and Administration".</p> <p><b>Reason:</b> C-14 should stipulate the consortia etc must be in a legally robust form to protect the Council's interests.</p>

<p><b>C15 Appointment of Consultants</b></p>	<p>(1) It shall be a condition of the appointment of any architect, engineer, quantity surveyor or other consultant (not being an officer of the Council) who is to be responsible to the Council for the supervision of a contract on its behalf, that in relation to that contract there shall be compliance with the requirements of these Standing Orders relating to contracts as though the Consultant was a Chief Officer.</p>	<p><b>Add</b> the following sentence at the end of (1):          "The Council's standard form of appointment for consultants shall apply in all cases. This is set out in full in Annex 2 to these contract standing orders".  <b>Reason:</b> clarifies current Council practice.</p>
<p>(2) The engagement of consultants shall be in accordance with Standing Orders C4, C5, C6, C7, C8, C9, C10 or C12, dependent on the estimated amount of the fees and disbursements to be paid to them.</p>	<p>(3) The appointment of any consultant to the Council in respect of duties performed or services rendered on projects with an estimated or potential scheme value in excess of £250,000 shall be under seal. The appropriate Chief Officer may, however, require that any contract of less than £250,000 in value or amount shall be under seal if it is considered that this would be in the Council's best interests.</p>	<p><b>Add</b> the following after "any contract" in the fourth line of (3):          "... in respect of a scheme ..."  <b>Reason:</b> clarification</p>
<p><b>C16 Posting Receipt and Custody of Quotations and Tenders</b></p>		
<p>(1) New Paragraph</p>	<p><b>Add</b> new paragraph as follows:          "All quotations and tenders invited in accordance with standing orders shall be sent out by Special Delivery. The instruction to the post room shall include 'T&amp;T' or equivalent system so that the progress of the documentation will be traced.  <b>Reason:</b> Potential tenderers have in the past stated that they have not received invitations to tender."</p>	

<p>(1) Quotations and tenders invited in accordance with these Standing Orders will not be considered unless contained in a plain envelope which shall be securely sealed and shall not bear any distinguishing matter or mark intended to indicate the identity of the sender, such envelope to be marked and returned in one of the following ways:</p> <p>(a) in respect of contracts with an estimated value up to £50,000 the envelope shall bear the word "Quotation", followed by the subject to which the quotation relates, the closing date for receipt and shall be addressed impersonally to the relevant Chief Officer; or</p> <p>(b) in respect of contracts with an estimated value in excess of £50,000 the envelope shall bear the word "Tender" followed by the subject to which the tender relates, the closing date for receipt, and shall be addressed impersonally to the Head of the Policy Unit, who shall maintain in a secure location a record of tenders and the dates and times of receipt.</p>	<p><b>Amend (2) (b) (re-numbered)</b> by changing "Head of Policy Unit" to "Head of Research and Democratic Services".</p> <p><b>Reasons:</b> reflects change in post title.</p>
<p>Quotations and tenders submitted in respect of the provision of goods and services or offers for the disposal of any interest in land or property, by means of any electronic transmission system shall be automatically disqualified from consideration and shall be dealt with by the appropriate Chief Officer in accordance with the procedure outlined in the same manner as late tenders in Standing Order C18(b).</p>	<p><b>Delete C16(3) (re-numbered)</b> and substitute the following to be numbered (3):</p> <p>"(3) Invitations by the Council of tenders and quotations for the provision of goods or services shall only be permitted by electronic means in accordance with the Essex Marketplace Procurement system. Any tender or quotation submitted to the council by electronic means shall be disqualified from consideration unless submitted in accordance with the Essex Marketplace Procurement system and shall be dealt with by the appropriate Chief Officer in accordance with the procedure prescribed in Standing Order C18(c) for late tenders.</p> <p><b>Reason:</b> In the electronic/computer age the existing C16(2) should be amended to permit electronic invitations of tenders and quotations and the receipts of such tenders and quotations. However, it is recommended that this should be facilitated only within the framework of the Essex Marketplace Procurement System to which Essex districts are affiliated. Further work will be undertaken on extending electronic handling to other tendering but these are not considered to have appropriate security at present.</p> <p><b>NOTE: This recommended change is subject to consideration at the OS Committee on 8.12.05. The Committee's decision will be reported orally.</b></p>

<p>(5) All tenders shall be in the custody of the Head of the Policy Unit and shall be kept in a secure location until required to be opened.</p> <p>(6) The provisions of Standing Orders C16(2) and C16(3) shall not apply in relation to Standing Order C4.</p>	<p><b>Renumber</b> existing (3) and (4) as (5) and (6)</p>
<p><b>C17 Opening of Tenders and Quotations</b></p>	
<p>Quotations and tenders received in accordance with these Standing Orders shall be opened at one time, as follows:</p> <p>(a) in respect of contracts with an estimated value not exceeding £50,000, the relevant Chief Officer in the presence of at least one of his principal or senior officers, shall open the quotations received, and shall maintain a record of all such quotations;</p> <p>(b) in respect of contracts with an estimated value in excess of £50,000 the Chairman of Committee concerned, together with the Head of the Policy Unit and the relevant Chief Officer, or their representatives who shall be Principal or Senior Officers, shall open the tenders which in the normal course of events will not be less than three working days after the closing date for receipt of those tenders; and</p> <p>(c) the Head of Research and Democratic Services shall maintain and sign a record of all tenders opened which shall also be signed by the relevant Portfolio Holder and the representative of the Head of Service concerned.</p>	<p><b>Amend</b> reference to "Head of Policy Unit" to "Head of Research and Democratic Services".</p> <p><b>Amend</b> reference to "Chairman of Committee concerned" to "Portfolio Holder concerned".</p> <p><b>Reason:</b> reflects new post title and executive constitution.</p>
<p><b>C18 Late Receipt of Quotations and Tenders</b></p>	
<p>Quotations and tenders invited in accordance with these Standing</p>	<p><b>Amend</b> references to "Committees" throughout</p>



<p>Orders which are received after the date stipulated for their return shall be examined unopened by the relevant Chief Officer and shall be dealt with as follows:</p>	
<p>(a) provided that such other quotations or tenders as have been received have not been opened, the relevant Chief Officer shall, if satisfied that there is evidence of posting in time for delivery by the due date in the normal course of post delivery, place the quotation or tender with such others as have been received to await opening in accordance with Standing Order C17 and shall note or cause to have noted the action in the record maintained under that Standing Order and report the situation to the committee concerned; and</p>	<p><b>Revise</b> sub-paragraph (a) as follows:</p> <p>(a) where other quotations or tenders have been received but not opened and the Chief Officer is satisfied that there is evidence of posting in time for delivery, a late tender shall be noted in the record kept by the Chief Officer and retained for opening in accordance with Standing Order C17 and the circumstances reported to the body or individual responsible for approval;</p> <p><b>Reason:</b> clarifies wording.</p>
<p>(b) in the event of such other quotations or tenders as have been received having been opened or the quotation or tender clearly being delivered after the due date, the Head of the Policy Unit or the relevant Chief Officer shall open the quotation or tender to ascertain the name and address of the sender, who will promptly be advised in writing of the reason for the disqualification, the records maintained by the Head of the Policy Unit or the relevant Chief Officer under Standing Order C17 shall be annotated to record the action taken, but the value or amount of the quotation or tender shall not be recorded.</p>	<p><b>Revise</b> sub paragraph (b) as follows:</p> <p>(b) where other tenders have been opened or there is no evidence in the opinion of the Chief Officer of posting of the tender in time to reach the Council by the closing date, the tender will be opened by the Head of Research and Democratic Services or the relevant Chief Officer for the purpose of advising the tenderer or their disqualification from consideration, the record of tenders received being annotated accordingly.</p> <p><b>Reason:</b> clarifies wording.</p>

<p><b>C19 Alterations</b></p>	
<p>(a) Quotations and tenders shall not be altered after the date stipulated for their return, save that the relevant Chief Officer shall permit correction of arithmetical errors if he is satisfied that such errors were made inadvertently.</p> <p>(b) If an error is identified before the closing date for the return of tenders, all the tenderers shall be informed of the error and invited to adjust their tenders.</p> <p>(c) If an error in the specification is identified after the closing date for the return of tenders, all tenderers shall be given details of the error and afforded the opportunity of withdrawing the offer or submitting an amended tender.</p>	
<p><b>C20 Acceptance of Quotations and Tenders</b></p>	
<p>(1) A Chief Officer may, subject to the provisions of Standing Order C5 accept the lowest quotation received in respect of a contract not exceeding £50,000 in value or amount; a quotation other than the lowest received shall not be accepted until the Council or the Cabinet has considered a report from the appropriate Chief Officer or other person.</p>	<p><b>Add</b> reference to “Portfolio Holder” in the fourth line.</p> <p><b>Reason:</b> reflects executive constitution.</p>
<p>(2) In respect of a contract in excess of £50,000 in value or amount no tender shall be accepted until approved by the Council or the appropriate committee. Subject to the requirements of Section 123 of the Local Government Act 1972 and of Contract Standing Orders, nothing in this Standing Order shall prevent the Council or the Cabinet from accepting a tender other than the lowest received provided that such acceptance shall be approved only on the recommendation of the appropriate Chief Officer and that the reasons for such action shall be recorded in the minutes of the appropriate meeting.</p>	<p><b>Amend</b> (2) to delete “the Council or the appropriate committee” and substitute “the Council or the Cabinet....”</p> <p><b>Reason:</b> reflects executive constitution.</p>

<p>(3) A certificate of bona fide tendering in terms that the Head of Legal, Estates and Administration Services shall prescribe shall be completed by every tenderer before a tender is accepted.</p>	<p><b>Replace C20(3)</b> with the following:</p> <p>“Each Head of Service shall ensure that a certificate of bona fide tendering is completed by every tenderer before a tender is accepted. This certificate shall be in a form prescribed by the Head of Legal, Administration and Estates Services.”</p> <p><b>Reason:</b> to state clearly the responsibilities of Chief Officers.</p>
<p>[Insert C21 Post Tender Negotiation]</p>	<p><b>C21 Post Tender Negotiation</b></p> <p>(1) Where a Procurement is conducted through either the open or restricted procedure, and the EU (UK) Regulations apply, no post tender negotiations are permitted. The Council may seek clarification from Suppliers where appropriate and this does not constitute post tender negotiation.</p> <p>(2) Where a Procurement is conducted through the open or restricted procedures and the EU (UK) Regulations do not apply, post tender negotiations are only permitted to the extent indicated in the tender documentation. Any negotiation will be in strict compliance with the tender documentation. Proper and sufficient records of any negotiation shall be maintained.</p> <p>(3) Should negotiations be required because the lowest tender exceeds the budget available, or the Council's requirements have changed since the tenders were invited, all tenderers must be given the opportunity to submit revised tenders based on a revised specification.</p> <p><b>Reason:</b> complies with EU legislation.</p>

<p><b>C22 Contract Documentation</b></p>	<p>(1) Contracts placed in accordance with Standing Order C4 may be dealt with by the use of an official order, providing that the relevant Chief Officer is satisfied there is no need for more extensive terms and conditions in order to protect the interests of the Council. An official order should not be used in respect of any other contract.</p> <p>(2) Contracts for the execution of works placed in accordance with Standing Orders C5 and C6 shall be in writing and be in a standard format such as ICE or JCT as approved by the Head of Legal, Estates and Administration Services.</p> <p>(3) Every contract for the supply of goods, materials or services or for the execution of works for an amount in excess of £50,000 shall be under seal as should any other contract where it is desired that the period of liability for breach of contract should be extended from six to twelve years.</p> <p>(4) Every contract for the execution of works shall contain a provision affording the Chief Executive or his authorised representative access to the site and the relevant documentation for audit purposes during the construction of the works.</p>	<p><b>Add</b> in 2<sup>nd</sup> line after the word "order" "in respect of works or goods and in respect of services the contract on the website of Human Resources on the Intranet".</p> <p><b>Reason:</b> introduction of standard contract for services introduced by H.R.</p> <p><b>Add</b> "PPC2000" or similar partnering contracts after "ICE" in first line of C22(2)</p> <p><b>Reason:</b> these forms of contract is currently used by the Council.</p> <p><b>Amend</b> (second line) by deleting the "Chief Executive" and substitute "a Joint Chief Executive".</p> <p><b>Reason:</b> reflects current top management structure.</p> <p><b>Add</b> new paragraph (5) as follows:</p> <p>"(5) All contracts shall include standard contract terms as set out in Annex 2 to these Contract Standing Orders unless the Head of Legal, Administration and Estates agrees an amended clause in substantially the same term or agrees that it would not be relevant to a particular contract."</p> <p><b>Reason:</b> standard contract terms should be included as a means of reference in this document.</p>
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<p><b>C23 Retention of Documents</b></p>	<p>The relevant Chief Officer shall ensure that:</p> <p>(a) all appropriate contract documentation must be retained for a minimum of six years, or if a contract is executed as a deed under seal, twelve years, following the date of the final payment;</p> <p>(b) unsuccessful tenders should be retained in a secure location for a period of two years; and</p> <p>(c) tender opening records should be retained indefinitely in a secure location.</p>	
<p><b>C24 Liquidated Damages, Performance Bonds and Insurance</b></p>	<p>Contracts for the execution of works for an amount in excess of £50,000 shall provide for liquidated damages. These should be calculated by using the standard formulae drawn up by the Society of Quantity Surveyors in Local Government as a basis. Advice regarding the calculations may be obtained from the Internal Audit Unit.</p> <p>(2) The Council shall not require security for the due performance for any contract below £2 million, unless there are special circumstances which in the opinion of the relevant Chief Officer would warrant this provision.</p> <p>(3) For every contract of £2 million and above, a performance bond shall be obtained for its due performance.</p> <p>(4) In exceptional circumstances, a Chief Officer, subject to the agreement of the Finance Director, may require a parent company guarantee or a deposit with the Council, as security. The precise form of any parent company guarantee must be agreed with the Head of Legal and Administration Services.</p>	<p><b>Add</b> the following words after "contracts" in the first line.</p> <p>" ..... including contracts under PPC2000 or similar partnering contracts"</p> <p><b>Reason:</b> these contract types are not referred to at present and are frequently used by the Council.</p> <p><b>Delete</b> "Finance Director" in the second line of (4) and "Head of Legal and Administration Services" in the last 2 lines and substitute "Head of Finance" and "Head of Legal, Estates and Administration Services" respectively</p> <p><b>Reason:</b> reflects current post titles and responsibilities.</p>

<p>(5) Notwithstanding the fact that Constructionline includes insurance details of contractors and consultants, there shall be a requirement to insert in every written contract which places upon the contractor liability to effect insurance in respect not only of the works to be carried out or goods to be supplied but also in respect of its employees and third parties. The insurance shall have the interest of the Council noted and the contractor shall be required to supply evidence of insurance cover effected and premiums paid as and when required for the approval of the Finance Director. The minimum third party insurance cover shall be £5,000,000 or such other sum as may be determined by the Finance Director.</p>	<p><b>Delete</b> "Finance Director" in lines 8 -10 and substitute "Head of Finance".</p> <p><b>Reason:</b> reflects current post titles and responsibilities. <b>Add</b> a further sentence of the Standing Order as follows:</p> <p>"The Contractor shall also show evidence of a level of employer liability cover which is considered appropriate by the Head of Finance.</p> <p><b>Reason:</b> The current Standing Order does not specify a requirement that contractors appointed by the Council should have appropriate employer liability cover.</p>
<p>(6) In contracts for professional services, confirmation of Professional Indemnity Insurance with a minimum cover of £1,000,000 for any one claim or such other sum as may be determined by the Finance Director, shall be additionally provided when required.</p>	<p><b>Delete:</b> "Finance Director" and substitute "Head of Finance" in third line.</p> <p><b>Reason:</b> Reflects current management structure.</p>
<p><b>Pa 025 Retentions</b></p>	
<p>A contractually - specified retention must be held on all contracts where there is a defects liability of maintenance period. The monies held must not be finally released until the end of these periods. Retention clauses shall also be included in other forms of contract where the Chief Officer considers it appropriate.</p>	
<p><b>C26 Assignment</b></p>	
<p>(1) Every written contract shall contain a provision which prohibits the contractor from transferring or assigning directly or indirectly, to any person or persons whatever, any portion of the contract without the written permission of the Council.</p>	<p><b>Delete</b> (1) and substitute the following:</p> <p>"Every written contract shall include the provision against assignment specified in the annex unless the Head of Legal Administration and Estates agrees an amended clause in substantially the same terms".</p> <p><b>Reason:</b> reflects legal requirements.</p>

<p>(2) Whenever a contractor is unable to conform to C26(1) and every alternative measure has been evaluated, then the Chief Officer responsible shall request approval to proceed from the relevant Committee.</p>	<p><b>Amend</b> reference to "relevant Committee" in the final line of (2) and substitute "relevant Portfolio Holder".</p> <p><b>Reason:</b> reflects current executive constitution.</p>
<p><b>C27 Cancellation</b></p> <p>In every written contract, a clause shall be inserted to secure that the Council shall be entitled to cancel the contract, and to recover from the contractor the amount of any loss resulting from such cancellation if the contractor shall have offered or given or agreed to give to any person any gift, or consideration of any kind as an inducement or reward, for doing, or forbearing to do, or for having done, or forborne to do, any action in relation to obtaining the execution of the contract, or any other contract with the Council, or for showing or forbearing to show favour or disfavour to any person in relation to the contract, or any other contract with the Council, or if the like acts shall have been done by any person employed by him or acting on his behalf (whether with or without the knowledge of the contractor), or if in relation to any contract with the Council, the contractor, or any person employed by him or acting on his behalf, shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916, or any amendment of them, or shall have given any fee or reward, the receipt of which is an offence under sub-section (2) of section 117 of the Local Government Act 1972.</p>	<p><b>Delete</b> existing wording and substitute:</p> <p>"Every written contract shall include a provision for cancellation in the terms specified in the annex unless the Head of Legal, Administration and Estates agrees an amended clause in substantially the same terms".</p>
<p><b>C28 Final Account</b></p>	
<p>(1) Re-instate wording from draft (1<sup>st</sup> sentence). This account will include details of the tender sum, contract variations, final account sum, any deducted liquidated damages, any extension of time awarded and any claims agreed with the contractor.</p>	<p><b>Delete</b> first sentence and substitute the following:</p> <p>"The Chief Officer responsible for every contract for the provision of works, goods and services in excess of £50,000 shall provide at the end of the contract a final account."</p> <p><b>Reason:</b> this is not a contract term.</p>
<p>(2) The Chief Officer responsible is fully accountable for the agreement of the final account and is authorised to sign off the final payment.</p>	

<p>(3) At the time the final account is agreed, a Final Account Certificate should be completed by the Chief Officer responsible and copied to the Chief Auditor.</p>	
<p>(4) For contracts in excess of £500,000, the Chief Officer responsible should advise the Chief Auditor of all details relating to the contract at the time of practical completion. If considered necessary, any contract could be subject to examination by Internal Audit.</p>	
<p><b>C29 Contract Monitoring</b></p>	
<p>(1) All contracts let in accordance with Standing Order C8 (i.e contracts in excess of £2 million in value or amount) shall be the subject of regular monitoring reports to each meeting of the Client Committee, as should any other contract where the relevant Committee so requests.</p>	<p><b>Delete</b> references in (1) to "Client Committee" and "relevant Committee" and substitute "the Council, the Cabinet, a Cabinet Committee or Portfolio Holder".</p> <p><b>Reason:</b> current terminology does not reflect the executive constitution.</p>
<p>(2) On completion of the Contract, a review should be carried out and reported to the relevant Client body in order to:</p> <p>(a) provide a means of accountability, in showing how far the authority has done what is set out to do, and how much it cost: and</p> <p>(b) enable the Council to learn from experience; this covers identifying how well projects met client and user requirements, recording issues that might require changes to procedures and transferring lessons between different services and types of project.</p>	<p><b>Amend</b> (2) (first two lines) to read as follows:</p> <p>"On completion of contracts in excess of £250,000 a review should be carried out and reported to the Council, the Cabinet, a Cabinet Committee or a Portfolio Holder as appropriate, in order to:....."</p>



<p>(3) New paragraph</p>	<p><b>Add</b> new paragraph (to be numbered (3) as follows:</p> <p>"(3) To prepare and submit reports, jointly with the Head of Finance to the Cabinet, on completion of all contracts where the final expenditure exceeds the approved contract sum by more than the lesser of 10% or £25,000."</p> <p><b>Reason:</b> Incorporates the existing provisions of Financial Regulations relating to contract overspendings.</p>
<p><b>C30 Special Market Conditions</b></p>	
<p>A Chief Officer may (with the approval of the Cabinet) place an order for the purchase or disposal of goods or materials which in his opinion would take advantage of any special conditions in the market or any other special conditions which he considers would be to the benefit of the Council; any case in which this Standing Order is utilised shall be the subject of a written report to the next meeting of the Cabinet.</p>	<p><b>Amend</b> last line by deleting "the appropriate Committee" and substitute "the Cabinet".</p> <p><b>Reason:</b> reflects the current constitution.</p>
<p><b>C31 Acquisition and Disposal of Land</b></p>	
<p>For the purposes of these Standing Orders any acquisition or disposal of land and property or interest in land and property shall be dealt with as follows:</p>	
<p>(1) The Head of Planning Services may negotiate any lease with a rental or premium not exceeding £20,000 in value or any acquisition or disposal not exceeding £20,000 in value subject to compliance with all requirements of these Contract Standing Orders and no statutory rule having been breached. In either of these two circumstances, the Head of Planning Services shall be required to report to the Cabinet seeking approval of the terms proposed. Standing Order C5(3) shall apply.</p>	<p><b>Amend</b> (1) to refer to "Head of Legal, Administration and Estates Services" throughout.</p> <p><b>Reason:</b> Reflects change in service responsibility.</p> <p><b>Add</b> in line 1, after the word "lease" "assignment, underletting, change of use or alterations to premises leased (irrespective of term)".</p> <p><b>Amend</b> line 3 by the addition of "..... agree terms and complete" after "negotiate in the first line and "a total consideration of ..." before "£20,000" in the 3<sup>rd</sup> line.</p>

	<p><b>Reason:</b> C30(1) deals with transactions which are delegated to the Chief Officer and it should be clear that there is authority to complete contracts within the delegated limits. The amendment also clarifies that the £20,000 limit relates to single transactions, irrespective of the terms of any lease etc.</p> <p><b>Amend</b> (1) line 3 after the word "disposal" add "of any interest in land".</p> <p><b>Reason:</b> to clarify what was being referred to. Interest in land means freehold, leasehold, easements and covenants.</p>
<p>(2) The Head of Planning Services is further authorised to negotiate terms for land and property transactions within the categories set out in C31(1) in excess of £20,000 in value but unless otherwise required by statute shall treat such offers as tenders or quotations and shall be subject to the procedures set out in Standing Order C5(1)(A) which apply to tenders and quotations for goods and services. Any Cabinet terms of reference shall be adhered to regarding transactions of £250,000 in value or more, or of one acre of more, or of land or property of strategic importance to the district, and any other terms and conditions shall be subject to confirmation by the Cabinet, including the acquisition and disposal of dwellings within the Housing Revenue Account, which shall be dealt with by the appropriate Cabinet.</p>	<p><b>Amend</b> by the addition of "and C6" after "C5(1)" and to include "Head of Legal, Estates and Administration Services" as with (1) above.</p> <p><b>Reason:</b> includes reference to the requirement of C6 for formal tendering of transactions valued in excess of £50,000.</p>
<p><b>C32 Code of Practice for the Disposal of Surplus Land</b></p>	
<p>Guidance from the Valuation Liaison Group from the Valuation Office, Inland Revenue, Chief Valuer's Office, shall be used, as appropriate, as a Code of Practice when dealing with the disposal of surplus land.</p>	
<p><b>C33 EU Procurement Thresholds - 1 January 1999 to 31 December 2001</b></p> <p>Works Contracts: £3,611,395 Prior information Notice required</p>	<p><b>Amend</b> heading to delete "from 1 January 2004"</p> <p>Note: these will be amended on 1 January 2006.</p> <p><b>Delete</b> existing wording and substitute the following.</p>

Supplies Contracts: £144,456  
 Prior information Notice required £505,500

Services Contracts: £144,456  
 Prior Information Notice required £505,500

These thresholds are subject to reviews. Before using check for the current thresholds.

SUPPLIES	SERVICES	WORKS
£ 99,695	£ 99,695 <sup>2</sup>	£3,834,411 <sup>3</sup>
£153,376	£153,376 <sup>2</sup>	£3,834,411 <sup>3</sup>
£485,481	£485,481	£3,834,411
Not applicable	£ 51,785	£ 647,308

These thresholds are regularly updated and the Head of Legal, Administration and Estate Service will amend the table from time to time.

<sup>1</sup> Schedule 1 of the Public Supply Contracts Regulations 1995 lists central government bodies subject to the WTO GPA. These thresholds will also apply to any successor bodies.

<sup>2</sup> With the exception of the following services, which have a threshold of £129,462 (€200,000) Part B (residual) services Research & Development Services (Category 8) The following Telecommunications services in Category 5.

CPC 7524 - Television and Radio Broadcast services  
 CPC 7525 - Interconnection services  
 CPC 7526 - Integrated telecommunications services Subsidised services contracts under regulation 25 of the Public Services Contracts Regulations 1993.

<sup>3</sup> For subsidised works contracts under regulation 23 of the Public Works Contracts Regulations 1991 and Works Concessions the threshold is £3,236,542 (€5,000,000).

**Reason:** clarifies EU legislative requirements.

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