

Constitution - Part 7 Contract Standing Orders

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North Tyneside Council

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Version Control

This version of Contract Standing Orders incorporates changes proposed as part of the Covid 19 Recovery Workstream for Supply Chain to ensure a local and national supply chain can recover from the COVID crisis and grow in a safe and sustainable way. The changes were approved by Council at its meeting on 24 September 2020. It also reflects changes to the job titles of the Senior Leadership Team that were approved in June 2021.

The content and operation of Contract Standing Orders will be kept under review by officers within Law and Governance, the Strategic Procurement Service and Audit, Risk and Procurement. Should the review identify any proposed changes to Contract Standing Orders these will be presented to the Annual Council Meeting for approval.

**MADE BY NORTH TYNESIDE COUNCIL PURSUANT TO SECTION 135
OF THE LOCAL GOVERNMENT ACT 1972**

1. Introduction

- (1) The Council is required by Section 135 Local Government Act 1972 to have Standing Orders in relation to its contracts. All contracts for goods, works and services must comply with them.
- (2) The purpose of these Standing Orders is to set clear rules for the procurement of goods, works and services for the Council. This will ensure the openness, integrity, accountability and probity of the process. It also ensures value for money and gives confidence that the Council is fulfilling its fiduciary and legal responsibilities.
- (3) Any dispute or difference as to the interpretation of these Standing Orders and/or any related Code of Practice shall be resolved by the Head of Law. All such documents will be regularly reviewed.
- (4) The Head of Law in consultation with the Director of Resources has delegated authority to review and propose any amendments to these Standing Orders.
- (5) Various figures in the Standing Orders are subject to review by the Council annually, and can also be changed by Regulation. The current figures should always be checked. All figures and thresholds included in these Standing Orders exclude VAT.
- (6) The Chief Executive, Assistant Chief Executive, The Director of Resources and the Strategic Commercial and Procurement Manager may delegate to named officers within their service area any of the specific duties identified in these Contract Standing Orders. In these circumstances documentary evidence of the authorisation must be kept.
- (7) A reference to any statute, order, regulation or similar instrument shall be construed as a reference to that statute, order, regulation or instrument as from time to time amended, modified or re-enacted by any subsequent statute, order, regulation or instrument after the date of these Contract Standing Orders and include any by-laws, statutory instruments, rules, regulations, orders, notices, directions, consents or permissions (together with any conditions attaching to any of the foregoing) made thereunder.

2. Compliance and Conduct of Officers and Members

- (1) Every contract made by or on behalf of the Council must comply with:
 - (a) All relevant statutory provisions;
 - (b) The relevant UK procurement legislation rules (i.e. the EC Treaty, the General Principles of EC law and the EC Public Procurement Directives implemented by the UK Regulations);

- (c) The Council's Constitution including these Contract Standing Orders, the Council's Financial Regulations and Officer Delegation Scheme and associated codes of practice; and
 - (d) The Council's strategic objectives, procurement strategy and policies.
- (2) All Council employees and organisations engaged to act in any capacity to manage or supervise a contract **must** comply with these Contract Standing Orders, Financial Regulations, the Officer Delegation Scheme and associated codes of practice, and the Directors of Service must ensure such compliance in the Service Areas for which he/she is responsible. Failure to comply with Contract Standing Orders, Financial Regulations, the Officer Delegation Scheme or any associated code of practice may result in disciplinary action and legal proceedings against the officers or organisations concerned.

All Council employees and organisations engaged on the Council's behalf must ensure that any conflicts of interest are avoided. (See also the Code of Conduct for Employees).

- (3) Where it becomes apparent that there has been a failure to comply with these Standing Orders then the relevant Director of Service or Chief Executive is required to produce a report outlining the reasons for the non-compliance and the steps taken to prevent a reoccurrence. That report will be submitted to the Chief Executive and Head of Law or the Director of Resources.
- (4) Members, including the elected mayor must conform to the Members Code of Conduct. Officers must comply with the Code of Conduct for Employees.
- (5) No member of the Council, including the elected mayor, shall enter either orally or in writing into any contract on the Council's behalf.
- (6) Any officer, member, agent of the Council or contractor, whilst acting on the Council's behalf in relation to any contractual matter shall ensure that the independence and integrity of the Council's procedures are at all times maintained. Failure to observe such standards of conduct will be referred to the Chief Executive and Head of Law.

3. Waiving of Contract Standing Orders

- (1) The waiving of Contract Standing Orders may only be authorised in the following circumstances:
 - (a) Where the total value of the works/services to be procured is less than £50,000 the appropriate Director of Service shall submit a report to their Chief Executive or, in respect of the Chief Executive's Office, Head of Law or The Director of Resources in consultation with the Strategic Commercial and Procurement Manager for agreement. In the absence of agreement the matter may be referred to the Chief Executive for a decision.
 - (b) Where the total value of the works/services to be procured exceeds £50,000 the appropriate Director of Service shall obtain the approval of

the Strategic Commercial and Procurement Manager and following this submit a report to the Head of Law and the Director of Resources for agreement. In the absence of agreement the matter may be referred to the Chief Executive for a decision; or

- (c) In circumstances where the funding for the procurement of the goods/services is from a third party and the procurement process is specified as a condition of the funding (in the absence of such conditions the Council's Contract Standing Orders shall apply)
- (2) The Director of Resources will ensure that a register of all such waivers of Contract Standing Orders is maintained.
- (3) In all cases a full record of the decision making process will be retained for a minimum of six years.
- (4) The proposed contract should be appended to the waiver with any associated insurances and accreditations as required. Confirmation of financial viability of the contractor as set out in Section 16 will be required.

4. Role of the Strategic Procurement Service

The Strategic Procurement Service is central to procurement strategy. The role of the unit is to support and manage all procurement activities and processes within the Council. The unit is responsible for:

- (a) Ensuring that the Council complies with EU Procurement Regulations, UK Legislation and Standing Orders;
- (b) Providing support to Service Areas as to content of the tender, tendering process, tendering timescales, length and type of contract, award criteria, performance monitoring and action; and
- (c) Providing direction, advice and guidance to Service Areas on all procurement issues with the aim of ensuring continuous improvement in procurement practice across the Council.

5. Prior Information Notices and Statistics

The Council has responsibilities to publish Prior Information Notices under the UK procurement legislation requirements and to the Government in relation to producing annual data relating to its procurement activities.

- (1) Where it is considered appropriate by the Strategic Commercial and Procurement Manager, the Council may publish a Prior Information Notice in the Find a Tender Service at the beginning of the financial year listing the contracts for services and supplies which it expects to procure for the financial year and which in aggregate will exceed the threshold limits for the UK Procurement Rules to apply. In relation to contracts for works, the Council may publish a Prior Information Notice in the Find a Tender Service when the works are approved.
- (2) The contracts register is an electronic, searchable register of all Council contracts and is maintained by the Strategic Procurement Service. The

Assistant Chief Executive and all Directors of Service must provide the Strategic Procurement Service with the information required to maintain a complete contracts register. The purpose of the register is to:

- (a) Maintain a complete and accurate record of all Council contracts;
- (b) Ensure compliance to contract. Service Areas, when sourcing non-catalogued goods and services, should search the register for contracted suppliers before initiating a request for the contracting of a supply opportunity; and
- (c) Ensure that the re-contracting of goods and services are initiated, in a timely manner, in accordance with EU procurement regulations, UK legislation, Contract Standing Orders and associated codes of practice.

6. Pre Procurement Requirements

- (1) Before commencing any proposed procurement process, the appropriate Director of Service must:
 - (a) Consult the Strategic Commercial and Procurement Manager on the method of procurement and notify the Director of Resources where that method involves a tendering process;
 - (b) Consult the Head of Law or any Director of Service who may be able to provide the works or services required to ascertain whether the Head of Law or Director of Service wishes to provide the works or services, or wishes to assist with this provision;
 - (c) Before engaging with any external works or service provider, check their status against any existing approved framework agreement. (see section 10) Deviation from an approved framework agreement must be sanctioned by the Director of Resources;
 - (d) Be satisfied that a specification that will form the basis of the contract has been prepared;
 - (e) Have prepared and documented an estimate of the anticipated cost of the contract, including where appropriate any maintenance costs and the costs of any options to extend the contract. This estimate must be used in determining the correct tendering procedure under Standing Order 8;
 - (f) Have clearly established the contract period in consultation with the Strategic Commercial and Procurement Manager outlined in Standing Order 4(b); and
 - (g) Ensure that all the evaluation criteria have been determined in advance.
- (2) Where any procurement exercise involves more than one service area, a lead officer will be appointed to ensure compliance with the Council's

Contract Standing Orders, Financial Regulations and any relevant Codes of Practice.

- (3) The Head of Law and Directors of Service must ensure that arrangements for the procurement of works/services are not artificially split either to remove them from control through these Contract Standing Orders or to reduce their value in terms of the thresholds referred to in Contract Standing Order 8.

7. Pre Contract Requirements

- (1) Before entering into a contract with any prospective contractor, the Head of Law or appropriate Director of Service must:
 - (a) Be satisfied about the technical capability of that contractor on the basis of the information provided by that contractor;
 - (b) Where an approved framework agreement exists for the supply of , the works or services concerned, ensure that the contractor is included in the agreement;
 - (c) Ensure that these Contract Standing Orders and associated codes of practice have been complied with, and that the proposed contract represents value for money.
- (2) The Head of Law and Directors of Service are under a duty to ensure that works/services purchased within their service area are reviewed in order that the scope for establishing medium to long-term contract arrangements is fully explored. This is essential to securing optimum value for money and economies of scale for the Council. The Strategic Commercial and Procurement Manager should also be consulted to identify any opportunities for establishing arrangements across service areas.

8. Contract Thresholds and Tendering Procedures (see also Contract Standing Order 9)

- (1) For contracts valued at up to £10,000, the Budget Manager, in consultation with the Director of Service concerned, may invite one quotation. However, more may be invited at the Director of Service's discretion. A standard template as determined by the Strategic Commercial and Procurement Manager may be used for such quotations. Every effort must be made to obtain quotations in writing, or through the Council's electronic contract management system, although it is appreciated that this may not be practical for some procurement at the lower end of this threshold. In all events, however, the Director of Service should proceed in a manner most appropriate to the efficient management of the service, having kept a record of the reason for doing so. Where there is an approved framework agreement in existence then that agreement must be used as the source of providing the names of contractors from whom quotations are sought. Details of Framework Agreements can be obtained from the Council's Strategic Procurement Service. This will be subject to periodic checks as part of the internal audit process.
- (2) For contracts valued from £10,001 up to £50,000, the Budget Manager, in consultation with the Director of Service concerned, must engage with the Strategic Commercial and Procurement Manager who will invite a minimum of three written quotations, in most circumstances, including one local supplier where appropriate;

however this will be dependent on the market, the service or goods required and value for money. Where there are not three available suppliers due to the specialist nature of the requirements less than three quotations may be requested but this must be agreed in advance with the Strategic Commercial and Procurement Manager. Quotations within this threshold must be returned to the Procurement Team and opened by a representative of the Strategic Commercial and Procurement Manager in conjunction with a representative of the appropriate Director of Service. A standard template as determined by the Strategic Commercial and Procurement Manager must be used for such quotations.

All quotations for a proposed contract with an estimated value of over £10,001 and up to £50,000 must be invited and received through the Council's electronic contract management system, unless the Head of Law approves the use of an alternative method.

The Director of Service may, depending on the nature and/or evaluated risk of the contract, wish to invite tenders rather than written quotations. An example could be due to the complexity of the service to be provided or the Council may feel that suppliers could provide a more innovative solution. In such instances the Director of Service must consult with the Strategic Commercial and Procurement Manager on the most appropriate option.

- (3) For contracts with an estimated value of £50,000 and above a tendering procedure is required via the Procurement Team using either the restricted or open procedure or through a competitive procedure with negotiation, a competitive dialogue process or an innovative partnership. Details of these procedures are set out in Appendix 1. All tenders must be invited and received through the Council's electronic contract management system, unless the Head of Law approves the use of an alternative method.
- (4) Appendix 5 shows threshold detail in table format.
- (5) In addition, the appropriate Director of Service will make arrangements to notify the relevant Cabinet Member of all procurement with a value of between £50,000 and £500,000. Where a contract may exceed the relevant UK Procurement threshold, as set out in Appendix 2, advice must be obtained from the Strategic Commercial and Procurement Manager prior to any procurement activity taking place and an auditable process must be applied to ensure compliance.
(See also Contract Standing Order 9)

Where it is proposed to undertake a procurement exercise and the estimated total cost of the works/services to be procured will or is reasonably expected to exceed £500,000 in value, a report must be submitted to Cabinet. Bi-annually a report will be presented to Cabinet detailing the procurements over £500,000. The relevant Director will be responsible for agreeing the specification and award criteria.

- (6) Contract Standing Orders 8(1), 8(2) and 8(3) above shall not apply in the case of:
 - a. Goods or materials purchased at auction sales;

- b. The extension of existing contracts where prices have remained unaltered or have varied only slightly and are otherwise clearly competitive provided that provision for extension has been included in the original contract. In such instances the Director of Service must maintain a record of all decisions taken and the reasons for those decisions; (See also Contract Standing Order 19);
 - c. Purchase of patented or proprietary goods or materials sold only at a fixed price;
 - d. Goods or materials in respect of which effective competition is prevented by government control;
 - e. The purchase of a named product required to be compatible with an existing installation as approved by the appropriate Director of Service;
 - f. The purchase of a work of art or museum specimen as approved by the appropriate Director of Service;
 - g. Registration with statutory regulators including Care Quality Commission (CQC);
 - h. Subscriptions to statutory bodies;
 - i. Contracts with GP's and Pharmacies;
 - j. Payments to Examination Boards;
 - k. Coroner Office Expenses;
 - l. with Driver and Vehicle Licensing Agency and/or Driver and Vehicle Standards Agency with regard to Council owned or operated vehicles;
 - m. Mandatory works by statutory undertakers, where the statutory undertaker is the only body which can perform the works. (e.g. Northumbria Water specifically for water and sewerage infrastructure works, Northern Powergrid specifically for electricity infrastructure works, British Telecom – specifically for telecoms infrastructure works, Network Rail specifically for works affecting the railway infrastructure etc.).
- (7) In any of the circumstances set out in Standing Order 8(6) above, a report should be written by the Head of Law or Director of Service to the Strategic Commercial and Procurement Manager where the value of the works and services is less than £50,000. Where the total value exceeds £50,000 a report should be submitted to the Head of Law or /Director of Service, Strategic Commercial and Procurement Manager, Assistant Chief Executive and The Director of Resources. This report should detail items procured, cost to the Council, reason for urgency (if applicable) and supplier information.
- (8) ICT contracts to £100,000 per annum where this is the purchase of licencing, software or a single source supplier at the discretion of the Strategic Commercial and Procurement Manager in consultation with the Chief Information Officer

9. Contracts subject to UK Procurement Regulations

- (1) Where an estimated value of a contract exceeds the current UK Procurement Threshold then the contract shall be tendered in accordance with the UK Procurement Regulations. Advice should be sought from the Strategic Commercial and Procurement Manager as to the need for compliance and as to the process to be followed. A broad outline of the requirements is set out in Appendix 2. The requirements are complex and it is essential that guidance be sought as the Council can be heavily penalised for non-compliance with UK Procurement Legislation.

10. Framework Agreements

- (1) A framework agreement is an overarching agreement or arrangement between one or more contracting authorities (contracting authorities include local authorities, fire authorities, police authorities, government bodies etc. as listed in Schedule 1 of the Public Contract Regulations 2015) and one or more contractors. The framework agreement sets out the terms and conditions for any subsequent specific call-offs (i.e. individual orders for supplies, services or works placed under that framework) made by the contracting authority during the term of that agreement or arrangement. The overarching framework agreement or arrangement itself may or may not create any binding obligations (such as any exclusivity obligations, or whether to buy or supply or not to buy or supply) on either or both parties.
- (2) Where a framework agreement has an estimated maximum contract value over its lifetime above the relevant EU threshold prevailing from time to time, the procurement and award of the framework agreement will be subject to EU procurement rules, and the duration of the framework must not exceed four years unless there are exceptional circumstances.
- (3) Where a framework agreement has been identified by Strategic Procurement, the Directors of Service can authorise the use of these frameworks in consultation with the Strategic Commercial and Procurement Manager.
- (4) The framework agreement should set out clear price structure and the call-off award criteria applicable to future call-offs. Where the pricing or terms of future call-offs are not precise or complete enough when the framework agreement is set up, a mini-tendering should be held with those framework contractors who are capable of meeting the particular requirements of the relevant call-off (i.e. not necessarily every provider under the relevant framework), using the call-off contract award criteria previously set out when the framework was first set up.
- (5) As per Office of Government Commerce (OGC) Guidance on Framework Agreements updated in October 2016, precise terms to be agreed at the particular mini-tender stage for a specific call-off could include:
 - (a) Delivery time;
 - (b) Invoicing arrangement and payment profiles;
 - (c) Additional security needs;
 - (d) Incidental charges;
 - (e) Associated services such as installation, maintenance and training;
 - (f) Mixes of rates and quality;

- (g) Price mechanism; and
- (h) Terms specific to the particular products or services required to meet a particular requirement.

- (6) The contractors' technical ability and or financial standing are not relevant in the mini-tendering stage. Sufficient time is to be allowed for the return of bids for the relevant call-off, taking into account the complexity of the call-off. The weighting of applicable award criteria (based on those set out in the framework) to be used in the mini-tendering can vary to reflect the requirements of the particular call-off.

11. Submission, Registration and Opening of Quotations (see also Contract Standing Order 8)

- (1) A quotation is defined as a written priced offer provided to the Council for the supply of goods, works and/or services. It may be provided on the suppliers paperwork, and be subject to the suppliers terms and conditions.
- (2) For quotations up to the value of £10,000 the Assistant Chief Executive/Directors of Service must make appropriate arrangements for their receipt, recording and opening. Arrangements should include a specified period of time during which quotations will be received for the procurement of specific works/services. Quotations received verbally must be confirmed in writing. A record of quotations received, opened and considered must be retained.
- (3) All quotations between £10,001 and £50,000 in value must be returned through the Council's electronic contracts management system.

12. Submission, Registration and Opening of Tenders (see also Contract Standing Order 8)

- (1) A tender is defined as a supplier's written, priced offer (made in a form prescribed by the Council) in response to a specific invitation for tendering by the Council for the supply of goods, works and/or services as described in the specification prepared by the Council. Other than in exceptional circumstances (as determined by the Head of Law) the tender must be submitted in an electronic format via the Council's electronic management system and will be subject to the Council's terms and conditions.
- (2) Invitations to tender shall state that no tender will be received unless it is:
 - (a) in an electronic tender time-box specifically set up for the purpose: and
 - (b) submitted by the time and date specified in the Invitation to Tender as being the last time and date for the receipt of tenders.
- (3) Each tender submitted will remain in the electronic tender time-box until the time appointed for opening. Tender documents received within the electronic tender time-box will remain in a read only state throughout the tender opening and evaluation stage.

- (4) A representative of the Head of Law will open electronic tenders.
- (5) Prior to opening, the Head of Law must have details of the type of goods or materials to be supplied or disposed of, or the work or service to be carried out and the name of all potential tenderers.
- (6) No tender received after the date and time indicated for the receipt of tenders will be considered. Any such tender will be opened separately, and after those that are received prior to the submission deadline, so as to enable the Head of Law to identify the tenderer and notify them of the late receipt and rejection of the tender in question.
- (7) Only the Head of Law can exclude a tender from the process, if that tender does not comply either with these Contract Standing Orders or the tendering instructions.

13. Errors in Tenders

Where the Construction Industry Board Code of Practice applies then errors in tenders will be dealt with in accordance with that code. In all other cases errors in tenders shall be dealt with in one of the following two ways:

- (a) The tenderer shall be given details in writing of the error(s) found during the examination of the tender and shall be given the opportunity of confirming in writing without amendment or withdrawing a tender; or
- (b) Amending the tender to correct genuine arithmetic errors provided that in this case, apart from these genuine arithmetic errors, no other adjustment, revision or qualification is permitted.

Invitations to tender must state which method will be used for dealing with errors in tenders.

14. Tender Evaluation (see also Standing Order 16)

- (1) Tenders that are subject to Public Procurement Regulations 2015 will be evaluated in accordance with the relevant Regulations and the evaluation criteria will be clearly set out in any invitation to tender.
- (2) All other tenders, except those where lowest price is predetermined to be the appropriate criteria, will be evaluated on criteria predetermined in consultation with the Strategic Commercial and Procurement Manager. Such criteria will include considerations of quality as well as price and will aim to secure a contract that is the most economically advantageous to the Council.
- (3) The predetermined evaluation criteria must be listed in any invitation to tender, including any weighting to be applied. Such criteria must be strictly observed at all times by those involved in the tender evaluation.
- (4) For each contract that involves an evaluation process, the Assistant Chief Executive/relevant Director of Service must form an evaluation team with responsibility for carrying out the evaluation process. Representatives of

other service areas (where necessary) and the Strategic Procurement Service will be included in the evaluation team.

- (5) A summary sheet recording the outcome of the evaluation process must be completed, signed by all those involved in the evaluation and retained.

15. Acceptance of Tenders/Quotations

- (1) Authority to accept tenders/quotations lies with the Assistant Chief Executive/Directors of Service in accordance with the Council's Officer Delegation Scheme and subject to compliance with the general provisions of these Contract Standing Orders and specifically where:
 - (a) The tender to be accepted is the lowest in price where payment is to be made by the Council and where price has been the predetermined criteria;
 - (b) The tender to be accepted is the highest where payment is to be received by the Council and where price has been the predetermined criteria;
 - (c) The tender is identified as the most economically advantageous by virtue of the predetermined evaluation criteria; or
 - (d) The tender is identified as the most suitable tender according to any evaluation criteria required under relevant Public Procurement Regulations 2015.
- (2) The provisions for the waiving of Contract Standing Orders to accept a tender/quotation that does not comply with this Standing Order are set out in Standing Order 3.
- (3) Subject to Contract Standing Order 15(2) above, if after evaluation the tender/quotation is within the relevant budget provision then:
 - (a) In the case of a tender, the appropriate Director of Service may authorise the acceptance of the tender on behalf of the Council, such acceptance to be notified in writing to the successful tenderer in a manner specified by the Assistant Chief Executive; or
 - (b) In the case of a quotation, the Assistant Chief Executive/ appropriate Director of Service may accept the quotation by issuing an Official Order (which should be signed by the Director of Service) where appropriate accompanied by an Agreement signed by the Head of Law .
 - (c) An electronic order, or purchasing card, may be used to accept a quotation, in accordance with the systems procedures and controls in place relating to their use.
 - (d) Notwithstanding the above, the Assistant Chief Executive/ appropriate Director of Service where appropriate must, prior to the Council entering into any contract, consult with The Director of Resources to establish the need to undertake any evaluation of

the financial standing of the firm to whom it is proposed to award the contract. Where the contract value exceeds £250,000 The Director of Resources will carry out a detailed financial appraisal of the proposed contractor.

16. Bonds, Guarantees and Insurance

- (1) For contracts above £100,000, the evaluation team shall consider as part of its pre-qualification assessment and evaluation process whether a performance bond and/or a parent company guarantee (if applicable) shall be required from the preferred contractor.
- (2) The evaluation team, where appropriate in consultation with other relevant officers specialising in finance and insurance, shall consider the appropriate type (employer liability, public liability, professional indemnity, etc.) and level of insurance requirements for each contract.
- (3) Where a framework is established, preferred providers will be notified if due to their financial standing a bond is required, bonds will only be put in place when works are called off under the framework, the level of bond will be agreed due to the value of the goods/works and/or services and the financial standing of the tenderer.

17. Contract Variations

Variations relate to the content of the contract and are subject to the following:

- (1) All variations must be in the form of written instruction to the contractor. The likely cost effect of each variation should be assessed prior to the issue of the instruction. In cases where this would cause serious disruption to the contract, or where immediate action is necessary to prevent danger or damage, the instruction may be issued without prior costing, but in such cases this costing must be completed within twenty working days of the instruction being issued.
- (2) Wherever a variation to a contract is such that without it the contract cannot be properly completed in accordance with the original design, with a performance standard required by the original design, then it is an essential variation.

The Assistant Chief Executive/Directors of Service may authorise variations on contracts up to a value of £30,000 on contracts up to £500,000 in value and up to a value of £75,000 on contracts above £500,000 in value. Variations beyond these figures must be reported to Cabinet. Any additional costs resulting from the variations should be set against accrued savings elsewhere in the contract or other funding for the essential variation must be identified. Where a variation is likely to cause the authorised amount of the contract to be exceeded, the Assistant Chief Executive/appropriate Director of Service shall seek the necessary approval set out in Financial Regulations prior to issuing the variation. Variations must also comply with the provisions of the Officer Delegation Scheme, Contract Standing Orders and Financial Regulations.

18. Contract Extensions

Extensions to contracts apply in circumstances where it is proposed to extend the contract for a further specified period of time and such extensions are subject to the following:

- (1) The terms of any contract extension(s) must be agreed on awarding the original contract;
- (2) The Assistant Chief Executive/appropriate Director of Service in consultation with the Strategic Commercial and Procurement Manager must review the arrangements in respect of all contracts where extensions are proposed to ensure that value for money is obtained and the relevant procurement regulations have been observed;
- (3) Provision for any contract extension(s) must have been made in the original contract and exceptions to this are only permitted where the necessary approvals have been obtained in accordance with Contract Standing Order 3.

19. Nominated Sub-Contractors or Suppliers

- (1) This Standing Order applies where a sub-contractor or a supplier is to be nominated by the Council to a main contractor.
- (2) Nominated sub-contractors or suppliers are defined as those persons specified in a main contract for the discharge of any part of that contract.
- (3) Where the estimated amount of the sub-contract or the estimated value of goods or materials to be supplied by a nominated supplier is less than £10,000 the Budget Manager must invite a minimum of one written quotation. If oral quotations are received, they must be confirmed in writing.
- (4) Where the estimated amount of the sub-contract or the estimated value of goods or materials to be supplied by a nominated supplier is between £10,001 and £50,000 then quotations must be invited in accordance with Standing Order 8(2).
- (5) Where the estimated amount of the sub-contract or the estimated value of goods or materials to be supplied by a nominated supplier is £50,000 or more then tenders must be invited in accordance with Standing Order 8(3).
- (6) The terms of any invitation for nominated sub-contractor suppliers must require that, if selected, the firms would be willing to enter into:
 - (a) A contract with the main contractor on terms which indemnify the main contractor against the main contractor's own obligations under the main contract in relation to the work or goods and materials included in the sub-contract; and
 - (b) An agreement to indemnify the Council in such terms as may be prescribed.
- (7) The Assistant Chief Executive/appropriate Director of Service must nominate to the main contractor the organisation whose tender or quotation in his/her opinion is the most economically advantageous, provided that, where the tender is other than the lowest received, the Head of Law/Director of Service

must submit a report for the agreement of the Head of Law and the Director of Resources. In the absence of agreement the matter may be referred to the Chief Executive for decision.

20. Written Contracts (see also Contract Standing Order 22)

- (1) Every contract must be in writing except where Quotations have been issued via the electronic contract management system where the terms and conditions of contract have been agreed and accepted electronically by the supplier.
- (2) All contracts for less than £50,000 shall be in writing, except those excluded by clause (1) above, and signed by the Assistant Chief Executive/Director of Service to whom authority is given by the delegation scheme to enter into such contracts.
- (3) Every contract with a value between £50,000 and £100,000 shall be in writing and signed by the Head of Law or their authorised representatives.
- (4) All contracts valued in excess of £100,000 will be under seal or signed as a deed.
- (5) Every contract for the acquisition or disposal of an interest in land is to be in writing and signed by the Head of Law.
- (6) Electronic signatures may be used in accordance with the Electronic Signature Regulations 2002 provided the sufficiency of security arrangements has been approved by the Head of Law , the, Strategic Commercial and Procurement Manager and the Assistant Chief Executive /relevant Director of Service.
- (7) Any extension to a contract shall be agreed in writing by the Chief Executive, Head of Law or Directors of Service

21. Contents of Contracts

- (1) All contracts shall contain such standard terms and conditions that shall be approved or required from time to time by the Head of Law in consultation with the, Strategic Commercial and Procurement Manager. All contracts exceeding £50,000 in value will be in a form to be approved by the Assistant Chief Executive.
- (2) The Assistant Chief Executive/appropriate Director of Service must ensure that:
 - (a) Every contract must set out:
 - i) The work, goods, services, materials, matters or things to be carried out or supplied;
 - ii) The price to be paid and, or the amounts in frequency or the method of calculation of contract payments with a statement of discounts or other deductions;
 - iii) The time(s) within which the contract is to be performed; and

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- iv) Such other matters referred to in this Standing Order or as may be agreed between the parties.
- (b) **Cancellation:** Every contract must state that if the organisation fails to comply with its contractual obligations in whole or in part, the Council may:
- i) Cancel all or part of the contract;
 - ii) Complete the contract;
 - iii) Recover from the organisation any additional costs in completing the contract;
 - iv) Take other legal action against the organisation.
- (c) **Liquidated Damages:** Unless the Head of Law and the Assistant Chief Executive/appropriate Director of Service consider it to be unnecessary or impractical, every contract must provide that:
- i) Liquidated damages must be paid by the contractor if it fails to comply with the terms of the contract;
 - ii) Where under any contract; one or more sums of money are to be received by the Council, the contractor responsible for the payment of such sum or sums must pay interest at the rate stated in the contract from the date when payment is due until the date when payment is received;
 - iii) **Statutory Obligations:**
 - a. Each contract must provide that, in the performance of the contract, a contractor must not act incompatibly with the rights contained within the European Convention on Human Rights or within the meaning and scope of any law, enactment, order or regulation relating to discrimination in employment (whether in race, gender, religion, disability, sexual orientation or otherwise).
 - b. The contractor must provide any information reasonably requested relating to the performance of the contract to ensure that the Council meets its statutory obligations under Section 71 of the Race Relations Act 1976; in relation to the Transfer of Undertakings (Protection of Employment) Regulations 2006; and in relation to Best Value.
 - iv) In the performance of the contract, the contractor must comply with the requirement of the Health and Safety at Work etc Act 1974 and of any other relevant Acts, Regulations, Orders or Rules of Law pertaining to health and safety.
 - v) **Sub Contract Obligations:**
 - a. The contractor must not sub-contract the works or any part of the works, without the prior written consent of the Head of Law /appropriate Director of Service who will take advice from the Head of Law where appropriate.

- b. Without prejudice and subject to any other condition of the contract, no sub-letting by the contractor will relieve the contractor of its liability to the Council for the proper performance of the contract.
- c. The contractor is responsible to the Council for the proper performance and observance by all sub-contractors of all the contractors obligations under the contract as references in the contract to “the contractor” were references to the sub-contractors. Failure or neglect by a sub-contractor is deemed to be failure or neglect by the contractor.
- vi) **Assignment:** The contractor is prohibited from transferring or assigning directly or indirectly to any person or persons whatsoever any part of its contract, without the prior written consent of the Head of Law/appropriate Director of Service, following consultation with the Head of Law and the Director of Resources.
- vii) **Standards:** All goods, materials, services or work must comply with any appropriate European Union Specification (or equivalent) or Code of Practice or British Standards Specification or British Standard Code of Practice or European Union equivalents in force at the date of tender/quotation.
- viii) **Bribery and Corruption:** The Council is entitled to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation, if the contractor or its employees or agents (with or without its knowledge):-
 - (i) does anything improper to influence the Council to give the contractor any contract;
 - (ii) commits an offence under the Prevention of Corruption Act 1889-1916 or under Section 117(2) of the Local Government Act 1972.
- ix) **Deductions from amounts due:** Contracts shall provide that whenever under the contract any sum of money is recoverable from or payable by the contractor, this sum may be deducted from any sum due or which at any time may become due to the contractor under this or any other contract with the Council. Exercise by the Council of its rights under this clause is without prejudice to any other rights or remedies available to the Council under the contract.
- x) **Insurances:** The contractor must be required to provide evidence of adequate insurance to cover both public and employers liability.
- xi) **Non-fetter of power and discretion:** The Contract shall provide that nothing contained in the Contract shall fetter prejudice, restrict, interfere with or otherwise affect any of the

statutory or any other discretionary rights, powers, obligations and/or duties for the time being vested in the Council of the Borough of North Tyneside (“the Council”) howsoever as a local authority or the performance by the Council of any such obligations or duties or the means by which the Council shall in its absolute discretion exercise its rights or powers or fulfil or discharge any such obligations or duties.

- (3) Any standard terms and conditions of contracts submitted by contractors shall not be accepted without advice from the Head of Law . Proposed payment arrangements under a contract must be discussed with and agreed by the Director of Resources in advance of any contract being entered into.
- (4) No term or condition of any contract, whether submitted by contractors or otherwise, shall be agreed which requires or purports to require non-disclosure by the Council of any information contained within or arising from the contract, or the performance of the contract, without the prior agreement of the Assistant Chief Executive.

This Contract Standing Order shall not apply in respect of public utilities order forms.

22. Retention of Documents

Other than in the case of circumstances set out below, all documents relating to contracts that have been subject to a procurement exercise must be retained for a minimum of 6 years from the expiry of the contract. Such documents include all those relating to the pre tender stage, validation of tenders, evaluation process and contract award and monitoring.

Documents relating to any contracts under seal or signed as a deed must be retained for a minimum of 12 years.

Documents relating to building contracts must be retained for 15 years following the completion of works.

23. Joint Procurement

Any joint procurement arrangements with other local authorities or public bodies, including membership or use of purchasing consortia, will be undertaken in accordance with the principles set out in these Contract Standing Orders and/or the Contract Standing Orders of the lead authority or lead public body.

24. Procurement by Consultants/Agents

Any consultants/agents used by the Council shall be appointed in accordance with these Contract Standing Orders. Where the Council uses consultants/agents to act on its behalf in relation to any procurement, then the Assistant Chief Executive/Director of Service shall ensure that the consultants/agents carry out any procurement in accordance with these contract Standing Orders. No consultant/agent shall make any decision on whether to award a contract or to whom a contract should be awarded. The Assistant Chief Executive/Director of Service shall ensure that the consultant's/agent's performance is monitored.

25. Bidder Concerns

Where a tenderer who raises concerns with the Procurement process the Director of Commissioning and Asset Management shall review the process undertaken. This review shall be limited to confirming that a fair, open and transparent process was undertaken. The technical judgement of the evaluation team shall not be questioned.

Appendix 1

1. Tendering Procedures under Contract Standing Order 8(3)

- 1.1 The procedures set out in this Appendix apply to contracts with an estimated value of £50,000 or over or if the Head of Law considers that a call off under an established framework arrangement as described in Standing Order 10 is inappropriate.
- 1.2 There are four main procurement procedures to award a public contract.

2. The Open Procedure

- 2.1 Under this procedure, all interested economic operators who meet the qualification criteria may tender. This procedure has been referred to as “one stage” tendering in that the assessment of tenderers, their qualifications for the contract, and the assessment of the bids they submitted take place at the same time.
- 2.2 Public Notice must be given on the Council’s website and electronic tendering system and may, where appropriate, be published in one or more newspapers or journals circulating among organisations who undertake such contracts. Public notice must be given in the Find a Tender Service and the information must be published on Contracts Finder, if the estimated contract value exceeds the prevailing EU threshold for supplies, services or works as the case may be.
- 2.3 All organisations expressing an interest are invited to tender.

3. Restricted Tendering Procedure

- 3.1 This procedure applies to contracts with an estimated value over EU service threshold limits or more or if the Head of Law considers that a call off under an established framework arrangement as described in Standing Order 10 or an open procedure are inappropriate. Where the Authority uses the restricted procedure, suppliers are able to ‘pre-qualify’ based on their financial standing, technical or professional capabilities to narrow the number of suppliers permitted to submit bids.
- 3.2 Ten days Public Notice may be given on the Council’s website and electronic tendering system and where appropriate, if the estimated value of the contract exceeds EU service threshold limits, in one or more newspapers or journals circulating among such organisations who undertake such contracts, setting out details of the proposed contract, inviting tenders and stating the last date on which tenders will be received.
- 3.3 After the expiry of the period specified in the Public Notice, tender documents must be sent to at least five of the organisations who expressed an interest in tendering and have passed pre-qualification criteria or, if fewer than five organisations have applied and are considered suitable, to all such organisations.

4. Competitive Procedure with negotiation

4.1 The Public Contracts Regulations 2015 abolished the standard Negotiated Procedure and replaced it with a new procedure called the "competitive procedure with negotiation". (A Negotiated Procedure without notice for use in very restricted circumstances will be retained.) Like Competitive Dialogue it is a competitive process where negotiations are to be carried out with all the bidders still in the procurement. The major change from the previous Negotiated Procedure will be that following negotiation on submitted tenders there will be a formal end to the negotiating and bidders will then be invited to submit a revised tender. This procedure specifies the extent to which the authority can change its requirements during the process. The Directive specifically precludes an authority from making changes to:

- the description of the procurement
- the part of the technical specifications which define the minimum requirements
- the award criteria.

However, it acknowledges the right to make changes to other parts of the specification provided bidders are given sufficient time to make an adequate response.

Other points to note include:

- as with Competitive Dialogue, there will be specific grounds which permit its use, this will include that "due to specific circumstances related to the nature or the complexity of the works, supplies or services or the risks attaching thereto, the contract cannot be awarded without prior negotiations"
- the minimum number of bidders to be invited is three
- it will be possible to hold the negotiation in stages and reduce the number of bidders at the end of a stage
- the ability to hold an accelerated procedure, currently limited to the Restricted Procedure, will be extended to the new procedure making it possible to use it in cases of urgency
- a bidder's solution or other confidential information is not to be revealed to other bidders without specific consent.

The new procedure will have much in common with Competitive Dialogue. What will distinguish them is that, in Competitive Dialogue the first phase solutions are developed until the authority considers that it has identified one or more capable of meeting its needs and then seeks to formalise positions in a tender, whereas in the new Competitive Procedure with Negotiation tenders are submitted initially, are then subject to negotiation and then resubmitted to finalise positions. Authorities may therefore be attracted to the new procedure in those cases where at present they might seek to run a truncated Competitive Dialogue procedure. This may be where the requirement is well developed and full tender documents can be produced and submitted but it is felt that there may be advantage in retaining the ability to hold negotiations if there are certain aspects which bidders raise.

5.1 The Competitive Dialogue is a procedure which is only available for use in circumstances when what is being procured is a “particularly complex contract” and the contracting authority considers that the use of the open or restriction procedure do not allow the award of that contract.

5.2 The decision to use competitive dialogue has to be justified in accordance with the relevant procurement regulations.

6. Innovation Partnerships

6.1 The innovation partnership is a new procurement procedure introduced under the Public Contracts Regulations 2015 that will enable contracting authorities to run a tender competition for both the development and the purchase of innovative goods, works or services in a single award process. Under the previous rules, where a contracting authority wishes to run a procurement procedure that combines both development and purchase elements together it encountered difficulties in structuring a competition that does not infringe upon the principles of equal treatment and transparency. The innovation partnership introduces a new procedure that allows for the combination of both the development and purchase elements, with express rules in place to seek to ensure equal treatment and transparency.

6.2 The process can only be used in limited circumstances, where (i) the goods, works and services that are sought are “innovative” and (ii) there is an intention to include both the development and purchase elements in the procedure, provided they correspond to agreed performance levels and maximum costs.

6.3 Competitions under the innovation partnership procedure will be governed by the same rules that will apply to other procurement procedures under the Directives. However, there are certain additional requirements specific to innovation partnership competitions which contracting authorities must also adhere to. Some of the key requirements include the following:

Required solution:

- The contract notice must set out sufficient information to allow tenderers to identify the nature and scope of the required solution as a whole and the minimum time limit for receipt of requests to participate is 30 days from the day which the contract notice is issued.
- The need for the innovative solution that cannot be met by products, works or services already available in the market must also be set out. It must also set out performance levels and maximum costs to which the resulting products or services must adhere.

Process:

- It will be in successive stages including the research and development of the solution which can take place in several stages, and the subsequent supply to the contracting authority of the solution. More than one partner can be identified and partners can then be eliminated as the development work progresses. The partnership will set intermediate targets to be attained by the partners and can provide for payments in appropriate instalments.

Selection criteria:

- Criteria must be applied in respect of tenderers' capacity in the field of research and development when selecting candidates. Capacity is distinguished from experience, so as not to rule out the involvement of start-ups.

Award phase:

- Whilst the minimum requirements and award criteria are not subject to negotiation, contracting authorities are required to negotiate with tenderers on their tenders to improve their content, save for the final tender. The criteria to award the innovation partnership must always be the most economically advantageous tender with the best price-quality ratio.

IP rights:

- Importantly, in the context of innovative products, works, or services, the procurement documents must provide for the protection of tenderers' intellectual property rights.

Proportionality:

- The estimated value of the supplies, works or services must not be disproportionate in relation to the value of the investment required for their development. This requirement seeks to avoid the abuse of the procedure and limit the quantum of the award to an amount that is essential to incentivise the development.

Subsequent purchase:

- The purchase of supplies, services or works developed under the partnership may be made only where they correspond to the agreed performance levels and maximum costs.

Appendix 2

A Summary of the Public Contracts Regulations 2015 (“the Regulations”)

Section 1

1. A procurement process must comply with the Regulations if the potential value of the contract exceeds the threshold values referred to below and the subject matter (goods, services or works) falls within the requirements of the Regulations.
2. Under the Regulations a relevant contract may be tendered under the open or restricted or, in exceptional circumstances as set out in the Regulations, the competitive procedure with negotiation or innovation procedure.
3. A contract notice in the prescribed form must be published in the Find a Tender Service in order to invite tenders for or expressions of interest for Services Contracts and Supplies and works tenders subject to the Regulations.
4. The distinction between Part A and Part B services is abolished in favour of a ‘Light touch regime’ to some contracts. However, the Regulations relating to technical specifications and the publication of contract award notices and the information to be published on Contracts Finder shall be observed for all contracts as shall the EC Treaty and the general principals of EC law including non-discrimination, equal treatment, proportionality and transparency.
5. The Regulations set out the minimum time scales for receipt of expressions of interest in tenders and also subsequently for the submission of bids. Where the Council has published a Prior Information Notice announcing its forthcoming contracts for the year ahead, then the Council may rely on reduced time scales if appropriate.

UK Procurement Thresholds

- (1) The Regulations relate to the procurement of contracts for services and have a two-tier application. Some contracts will be subject to a ‘light touch regime’.
- (2) [Schedule 2](#) gives details of contracts subject to the ‘light touch regime’.
- (3) The current threshold for service contracts (as at 1 January 2020) is £189,330 with the following exceptions:
 - (a) Some of the telecommunications services in Category 5 (ie the television and radio broadcast services, interconnections services and integrated telecommunications services)
 - (b) Research and development services - Category 8
 - (c) Light Touch Regime
 - (d) Subsidised services contracts under Regulation 34 of the Regulations

The current threshold for the above exceptions is also £189,330.

- (5) The current threshold for supplies contracts is £189,330.
- (6) The current threshold for works contracts (as at 1 January 2020) is £4,733,252 including for subsidised works contracts under Regulation 34 of the Regulations.
- (8) The current threshold for Light Touch Regime (as at 1 January 2020) is £663,540.
- (8) Section 4 gives details of the instances in which the Regulations shall not apply.

Instances in which the Regulations do not apply:-

- (a) the acquisition of land, including buildings and other structures, land covered with water, and any estate, interest, easement, servitude or right in or over land
- (b) the acquisition, development, production or co-production of programme material for radio or television by a broadcaster or for the purchase of broadcasting time
- (c) voice telephony, telex, radio telephony, paging or satellite services
- (d) arbitration or conciliation services
- (e) financial services in connection with the issue, purchase, sale or transfer of securities or other financial instruments
- (f) central banking services
- (g) research and development services unless:-
 - (i) the benefits are to accrue exclusively to the contracting authority for its use in the conduct of its own affairs
 - (ii) the services are to be wholly paid for by the contracting authority
- (h) contracts to which the provisions of Article 296 of the EU Treaty apply
- (i) a contract which is classified as secret or where the carrying out of the services under it must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions of any part of the United Kingdom or when the protection of the basic interests of the security of the United Kingdom require it
- (j) where different procedures govern the procedures leading to the award of the contract and it is to be entered into:-
 - (i) pursuant to an international agreement to which the United Kingdom and a state which is not a relevant State are parties and it provides for the provision of services intended for the joint implementation or exploitation of a project pursuant to that agreement
 - (ii) pursuant to an international agreement relating to the stationing of troops

- (iii) in accordance with the contract award procedures of an organisation of which only States are members (an “international organisation”) or of which only States or international organisations are members

- (k) services which are to be provided by another contracting authority, or by a person which is a contracting authority in another member state for the purposes of Directive 2004/18/EC, because that contracting authority or person has an exclusive right:-
 - (i) to provide the services; or
 - (ii) which is necessary for the provision of the services, pursuant to any published law, regulation or administrative provision, which is compatible with the EEC Treaty.

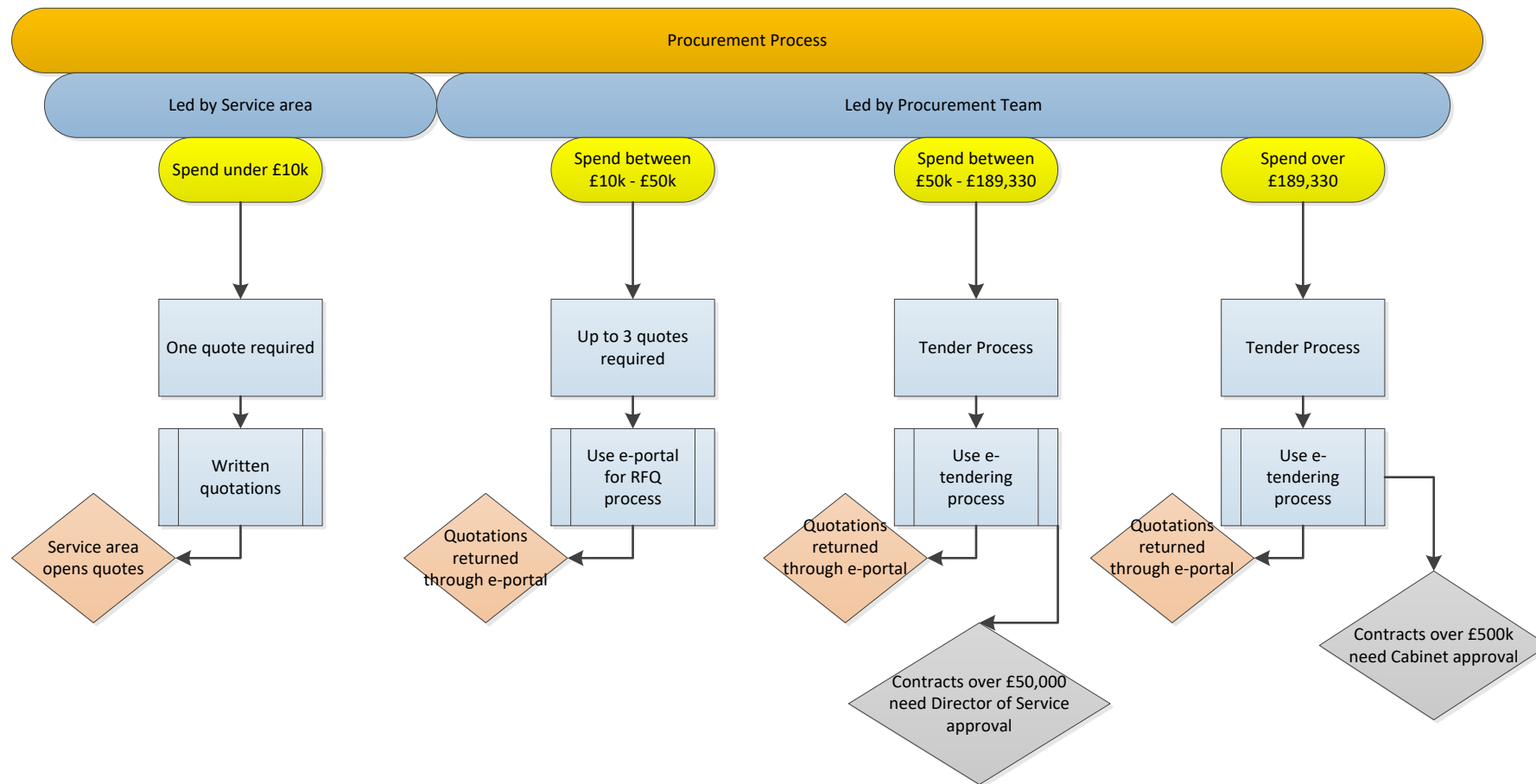
Appendix 3

Guidance on Exemptions under Paragraph 8(6)(j) of Contract Standing Orders

The exemption pursuant to paragraph 8(6)(j) provides that the contract thresholds and tendering procedures will not apply where, in relation to special education and social care contracts, if in the opinion of the Assistant Chief Executive/Director of Service and the Head of Law, it is considered necessary in the Council's interests and to meet its obligations under relevant legislation.

1. In approaching the provision of all services the Council must always aim to achieve value for money and to demonstrate compliance with its obligations in terms of undertaking fair and transparent procurement processes.
2. It is recognised that in the education and social care areas individual needs will need to be met in accordance with the Council's legal responsibilities. Where possible, services should be provided through providers who have been procured through the Council's normal procurement processes to ensure value for money and appropriate service standards will be achieved.
3. The exemption from the Council's standard tendering thresholds and requirements will be relevant where:
 - an individual's needs are so special that the Council's contracted service providers are unable to meet the need, or
 - the Council's contracted service providers do not have the capacity to provide the service required; and
 - the needs are genuinely urgent and there is no time to procure services through the normal route, or the service required is so specialist that there is only one available provider
4. In each case the Standing Orders require the Assistant Chief Executive/Director of Service and Head of Law to agree the criteria are met. A form in the same format as that used for waiver of standing orders should be completed, signed by the above, kept by the service area and copied to Law and Governance.
5. An overarching contract (i.e. a framework agreement) or placement agreement (i.e. individual call off/order placed under the framework agreement) should still be entered into to ensure clarity of the arrangements between the two parties.

Appendix 4 Procurement Process Flowchart



The flowchart on page 30 represents a summary of Council Standing Orders with respect to Contracts.

The diagram is designed to assist officers in understanding the contract process, but is not a comprehensive model. If in doubt reference should be made to full Contract Standing Orders – or advice sort from the Strategic Procurement Service.

Appendix 5 Threshold Bands Chart

Banding Threshold	Number of tenders / quotations to be sought	Minimum number of quotations to be returned	Records required	Method of invitation	Responsible
Up to £10,000	1	1	Written record if possible	Verbal or written quotation	Head of Law or Director of Service
£10,000 to £50,000	3 where possible including 1 local where appropriate. Unless agreed in advance by Procurement Team	1	Written Record	Use of E Tendering System	Procurement Team
Over £50,000	Tender exercise		Written Record	E Tendering System	Procurement Team

Where there are existing Council framework contracts mini competitions can be undertaken by the Service Areas via the e-tendering portal, following instruction and relevant training from the Procurement Team.