

## **REVISION OF PROCUREMENT RULES, REGULATIONS & CONTRACT STANDING ORDERS**

### **1. INTRODUCTION**

- 1.1 This report explains how the new Public Contracts Regulations 2015 (“the Regulations”) will bring about changes to the Council’s procurement processes and seeks approval for revisions to the Council’s Procurement Rules, Regulations & Contract Standing Orders to ensure compliance with the Regulations.

### **2. BACKGROUND**

- 2.1 The Regulations were laid in Parliament on 5 February 2015 and came into force very shortly afterwards on 26 February 2015. The Regulations implement the EU Public Sector Procurement Directive 2014/24/EU and a number of reforms recommended by Lord Young to make public procurement more accessible to small businesses.
- 2.2 The Regulations confirm that prior legislation, the Public Contracts Regulations 2006, will continue to apply to all contract award procedures commenced on or before 25 February 2015 so there could be a hybrid of procedures in place for existing procurement processes which started before the new Regulations came into force and for new procurement exercises from 26 February 2015.
- 2.3 To deal with the challenges of ensuring the Council complies with the new legal requirements, a procurement group (the “Procurement Rules Review Group”) has been set up. This group is led by the Head of Property Services and the Head of Legal and Democratic Services with valuable support from the Executive Director (S151 Officer). The group started work well in advance of the new Regulations coming into force and this has proved invaluable as very little time has been allowed between the Regulations being made and their coming into force.

### **3. THE KEY CHANGES**

- 3.1 The key reforms, which affect the Council’s procurement of works, goods and services, include:
- Abolition of the use of Pre-Qualification Questionnaires (“PQQs”) for procurement above £25,000 and below the EU Procurement threshold of £172,514

- Requirement to advertise contract opportunities on the Government contracts web portal 'Contracts Finder'
  - Requirement to invite tenders from all contractors and suppliers that express an interest in a contract opportunity
  - Removal of the Council's ability to use prior 'Approved Lists' of suppliers and contractors
  - Obligation to have all final contract documentation available at the date of public advertisement of the contract opportunity
  - Obligation to pay valid and undisputed invoices within 30 days and to ensure that a prompt 30 day payment term is passed down the supply chain
  - Publication of contract award notices on Contracts Finder
  - Compiling reports on EU contracts and framework agreements
  - Obligation to follow Cabinet Office guidance on all of the above
- 3.2 The requirements relating to PQQs and prompt payment apply from 26 February 2015. Other requirements apply from 1 April 2015. There is also a longer term requirement to move to full electronic procurement by 2018.
- 3.3 The Cabinet Office has provided some guidance although more guidance is expected in respect of the detail of the Regulations. At this stage, there is no clear timetable for the provision of future guidance so this is being carefully monitored by the Council's Procurement Rules Review Group.
- 3.4 The new changes are broadly welcomed and will bring about more streamlined procurement processes both for the Council and for those it does business with. There are however some uncertainties in terms of the impact of some of the new changes on the Council's resources, particularly arising out of the inability to now carry out PQQ exercises for medium size contracts (above £25,000 and below £172,514). This means that all those interested in a contract opportunity can submit a tender (which will have to be evaluated) even if they would previously not have passed the PQQ stage. The effect that this may have on existing resources will be kept under careful review.

#### **4. THE COUNCIL'S CONTRACT STANDING ORDERS**

- 4.1 The Council's existing Procurement Rules, Regulations & Contract Standing Orders ("the Contract Standing Orders") shall continue to apply to all contract award procedures commenced on or before 25 February 2015.
- 4.2 A new set of Contract Standing Orders are required to meet the changes that are now in place under the Regulations to cover procurement exercises that commenced after 26 February 2015. The new proposed Contract Standing

Orders (which are based on existing Contract Standing Orders) are attached. A summary of the principal changes to the existing Contract Standing Orders is set out in the table below:

<b>Standing Order Number</b>	<b>Description of Standing Order</b>	<b>Summary of Principal Proposed Changes</b>
SO7 & SO8	Exceptions where SO's do not apply	Removal of exception for proprietary and fixed price goods and services, and for where the contractor goes insolvent as there is no equivalent exception in the Regulations
SO14	Process to submit completed waiver forms to audit for retention in register	Deleted as this process has been superseded by an electronic system
SO19, SO21, SO42A & SO42B	Procurement thresholds, Selection of suppliers and Tender process	Tenders above £25,000 and below EU Procurement threshold must be advertised through Contracts Finder and South East Business Portal.  Tenders for works contracts between £172,514 and £4,322,012 must be advertised through Contracts Finder and South East Business Portal. A minimum of 6 tenders should be sought.
SO20	Contract values	Contract values include any right to extend the term of the contract.
SO21A	Selection of suppliers	Contracts over the EU Procurement threshold must be published in the Official Journal of the EU and on Contracts Finder.
SO22	Selection of Suppliers	PQQ's can only now be used for contracts above £172,514
SO23 - SO29 & SO91	Selection of suppliers - Works	Deleted – as can no longer have PQQ or Approved Lists except as mentioned in SO22
SO31, SO34 & SO43	Quotations process and Tender process	All tender documents (including specification, contract terms etc) must now be provided to potential suppliers.  Contracts must provide for payment of undisputed invoices within 30 days by the Council and all sub contractors through the supply chain.
SO35, SO36, SO41A, SO42, SO44, SO45 & SO47 - SO55A	Quotations process and Tender process	Quotations and Tenders can be processed manually or through the Council's Electronic Procurement System presently being rolled out

		(“EPS”).  Where the EPS is being used, officers must operate in accordance with it.
SO64A	Evaluation of EU Contracts	EU contracts must be evaluated in the award criteria as the most economically advantageous
SO66	Acceptance of tenders that do not meet conditions for acceptance	Deleted as the exceptions do not conform with the Regulations
SO69	Notification of Contract Award	Contract awards for tendered contracts must be published on Contracts Finder
SO77A	Contract awards register and records	A report pursuant to Regulation 84 of the Regulations must be completed for every EU Contract and Framework Agreement

4.3 As further Government Guidance is to follow and as the new processes evolve, there may be a need to be able to act quickly to make further changes to the new Contract Standing Orders. Therefore it is proposed that delegated authority is given to the Executive Director (Section 151 Officer), in consultation with the Head of Property Services and the Head of Legal and Democratic Services to make further changes to the Contract Standing Orders as and when the need arises.

## 5. FINANCIAL IMPLICATIONS

5.1 Whilst the new Regulations will bring about more streamlined procurement procedures which will benefit the Council and those it does business with, there may be an increase in work for officers involved in letting contracts especially as PQQs for medium sized contracts (above £25,000 and below £172,514) are no longer permitted. This will be kept under review.

## 6. ENVIRONMENTAL IMPLICATIONS, CRIME & DISORDER IMPLICATIONS AND EQUALITY & DIVERSITY IMPLICATIONS

6.1 None

## 7. PORTFOLIO HOLDER’S COMMENTS

7.1 The Portfolio Holder for Finance and Efficiency agrees with the recommendations of this Report.

## 8. RECOMMENDATIONS

8.1 It is recommended that the Council:-

- (a) Adopts the revised Contract Standing Orders set out in Appendix 1 for all procurement procedures commenced on or after 26 February 2015.
- (b) That the previous Contract Standing Orders (version 14 March 2013) continue to be followed for all contract award procedures commenced on or before 25 February 2015.
- (c) That delegated authority be given to the Executive Director (Section 151 Officer) in consultation with the Head of Property Services and the Head of Legal and Democratic Services, to make further revisions to the Contract Standing Orders as and when required.

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**Background Papers:**

Public Contracts Regulations 2015  
Procurement Policy Notes 02/15 & 03/15



# **PROCUREMENT RULES, REGULATIONS & CONTRACT STANDING ORDERS**

APPLICABLE FOR PROCUREMENTS AFTER 26 February 2015

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## **PROCUREMENT RULES, REGULATIONS & CONTRACT STANDING ORDERS INTRODUCTION**

This Procurement Rules, Regulations & Contract Standing Orders encompasses the Council's Procurement Strategy, the Council's Contract Standing Orders and the Council's rules and guidelines to good procurement.

This document is intended to provide rules and procedures to be followed in order to obtain best value, comply with the Law which governs spending and to safeguard public funds as well as to protect the interests of individuals involved in procurement. It provides the framework for the procurement of all works, goods and services and must be complied with by all Members, Officers, Consultants and other external Agents appointed to act on behalf of the Council in procurement matters.



# PART A

## PROCUREMENT STRATEGY

### A1. INTRODUCTION

A1.1 The Council's vision is to be an outward looking council working closely with the community and in partnership with others to enhance the quality of lives of present and future generations. This is to be achieved by:

- Conserving the environment
- Helping to create and maintain a local economy bringing opportunity and benefit to the area
- Understanding and fulfilling local needs.

A1.2 The Councils Corporate Plan 'Delivering for our Communities' identifies four key corporate priorities:

- Improving services to the customer
- Managing our resources effectively
- Maintaining excellent performance in the delivery of our services
- Developing effective partnerships with other local organisations.

A1.3 Procurement plays a fundamental role in the delivery of these key priorities. It is the foundation to providing cost effective, efficient, high quality and responsive services. It is therefore crucial that the Council has a clear strategic framework for the procurement of goods, services and works to enable the benefits of good procurement practice to be achieved and as a consequence help to deliver on the key corporate priorities.

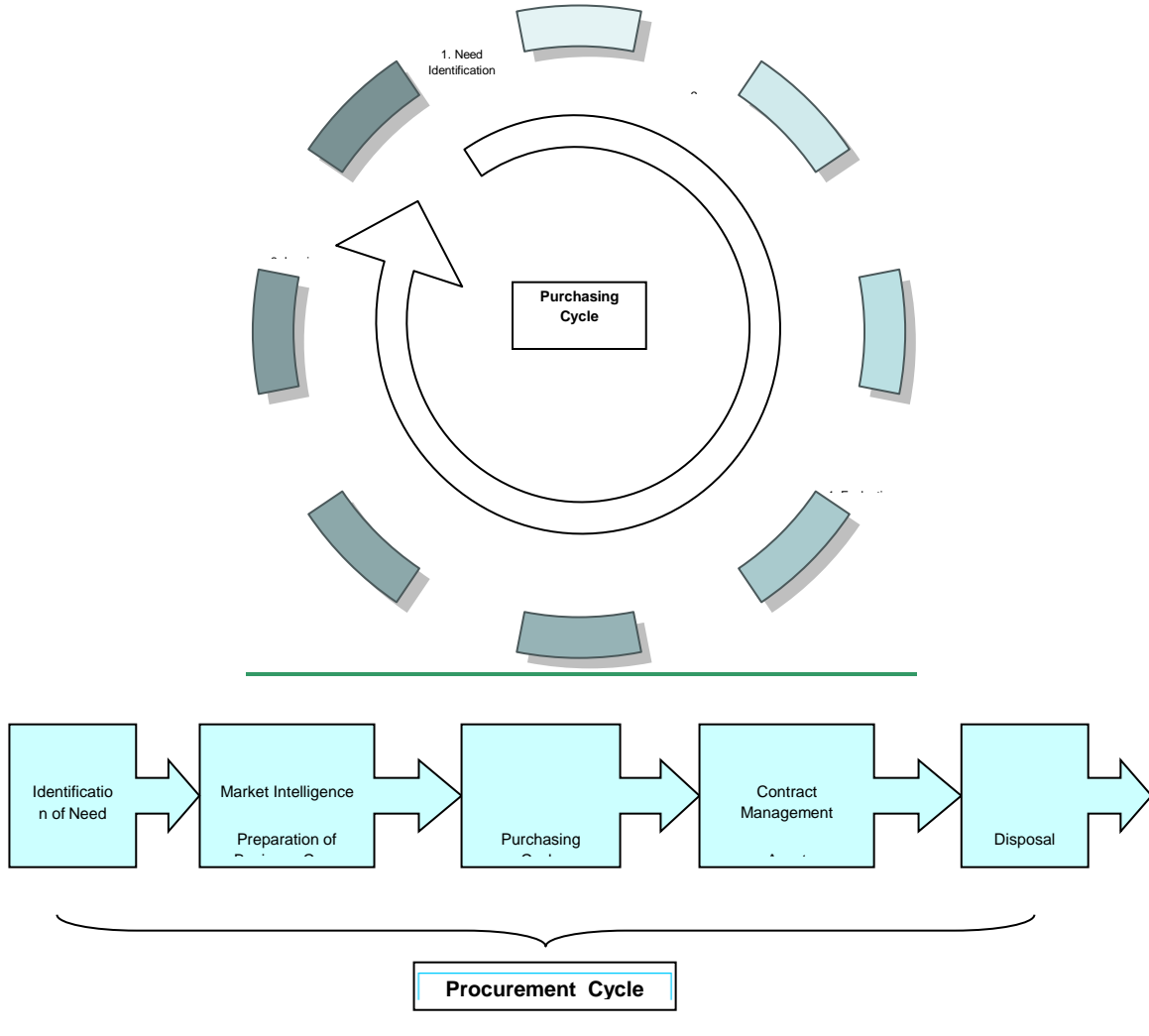
A1.4 The Council continues to face significant financial pressures meaning that efficiencies need to be identified across all service areas. To support this process of service reviews has been established by the Council's executive which is based upon considering all aspects of service delivery which range from restructure / reposition of an in-house service to transfer of a service to another provider. The Council's medium term financial plan sets out efficiency targets to be achieved by all services. In conjunction with this efficiency programme the procurement process will continue to play an important part in supporting services achieve their savings targets.

A1.5 The aim of this procurement strategy is to set out the overarching procurement principles of the Council. It identifies processes and policies that support procurement activity and includes a plan for future developments and improvements. The principles contained in this strategy should be applied to all procurement activity. This Strategy should be read alongside the Council's Standing Orders as to Contracts and Financial Regulations.

### A2. WHAT IS PROCUREMENT

A2.1 Procurement is defined as *"the process of acquiring goods, works and services, covering both acquisition from third parties and from in-house providers. The process spans the whole cycle from identification of needs, through to the end of a services contract or the end of the useful life of an asset. It involves options appraisal and the critical "make or buy" decision which may result in the provision of services in-house in appropriate circumstances"*.

A2.2 Procurement is not the same as purchasing. Purchasing is only one element of the process i.e. the basis of the acquisition stage in the Procurement Cycle. The procurement cycle starts with the identification of a need and moves through purchasing decisions to the end of a service or the end of the useful life of an asset. Procurement decisions would cover why, how and where in respect of service delivery options.



### **A3. SCOPE OF THE PROCUREMENT STRATEGY**

A3.1 The Council's combined gross revenue and capital budget for 2015/16 is £87m (excluding housing and council tax benefits). The allocation of this spending across services can be found on the Council's web site under Council Tax.

A3.2 In 2013/14 £41m was spent externally on the supply of goods, works and services. In 2013/14 the Council used over 1,800 different suppliers and contractors and processed over 37,000 invoices.

A3.3 Monitoring of the supplier base is crucial to ensuring efficiency savings through rationalisation and aggregation of spend. Where opportunities for consolidation are identified these will be pursued with services and suppliers to achieve efficiencies.

### **A4. ROLES AND RESPONSIBILITIES**

A4.1 The Executive Director (S151 Officer) and Portfolio Holder for Finance & Efficiency will assume the roles of Chief Officer and Member Procurement Champions respectively and the subsequent implementation and delivery of this strategy.

A4.2 The Procurement Champions will ensure that procurement is seen as a strategic issue and will be responsible for the adoption of this strategy. The Central Purchasing Unit provides specialist purchasing expertise to the organisation and will work closely with services to ensure compliance with both internal and external rules and procedures and that best practice is adopted.

A4.3 Specialist areas of procurement are the responsibility of individual services, as follows:

- ICT (hardware and software) – ICT Services
- Vehicles and Plant – Environment Services (Transport Manager)
- Property Maintenance – Property Services

A4.4 The Council's Asset Management Group maintains a close monitoring role over all property related issues (Acquisitions, disposals, planned maintenance programme). The group is chaired by an Executive Director with membership of the Finance & Efficiency and Housing Portfolio Holders.

A4.5 The Council's Internal Audit and Finance teams provide support and advice on the application of internal Standing Orders and Financial Regulation.

A4.6 The Council will ensure that all employees with identified procurement responsibilities receive ongoing training to ensure they have the skill sets required to deliver this strategy. All other employees shall be familiar with this strategy and highlight any procurement issues or potential opportunities with their line manager.

A4.7 Effective procurement across the Council will be achieved through the active participation of Portfolio Holders and Heads of Service as well as those officers with delegated responsibility for the control of budgets.

A4.8 Apart from a few limited exceptions, all orders for goods and services shall be placed using the Central Purchasing Unit, in order to benefit from:

- Purchasing expertise

- An overview of purchasing activity, ensuring opportunities can be maximised
- Reductions in costs through consolidation and use of centralised contracts.

## **A5. PROCUREMENT PRINCIPLES**

A5.1 All procurement across the Council shall follow these guiding principles:

- Ensure that all procurement options are considered in the delivery of services (in-house, partnering, collaboration, outsourcing etc) so that value for money is achieved from a varied and competitive supply market.
- Adoption of fair, transparent and proportionate arrangements within the procurement process to encourage interest from a wide range of service providers, suppliers and contractors.
- All procurement exercises will seek to achieve best value for money. This will not always result in the lowest price but shall take into account cost, quality, sustainability and localism. The evaluation of cost shall include the whole life cost of the product or service whilst at the same time considering the impact on the environment, economy and social development.
- The centralised procurement team will seek to continually review and improve procurement practices in order to deliver efficiencies for both the Council and supplier base. This will include the adoption of the latest technology in the procurement process
- Procurement officers will seek to develop appropriate solutions for contracts which present the most attractive and cost efficient way of offering service and supply requirements.
- The Council will ensure compliance with EU legislation, national regulations and the Council's Contract Standing Orders and Financial regulations. All employees involved in any procurement activity must be fully conversant with these prior to undertaking any procurement.
- The Council will continue to maintain close working relationships with other local authorities to maximise collaborative procurement opportunities, deliver economies of scale and widen the scope of its experience. This will be achieved primarily through the Hants & Isle of Wight Strategic Procurement Partnership. The use of wider national and regional framework agreements will also be considered in appropriate cases.
- Suppliers and service providers will be paid in a timely manner, in accordance with contract terms and conditions. The Council will pay all undisputed invoices for goods and services within 30 days of receipt of invoice. The Council will ensure all contracts with its suppliers include provision requiring suppliers to include equivalent provisions in all sub contracts through the supply chain.
- The Council has adopted the Small Business Friendly Concordat and is committed to supporting and working with small, local businesses. Procurement exercises and relationships with small and medium sized enterprises will be undertaken in a manner consistent with the principles set out in the Concordat.

## **A6. NEW FOREST BUSINESS PARTERSHIP**

A6.1 In developing the Council's relationship with local businesses, the Council will continue to support and promote the New Forest Business Partnership which has now been in existence since 2001. The aims of the partnership are to improve the relationship between commercial organisations and local government, promote better business to business relationships and to build a stronger economy and bringing greater prosperity to the local community.

A6.2 The Partnerships aims will be delivered through a range of activities:

- NFDC funding for a Business Development Officer resource
- Co-ordination of activities of the partnership
- Regular networking meetings
- Continued development and promotion of 'Brand New Forest' card scheme
- Working with other Hampshire LA's to deliver joint projects including the South Hants meet the buyer events and the NF Sustainable Business Network
- Training events for partnership members.

## **A7. E-PROCUREMENT**

A7.1 The Council recognises the benefits to be gained through the use of technology in the procurement process and is committed to continually reviewing and modernising its own arrangements.

A7.2 The Council uses an Electronic Procurement System for some procurement exercises and this will be adopted across the organisation.

A7.3 The Council encourages suppliers to submit invoices electronically and this is a requirement for all new suppliers.

## **A8. PARTNERSHIPS & COLLABORATION**

A8.1 The Council understands the benefits of working together with other organisations to deliver improved services and to realise financial efficiencies. There are many recent examples of partnerships and collaborations that are delivering efficiencies to the organisation ranging from shared use of premises, delivery of support and professional services to partners and collaborative procurement arrangements across Hampshire.

A8.2 The Council will seek to explore further opportunities to work with partner organisations, local communities and Town and Parish Councils to facilitate improved services to the public, deliver community benefits and reduce the cost burden on the taxpayer. This could be through the shared use of assets, skills or resources.

A8.3 The Right to Challenge is a national process being introduced through the Government's Localism Act. It is one of the new 'community rights' which makes it easier for voluntary and community groups or council employees to bid to run council services. The Right to Challenge is a way for groups with good ideas about how services can be run differently or better to have the opportunity to get their ideas heard fairly, and where appropriate allow them the time to prepare bids to participate in an open competition to win the right to provide the service. The Council has processes to determine whether any expression of interest received is accepted. If accepted a procurement exercise for a service must be conducted. Authorities must consider whether and how an expression of interest and any subsequent exercise can promote or improve the social, economic or environmental wellbeing of its area. They must also comply with existing public procurement law. Failure to do this could provide grounds for legal challenge.

A8.4 The Council will continue to play an active role in the Hants and Isle of Wight Strategic Procurement Partnership to deliver procurement efficiencies through collaboration. These efficiencies will be achieved through aggregation and joint procurement exercises,

standardisation of specifications and the sharing of procurement skills and information across organisations.

## **A9. SUSTAINABLE PROCUREMENT**

A9.1 The Council recognises the role its procurement of works, goods and services has in furthering sustainable development. Procurement decisions have major socio-economic and environmental implications, both locally and globally. The Council will therefore strive to adopt sustainable procurement practices consistent with BS8903 (Sustainable Procurement Guidance Standard).

A9.2 The aim of this approach is to ensure that employees, contractors and suppliers are aware of the Council's commitment to long term social, ethical and environmental sustainability. We will seek to protect and enhance the environment and create better lives, wellbeing and opportunities for the people of the New Forest through our procurement processes.

A9.3 The Council is committed to the responsible management of its procurement processes in order to deliver value for money, whilst actively pursuing environmentally and socially responsible products, services and buildings.

A9.4 This will be achieved by:

- Taking into account the need to minimise emissions and reducing the negative impacts of transportation when purchasing goods and services
- Taking steps to minimise carbon dioxide and other greenhouse gas emissions through the detailed consideration of products and services procured
- Considering the environmental performance of all suppliers and contractors, and encouraging them to conduct their operations in an environmentally sensitive manner
- Maximising the use of recycled products and products derived from reclaimed materials
- Considering a basic life cycle analysis of products to minimise the adverse effects on the environment resulting directly or indirectly from products
- Selecting products / services that have minimal effect on the depletion of natural resources and biodiversity
- Other things being equal, giving a preference to Fairtrade, or equivalent, and ethically sourced and produced goods and services
- Working in partnership with other organisations to improve sustainable procurement
- Encourage more effective working with diverse suppliers (micro, small and medium sized enterprises) and ensure that local enterprises are encouraged to bid for the Council's business
- Ensuring all relevant procurement contracts and tenders contain sustainability specifications as appropriate to the product or service being procured
- Maximising the opportunities for employment and economic gain within New Forest District Council communities
- Comply with all UK and EU statutory regulations and legislation and ensuring our suppliers do the same

- Training all procurement staff on sustainability considerations and encouraging internal purchasers to review their consumption of goods and services and adopting more environmentally friendly products
- Communicate policy to all staff, suppliers and partners.

# PART B – CONTRACT STANDING ORDERS

## INTRODUCTION TO CONTRACT STANDING ORDERS

The Council has a statutory duty to make Standing Orders for the procurement of goods, services and works in order to achieve competition and to regulate procedures for procurement.

These orders are intended to provide rules and procedures to be followed in order to obtain best value, comply with the Law which governs spending and to safeguard public funds as well as to protect the interests of individuals involved in procurement. These Contract Standing Orders provide the framework for the procurement of all works, goods and services and must be complied with by all Members, Officers, Consultants and other external Agents appointed to act on behalf of the Council in procurement matters.

Contract Standing Orders are mandatory rules and must be followed by all officers. These orders are highlighted in bold within a blue box and are numbered with a SO prefix. This document also contains best practice procurement rules which are not highlighted in a blue box.

**SO1 This document applies to all of the Council’s external procurement regardless of the source of funding. This also includes contracts where there is no cost to the Council but where there is income generation for a supplier / contractor.**

**SO2 It is a disciplinary offence to fail to comply with these Contract Standing Orders.**

**SO3 Employees have a duty to report breaches to their Head of Service and the Internal Audit Manager.**

**SO4 The Council’s Section 151 Officer and the Monitoring Officer monitor compliance with these Standing Orders in accordance with their responsibilities under Section 151 of the Local Government Act 1972 and Corporate Governance.**

## B1. EXCEPTIONS

There are certain exceptions where Contract Standing Orders do not apply. The following outlines the exceptions to Contract Standing Orders.

**Contract Standing Orders do not apply where:**

**SO5 The Council is to procure works, goods or services through a Consortium or similar body, provided the Council is a member of the Consortium and the Consortium’s or similar body’s rules are followed.**

**SO6 Works carried out under an Agency arrangement which states that the Standing Orders of the Principal Authority apply.**

**SO7 and SO8 DELETED**

**SO9 The appointment of counsel or specialist solicitors by the Head of Legal and Democratic Services in consultation with the relevant Director or Head of Service.**

**SO10 The appointment of specialist experts agreed by the Council’s Chief Executive to advise the Council in the conduct of legal matters and legal proceedings.**



**SO11** These Standing Orders do not apply to the purchase, letting or disposal of land in accordance with the Council's Asset Management Policy and the Council's Scheme of Delegations.

## **B2. WAIVERS**

A waiver is the process to follow where circumstances mean that Contract Standing Orders cannot be adhered to. Any Contract Standing Order may be waived in accordance with the following rules:

**SO12** A waiver must not result in a breach of EU Procurement Regulations for contracts within the EU tendering thresholds or of procurement law below EU procurement thresholds. In all cases, the Council must apply general principles of equal treatment, transparency and non-discrimination.

**SO13** An officer may request a waiver by completing the waiver template which can be found on the procurement pages on Forestnet. The following must be recorded:

- Which Contract Standing Order is being waived
- The value of the contract
- A short description of the reason for the waiver
- A demonstration of value for money
- An evaluation of risks to the Council
- Authorised as per the table below:

<b>Value of Contract</b>	<b>Approval Required</b>
<b>£0 - £10,000</b>	<b>Head of Service</b>
<b>£10,000 – EU Procurement Levels (See Para B3.3)</b>	<b>Head of Service &amp; any member of the Executive Management Team</b>
<b>EU Procurement Levels and above*</b>	<b>Chief Executive</b>

\*Please note that breaches of the EU Procurement Rules and the general law of procurement cannot be waived; this threshold applies to the waiving of the Council's Contract Standing Orders.

**SO14 DELETED**

## **B3. PROCUREMENT PROCESS**

The procurement process is the procedure to follow to ensure that the Council obtains the best value for money which demonstrates a fair, open and transparent process and complies with Procurement Law.

## In-house Services

**SO15 Where the Council has established expertise in a function, whether it be direct works (engineering, building, grounds maintenance etc) or professional services (accountancy, audit, legal, surveying etc) all relevant works and services shall be delivered by the service with the expertise.**

Where the in-house service provides the works, goods or service and makes a direct charge for a specific activity, there are a number of principles that must be followed by the commissioning officer and the delivering service, these are as follows:

- In the first instance the commissioning officer has the responsibility to establish whether the works or services can be delivered by a business unit within the organisation.
- The commissioning officer is responsible for identifying the scale of works or service to be procured and the basis for securing value for money for their service.
- The commissioning officer must discuss the proposed works or service with the delivering business unit in the first instance and decide if it is within the business unit's capabilities and capacity to deliver, before any attempt to obtain external prices is made.
- Provided the business unit has the skills and the capacity and is able to meet the project timetable (which must be reasonable & sufficiently planned in advance) then the work shall be allocated to the business unit to undertake.
- Any new works or services to be commissioned that would likely result in a material increase in resources or additional investment shall need the formal approval of EMT before any such works or services are commissioned.
- The proportion of works to be sub-contracted to third parties shall be discussed and agreed with the commissioning service. This may be necessary where elements of the job or service require specialist skills that the in-house team do not possess or where there are insufficient resources available within the in-house service. In these circumstances the relevant service shall be responsible for procuring any external resources within these Contract Standing Orders.
- The delivering service shall provide an estimate of the cost of the works, based on a sufficiently detailed specification. This estimate shall be built up to show labour, material and any other associated costs so that there is a baseline against which outturn costs can be compared. Any queries relating to this initial estimate shall be raised and discussed at the time. It should be noted that hourly charge out rates will not always appear comparable with external rates due to internal overheads; however quantities and material prices should be directly comparable to that which is expected.
- Costs will be charged on actuals. Internal invoices for completed works shall be submitted to the commissioning service within four weeks of completion of the project, with any variations clearly identified, having previously been discussed and agreed with the commissioning service.
- The delivering service will be responsible for ensuring that any likely variations against original estimated are communicated to the commissioning service at the time they arise so that approval / budget provision can be allocated. This may be as a result of additional works or unforeseen problems.
- Works shall be undertaken in accordance with the design and specification.
- Any disputes in relation to the delivery of the work or service shall in the first instance be discussed between the officers managing the works. If matters remain unresolved the matter shall be referred to the business unit managers for resolution.

### B3.1 STAGE 1 – NEED IDENTIFICATION

The first step in the procurement process is to identify exactly what is needed. You will need to determine which of the following categories the need fits into:

**Goods** - Goods contracts have as their objective the purchase, lease, rental or hire purchase of products. A contract having as its objective the supply of products and which also covers, as an incidental matter, siting and installation operations shall be considered as a goods contract.

**Services** – Service contracts can be described as contracts other than works or goods contracts having as their objective the provision of a service. A contract having as its objective both products and services shall be considered to be a “service contract” if the value of the services in question exceeds that of the products covered by the contract. Examples are as follows; telecommunications services, consultancy, insurance, banking and investment services, computer and related services, advertising services, building-cleaning services, publishing and printing services.

**Works** – Works contracts have as their objective either the execution, or both the design and execution of works related to one of the activities listed below or works, or the realisation, by whatever means, of works corresponding to the requirements specified by the contracting authority. “Works” means the outcome of building or civil engineering works taken as a whole which is sufficient of itself to fulfill an economic or technical function. Examples are general construction of buildings, civil engineering works and site preparation.

**SO16** If the need relates to the following specialist areas you will need to liaise with the relevant officer. The responsibility of the procurement process will sit with these business units; however the preparation of the specification is the responsibility of the Contract Administrator. Please see B3.2 for more information.

- **ICT – Head of ICT Services**
- **Vehicles & Plant – Transport Manager**
- **Property Maintenance – Property Manager**
- **Goods & Services (except for above) – Procurement Manager**

The following will need to be considered at this stage of the procurement process:

- What are the requirements and goals of the need?
- What is the timetable and timescales of the procurement?
- Is there a budget in place for the need?
- Are there any risks to the procurement?
- What are the relevant roles and responsibilities?
- Are there any sustainability issues?
- Can the need be sourced / provided from in-house teams?

**SO17** All contracts over £10,000 must be recorded on the Council’s forthcoming contracts register by the contract administrator at the commencement of the procurement process. This can be accessed through the Procurement pages on Forestnet.

A Gateway review is a process whereby each stage of a procurement project must be signed off by the relevant Head of Service before continuing to the next stage of the procurement. The Gateway review ensures that the procurement project is properly defined, effective

communication is established, roles and responsibilities have been identified and assigned, risks identified and managed and the overall procurement is well controlled.

**SO18 Gateway reviews must be undertaken on all contracts with an estimated value in excess of £25,000. The gateway review form and instructions can be found on the Procurement pages on Forestnet.**

Gateway review stages can be identified using the logo below. A gateway stage one review must be undertaken at this stage of the process.



### **B3.2 STAGE 2 – SPECIFICATION**

A specification must be prepared whenever the Council procures goods, works or services.

A specification is a full and accurate statement of what is required. It forms part of the contract documentation that is sent to suppliers / contractors when inviting them to quote or tender.

Where a supplier is likely to have some contact with children, young persons or vulnerable adults during the contract, the specification must require the supplier to have implemented robust Safeguarding procedures. Please see the Safeguarding Children, Young People and Vulnerable Adults Policy (Section 9.2) for further information.

A specification has three main functions:-

- To communicate to a supplier exactly what is required as a means of measurement of the delivery of works or supply.
- To provide a record against by which suppliers performance can be measured.
- To ensure that open and effective competition is achieved.

A good specification should:

- Refer to and make use of industry standard specifications where appropriate for the goods services or works being procured.
- Include a clear and concise description of what is required.
- Provide sufficient information for suppliers / contractors to cost the products they can offer.
- Allow a supplier / contractor to price in a consistent manner.
- If applicable, allow suppliers / contractors to offer a product that may incorporate different technical solutions.

The specification should normally be written by the Contract Administrator.

All necessary documentation must be prepared before the procurement process commences, including, where appropriate, specification, contract terms and invitation to tender (where required). More details on the required documentation are set out in each section of the procurement method and process.

### B3.3 STAGE 3 – PROCUREMENT METHOD & PROCESS

The contract quotation or tendering stage is split into the following areas:

- 1) Procurement thresholds to determine the procurement method
- 2) Advertisement
- 3) Selecting the suppliers / contractors (where applicable to the procurement method)
- 4) Insurances
- 5) Procurement method
  - Method A – Quotations
  - Method B - Tenders
  - Method C - Framework Agreement
  - Method D - EU Tenders

Choosing the correct procurement method is very important and must only be done by employees who have had the appropriate training and experience. If you require any help or guidance please contact the Central Purchasing Unit.

#### B3.3.1 Procurement thresholds

**SO19** There are various procurement methods that are to be used depending on the value and type of contract. The threshold values are detailed in the table below:

Works / Goods & Services	Contract Value	Mandatory Minimum Requirement	Alternative Procurement Method
Works, Goods & Services	£0 - £5,000	A minimum of 1 written Quotation must be obtained. (Method A)	Quotations (Method A) or Tender (Method B) or Framework Agreement (Method C)
Works, Goods & Services	£5,000 -£25,000	A minimum of three written quotations must be obtained. (Method A)	Tender (Method B) or Framework Agreement (Method C)
Works, Goods & Services	£25,000 - £172,514*	Tenders to be sought through South East Business Portal and Contracts Finder with at least two tenders returned. (Method B). Gateway review required.	Framework Agreement (Method C)
Works	£172,514*- £4,322,012*	A minimum of six tenders to be invited Tenders to be sought through South East Business Portal and Contracts Finder with at least three tenders returned. (Method B). Gateway review required.	Framework Agreement (Method C)
Works	Over £4,322,012*	Follow EU Procurement Procedures. (Method D). Gateway review required.	Framework Agreement (Method C)
Goods & Services	Over £172,514*	Follow EU Procurement Procedures. (Method D).	Framework

Works / Goods & Services	Contract Value	Mandatory Minimum Requirement	Alternative Procurement Method
		Gateway review required.	Agreement (Method C)

\* EU limits correct as 1 January 2014 please see procurement pages on Forestnet for the most up to date thresholds.

### How to calculate contract values

**SO20 Contract values must be estimated exclusive of VAT. Contract values must not be disaggregated to reduce individual contract sums in applying the procurement rules. The contract value must be estimated for the whole life of the contract, which includes any right to extend the contract by a further period.**

#### B3.3.2 Advertising of Opportunities and Selection of Suppliers

The process of advertising opportunities and selecting suppliers will differ depending on whether the contract is for works, goods or services and the value of the procurement.

For lower value procurements, officers can select suppliers using market knowledge and advertising through the South East Business Portal and obtain written quotes as required by SO19.

**SO21 The Council must advertise all contracts over £25,000 up to the EU Thresholds through the South East Business Portal and the “Contracts Finder” web-based portal.**

**SO21A All contracts with a value above the EU Public Procurement Directive thresholds must follow SO21 and the EU procurement rules by publishing a contract notice in the Official Journal of the European Union (OJEU).**

**SO22 Contract Administrators shall not use Pre –Qualification Questionnaires in most cases, but may do so in the following circumstances:**

- a). Contracts for Goods and Services above the EU Threshold\*
- b). Contracts for Works over £172,514\*

**Any Pre-Qualification Questionnaire must follow the approved form which can be found on Forestnet. Evaluation of the PQQ must follow approved procedures which can also be found on Forestnet.**

**Contracts above the EU Threshold must follow the EU Procurement rules in any event.**

**SO23 – SO29 DELETED**

\* EU limits correct as 1 January 2014 please see procurement pages on Forestnet for the most up to date thresholds.

If you are using a framework agreement then the suppliers from the framework can be used. For information on how to select a supplier using a framework agreement please see para B3.3.6. It is the Contract Administrator’s responsibility to ensure the proposed framework agreement can be legitimately used by the Council, i.e. the Council or organisation type is named in the framework agreement.

If EU Procurement Procedures apply please see para B3.3.7 for guidance.

### B3.3.3 Insurance

Suppliers / contractors are required to hold and maintain appropriate levels of insurance during the period of the contract. The insurance must be seen prior to the award of the contract.

**SO30 The Council requires that all suppliers / contractors must have a standard level of insurance. The current standards are:**

Contract Type	Public Liability Insurance	Employer's Liability Insurance	Professional Indemnity Insurance
Goods	£5,000,000	£5,000,000	Not applicable
Services	£5,000,000	£5,000,000	£500,000 - £5,000,000*
Works	£10,000,000	£10,000,000	Not applicable

\*A risk assessment must be carried out to determine the required value of the professional indemnity insurance. The risk assessment template can be found under the Procurement pages on Forestnet.

## 4 – Procurement Method

### Method A - Quotation process

#### 4.A1 £0-£5,000 – One Quotation

The procurement of any works, goods or services up to the value of £5,000 shall require a minimum of one written quotation. Further quotations or a formal tender process can be sought if it is considered appropriate.

It is the Contract Administrator's responsibility to ensure that value for money is being achieved when obtaining one written quotation.

The procurement of goods or services is generally managed through the Central Purchasing Unit (CPU). CPU can manage the invitation of suppliers, receipt of quotations and the recording of quotations. It is the Contract Administrator's responsibility to contact CPU if the goods or services procurement is to be managed through CPU

#### 4.A2 Required Documents

**SO31 At a minimum two documents are required for obtaining a quotation. All documentation must be provided to potential suppliers when requesting a quotation. These are:**

**A) Specification – This is a written description of the exact works, goods or service required. This can include any required designs, standards, materials and quality. See paragraph B3.2 for details.**

**B) The Conditions of Contract** – The conditions of a contract are the terms and conditions that set the rights and obligations of the contracting parties when a contract is awarded or entered into. These include 'general conditions' which are common to all types of contracts, as well as 'special conditions' which are peculiar to a specific contract. All contracts must provide for payment of undisputed invoices within 30 days by the Council, contractors and sub-contractors through the supply chain.

A TUPE statement must be included where applicable. TUPE could apply when the Council engages a contractor to do work on its behalf, reassigning such a contract or bringing the work "in-house". This can, therefore, encompass an initial (or first generation) outsourcing, a subsequent (or second generation) outsourcing or an in-sourcing. TUPE can be a complex area and advice should be sought from Human Resources.

Choosing the correct contract is very important and must only be done by employees with the relevant professional expertise. The post holders below have been given the appropriate training and authority to choose a type of contract for their relevant Service / Business Unit. Please contact the post holder or Legal Services for guidance on which contract to use.

POSITION	SERVICE / BUSINESS UNIT
Property Manager (P01392)	Property Services
Senior Project Manager	Property Services
Procurement Manager (P00218)	All Services (Goods & Services Only)
Building Works Manager (P00191)	Building Works
Grounds & Engineering Works Manager (P01346)	Environment Services
Planning Policy Manager	Planning & Transportation
Coastal Engineering Manager	Coastal Group
Principal Engineer (P00226)	Engineering Design

#### 4.A3 Obtaining one written quotation

**SO32** Once the supplier has been identified (see paragraph B3.3.2) then the supplier must be contacted to invite them to provide a quotation. This can be done by the EPS, email or written letter. The request for a quotation must include a specification, the terms of the contract, a pricing schedule (if applicable) and a date by which the quotation should be returned. The supplier must have adequate time to price and supply the quotation.

A supplier can be contacted by telephone. However, care should be taken to ensure that the supplier receives the specification and the terms of the contract by either the EPS, email or letter.

#### 4.A4 Receipt of one written quotation

**SO33** The quotation must be received in written form either by the EPS, email or post. The quotation should be returned to and opened by the Contract Administrator.



Telephone quotations are permitted, however, these must be confirmed by an email or letter from the supplier / contractor.

#### **4.A5 £5,000 - £25,000 Three Quotations**

The procurement of any works, goods or services from the value of £5,000 to £25,000 shall require a minimum of three quotations. Further quotations or a formal tender process can be sought if it is considered appropriate. Quotes can be obtained by officers manually or by using the Electronic Procurement System. Quotes using the Electronic Procurement System can also be advertised on South East Business Portal. Advice on using the EPS can be sought from CPU.

The procurement of goods or services is generally managed through the Central Purchasing Unit (CPU). CPU can manage the invitation of suppliers, receipt of quotations and the recording of quotations. It is the Contract Administrator's responsibility to contact CPU if the goods or services procurement can be managed through CPU. The Council is in the process of rolling out an Electronic Procurement System to be used in conjunction with CPU.

To ensure that the quotation process is as transparent and open as possible the following procedures should be followed when obtaining written quotations from suppliers / contractors.

**SO34 At a minimum three documents are required for obtaining quotations. All documentation must be provided to potential suppliers when requesting a quotation. These are:**

**A) Specification** – This is a written description of the exact works, goods or service required. This can include any required designs, standards, materials and quality. See paragraph B3.2 for details.

**B) Award Criteria** – The award criteria sets out how you are going to evaluate the returned quotations. The award criteria must be pre-agreed with your line manager and sent out with the specification to inform the supplier how their quotation will be evaluated.

**Either of the following evaluation methods should be used:**

**Price only** – This should only be used on a fixed specification where no variants can occur. The lowest priced quotation that can meet the specification will be awarded the contract.

**Most economically advantageous** – The award takes place based on various criteria related to the scope of the specific contract, such as the quality, cost, technical merit, environmental or social characteristics, after-sales support, technical assistance and delivery date. Each criterion should be individually stated with the maximum score available and the weighting of the criterion.

**C) The Conditions of Contract** – The conditions of a contract are the terms and conditions that set the rights and obligations of the contracting parties when a contract is awarded or entered into. These include 'general conditions' which are common to all types of contracts, as well as 'special conditions' which are peculiar to a specific contract. All contracts must provide for payment of undisputed invoices within 30 days by the Council, contractors and sub-contractors through the supply chain.

**A TUPE statement must be included where applicable. TUPE could apply when the Council engages a contractor to do work on its behalf, reassigning such a contract or**

bringing the work "in-house". This can, therefore, encompass an initial (or first generation) outsourcing, a subsequent (or second generation) outsourcing or an in-sourcing. TUPE can be a complex area and advice should be sought from Human Resources.

Choosing the correct contract is very important and must only be done by employees with the relevant professional expertise. The post holders below have been given the appropriate training and authority to choose a type of contract for their relevant Service / Business Unit. Please contact the post holder or Legal Services for guidance on which contract to use.

POSITION	SERVICE / BUSINESS UNIT
Property Manager (P01392)	Property Services
Senior Project Manager	Property Services
Procurement Manager (P00218)	All Services (Goods & Services Only)
Building Works Manager (P00191)	Building Works
Grounds & Engineering Works Manager (P01346)	Environment Services
Planning Policy Manager	Planning & Transportation
Coastal Engineering Manager	Coastal Group
Principal Engineer (P00226)	Engineering Design

#### 4.A6 Inviting Suppliers to provide a quote

**SO35** Once the suppliers have been identified (see paragraph B3.3.2) then the suppliers must be contacted to invite them to provide a quote. This can be done manually by email or written letter or through the Electronic Procurement System including a specification, award criteria, the terms of the contract, a pricing schedule (if applicable) and a date by which the quote should be returned. The supplier must have adequate time to price and supply the quotation. As a guide it is suggested that two weeks is an adequate time period but this may vary depending on the nature of the procurement.

#### 4.A7 Receipt of quotations

**SO36** Each service or business unit shall nominate an officer responsible (who is independent of procuring) for the receiving and retaining of returned quotations (manual) or shall operate in accordance with the Electronic Procurement System.

For manual quotes, SO37-SO41 shall apply:

**SO37** Quotation instructions shall clearly state that the quotations must be returned to the nominated officer only. This can be by email or by post. Returned quotations must be held securely and unopened by the nominated officer until the specified return date.

**SO38** Quotations must not be returned to the Contract Administrator.

**SO39** Suppliers must be instructed to clearly identify their email or written response as a quote.

**SO40** The Contract Administrator must supply the details of the suppliers that have been invited to quotation to the nominated officer prior to the quotations being received. This can be recorded using the quotation opening form available on the procurement pages of Forestnet.

**SO41** Any quotations received after the specified opening date whether by post or email should not be opened or included in the evaluation.

**SO41A** Where the Electronic Procurement System is being used, the service or business unit shall operate in accordance with the Electronic Procurement System.

#### 4.A8 Opening / Recording of quotations

**SO42** For manual quotes, the received quotations should all be opened at the same time on the specified opening date. It is best practice for two officers to open the quotations together. The quotations must be recorded on the quotation opening form. The quotation opening form is available on the Procurement pages of Forestnet. The form should be signed by both members of staff who have opened the quotations and must be retained as per the Council's retention policy. Where the Electronic Procurement System is being used the service or business unit shall operate in accordance with the Electronic Procurement System.

#### Method B - Tender process



The tender process is a more formal process designed for higher value and higher risk contracts.

**SO42A** any works, goods or services contract between the value of £25,000 and £172,514\* require a minimum of three tenders to be sought through the South East Business Portal and Contracts Finder with a minimum return of 2 tenders.

**SO42B** any works contracts between the values of £172,514\* and EU Procurement Threshold (see Para B3.3) require a minimum of six tenders to be sought through South East Business Portal and Contract Finder with a minimum return of three tenders.

\* EU limits correct as 1<sup>st</sup> January 2014. Please see procurement pages of Forestnet for the most up to date thresholds.

A gateway stage two review (pre-tender) must be undertaken at this stage of the process.

To reduce the risk of bid rigging and to be as transparent as possible the following tender procedures should be followed.

#### 4.B1 Required Documents

**SO43** The tendering procedures require a full Invitation to Tender (ITT) document to be completed. The ITT encompasses many documents but at this stage you should have at least the following, which must be prepared before the start of the process:

**A) Specification.** This is a written description of the exact works, goods or service required. This can include any required designs, standards, materials and quality. Please see paragraph B3.2 for details.

**B) Suitability criteria.** The Council shall not include a pre-qualification stage in procurement for any contracts between £25,000 and £172,514. In the ITT the Council may ask candidates to answer suitability assessment questions to allow the Council to assess whether candidates meet requirements of suitability, capability, legal status and financial standing. Such questions must be relevant to the subject matter of the procurement and be proportionate.

For those circumstances where the Council may include a pre-qualification stage in procurement, please see Section B3.3.2 for details.

**C) Award Criteria.** The award criteria sets out how you are going to evaluate the returned tenders. The award criteria, weightings and any sub criteria must be pre-agreed and sent out with the invitation to tender to inform the supplier how their tender will be evaluated. The award criteria must be signed off by the relevant Business Unit Manager or Head of Service.

Either of the following evaluation methods should be used:

**Price only.** This should only be used on a fixed specification where no variants can occur. The lowest priced quotation that can meet the specification will be awarded the contract.

**Most economically advantageous.** The award takes place based on various criteria related to the scope of the specific contract, such as the quality, cost, technical merit, , environmental or social characteristics, after-sales support and technical assistance and delivery date. Each criterion should be individually stated with the maximum score available and the weighting of the criterion.

**D) The Conditions of Contract** – The conditions of a contract are the terms and conditions that set the rights and obligations of the contracting parties, when a contract is awarded or entered into. These include 'general conditions' which are common to all types of contracts, as well as 'special conditions' which are peculiar to specific contracts. All contracts must provide for payment of undisputed invoices within 30 days by the Council, contractors and sub-contractors through the supply chain.

A TUPE statement must be included where applicable. TUPE could apply when the Council engages a contractor to do work on its behalf, reassigning such a contract or bringing the work "in-house". This can, therefore, encompass an initial (or first generation) outsourcing, a subsequent (or second generation) outsourcing or an in-sourcing. TUPE can be a complex area and advice should be sought from Human Resources.

Choosing the correct contract is very important and must only be done by employees with the relevant professional expertise. The post holders below have been given the appropriate training and authority to choose a type of contract for their relevant Service

/ Business Unit. It is the responsibility of these post holders to ensure that the contract conditions meet the Council's requirements. Please contact the named individual or Legal Services for guidance on what contract to use.

POSITION	SERVICE / BUSINESS UNIT
Property Manager (P01392)	Property Services
Senior Project Manager	Property Services
Procurement Manager (P00218)	All Services (Goods & Services Only)
Building Works Manager (P00191)	Building Works
Grounds & Engineering Works Manager (P01346)	Environment Services
Planning Policy Manager	Planning & Transportation
Coastal Engineering Manager	Coastal Group
Principal Engineer (P00226)	Engineering Design

**E) Invitation to Tender (ITT) Document** – The ITT consists of a pack of documents that are sent to the supplier / contractor to enable them to tender for a contract. This pack shall include:

- The tender timescales
- The tender instructions
- The contract conditions
- The specification
- The suitability assessment questionnaire
- The award criteria
- The schedule of rates (if applicable)
- Any other required schedules
- The form of tender

The ITT template is available on the procurement pages on Forestnet

#### 4. B2 Inviting suppliers to tender

**SO44** If the tender is being carried out manually, the ITT document should be sent out with a letter to all selected suppliers / contractors along with an ITT letter. The letter must be formal, it must refer to any attachments and it must set out (or refer to) the tendering instructions quite explicitly. You should offer a single named point of contact for the tenderer so that queries are handled consistently.

**SO45** The ITT document and letter can be sent by e-mail. However, no tenders can be received by email.

If the Electronic Procurement System is being used, the service or business unit must follow the Electronic Procurement System.

**SO46** It is acceptable to allow written queries so long as any information which clarifies or amends the tender documentation is confirmed in writing to all of the tenderers.

#### 4.B3 Receipt of tenders

Where the tender is being operated manually SO47 to SO52 applies.

**SO47** Contract Administrators must make arrangements for the receipt, custody, opening and witnessing of all tenders. The Contract Administrator must notify Legal and Democratic Services as soon as possible, and at least two weeks before the closing date for the return of tenders using the attached form. Please refer to the documents area of the procurement pages on Forestnet. The form gives details of the works, the time and date of return, who the Tender is submitted by, date and time of opening, tender estimate and a list of the relevant Tender suppliers / contractors. The time and date for opening the Tender should be agreed between the Contract Administrator and the person responsible for opening the Tender.

**SO48** The form should then be passed to Appletree Court Reception in order that they can note the relevant details in the Tender book held by them. They will then record the time and date the Tender came in. The tender envelope is kept under lock and key until it is due to be opened.

**SO49** You must inform potential tenderers to send their tenders in a plain envelope or parcel with a label provided by the Council for the purpose, on which is printed the word "Tender" followed by the subject of the contract and the date and time by which it must be returned. Tenderers must be told to seal the envelope and not to show their identity in any way. Tenders must be returned to Legal and Democratic Services at Appletree Court. The address for this is:

For the attention of  
Head of Legal and Democratic Services  
New Forest District Council  
Legal and Democratic Services  
Appletree Court  
Lyndhurst  
Hampshire SO3 7PA

**SO50** The onus to obtain proof of receipt rests with the tenderer.

**SO51** All tenders must be marked with the date and time of receipt and the signature of the receiving officer. Late tenders must be treated similarly but marked "received late". All tenders must be left unopened and stored in a locked cabinet until the due time for opening.

**SO52** Any unacceptable tender must be opened purely to determine the sender's details so that the tender can be returned with a letter of explanation.

**SO52A** If the Electronic Procurement System is being used, the service or business unit must follow the Electronic Procurement System.

**SO53** Tenders received after the closing date and time will not be accepted and must be returned to the tenderer.

#### 4.B4 Opening / recording of Tenders

**SO54** Where the tenders being operated manually, all tenders received by the due date and time (“valid tenders”) must be opened at the same time in the presence of two officers. A record of all valid tenders must be made on the tender return form including the name and, where applicable, amount of each tender received.

**SO55** All tenders will then be opened in the order they were received and the relevant details will be noted down on the standard form. It is important that the form of tender is duly signed with the tender figure clearly shown. If any of the above forms are not signed or provided then the Tender must be rejected.

**SO55A** If the Electronic Procurement System is being used, the service or business unit must follow the Electronic Procurement System.

**SO56** Before proceeding to the evaluation stage you must check that the tender submissions are compliant with any instructions to tenderers, pricing, schedule and any other explicit requirements (e.g. submission of method statements). In particular, you should check whether tenderers have submitted their own terms and conditions as these might have the effect of qualifying the bid. If in doubt, seek advice from Legal and Democratic Services.

**SO57** The Head of Service is responsible for retaining tenders for examination. Unsuccessful tenders must be retained for one year after the closing date for receipt of tenders. Successful tenders, where the contract was not under seal or executed as a deed, must be retained for six years after the date the contract expires. Successful tenders, where the contract was under seal, must be retained for twelve years after the date the contract expires. Arrangements must be made with Legal and Democratic Services for the storage of deeds.

### **Method C - Framework Agreement**

A Framework Agreement is an agreement with suppliers that sets out the terms and conditions under which specific purchases can be made (or “called-off”) throughout the term of the agreement. Framework Agreements may be established by the Council, or by other public bodies or public sector buying consortia as arrangements through which the Council, along with other public bodies, may make specific purchases.

Purchases through an existing Framework Agreement do not require to undergo the quotation or tendering process. However, if you are setting up a new Framework Agreement you will need to follow Contract Standing Orders.

**SO58** If you are intending to join a Framework Agreement or set up a Framework Agreement you must liaise with the Central Purchasing Unit.

If you are intending to use a Framework Agreement the following should be considered:

- To join a Framework Agreement the Council must be individually named or as a named recognisable class as part of the Framework Agreement and the OJEU (Official Journal of the European Union) notice
- The period of the Framework Agreement. The maximum period for a Framework Agreement is four years
- The Framework Agreement must cover all items of the contract specification.

The Council may use a Dynamic Purchasing System for commonly used purchases. A DPS shall be operated as a completely electronic process. A DPS has a key advantage over a framework agreement which is that once it has been set up in accordance with the Regulations, suppliers can be added at any time during the currency of the DPS provided they pass the exclusion criteria and minimum capacity requirements.

## Method D - EU Procurement Regulations

The EU Procurement Regulations set out the legal framework for public procurement. They apply when any public authority seeks to acquire goods, services, or works. They set out procedures which must be followed before awarding a contract when its value exceeds the set thresholds (See paragraph B3.3.1), unless it qualifies for a specific exclusion - e.g. on grounds of national security.

**SO59 The Central Purchasing Unit must be informed of any intended contract where the EU procurement regulations apply.**

Under the provisions of the Public Services (Social Value) Act 2012, in relation to any service contract above the EU thresholds the contract administrator must demonstrate firstly, that consideration has been given to how the procured service might improve the economic, social and environmental well-being of the New Forest area. Secondly you must consider how in conducting the procurement the Council can act to secure the improvement, considering other matters that are relevant to what is proposed and proportionality. Thirdly you will have to consider if any consultation is appropriate in relation to the first two matters to be considered.

Prior Information Notices. The Council may make known its intentions of planned procurements up to 12 months ahead through the publication of a Prior Information Notice as a form of “soft marketing”. A PIN must be sent for publication to the EU Publication Office and published on the Council’s web site. A PIN may be used to commence the procurement process for a restricted procedure or a competitive procedure with negotiation. A PIN may also reduce the minimum notice periods in the EU Procurement process in some circumstances.

Before commencing a procurement procedure, the Council may conduct market consultations with a view to preparing the procurement and informing market participants of their procurement plans and requirements and as a “soft marketing” tool. Advice from CPU and Legal Services should be obtained before carrying out any such consultations.

There are five procedures which can be followed under the EU Procurement Regulations. These are as follows:

- **Open** Under which interested parties may respond to the advertisement in the OJEU by submitting a tender for the contract. All the contract documents must be made available. There is no short listing process and no contract negotiations.
- **Restricted** Under which a selection is made of those who respond to the advertisement by providing the information for qualitative selection that is requested by the Council and only they are invited to submit a tender for the contract. It does not allow for any contract negotiations.
- **Competitive Procedure with negotiation.** Involves the Council making a selection of those who respond to the advertisement by providing the information for qualitative



selection that is requested by the Council and only they are invited to submit an initial tender for the contract. The Council may then open negotiations with the tenderers to seek improved offers.

- **Competitive Dialogue** – Allows the Council to short list the interested parties who responded to the advertisement by providing the information for qualitative selection that is requested by the Council. The short listed parties are then invited to participate in a dialogue during which any aspects of the project may be discussed and solutions developed. When the Council is satisfied it has the appropriate solution it declares the dialogue closed and invites the remaining tenderers to submit a final tender.
- **Innovation Partnership procedure** under which a selection is made of those who respond to the advertisement and the Council uses a negotiated approach to invite suppliers to submit ideas to develop innovative works, supplies or services aimed at meeting a need for which there is no suitable existing “product” on the market.

In addition, the Council can use a **negotiated procedure without prior publication**, which allows the Council, in certain narrowly defined circumstances, to approach one or more suppliers seeking to negotiate the terms of the contract. One of the permitted circumstances is where, for technical or artistic reasons or because of the protection of exclusive rights, the contract can only be carried out by a particular supplier.

Please seek advice from the Central Purchasing Unit for further details.

Procedure	Contract Notice	Receipt of request to participate	Invitation to tender	Receipt of tenders	Contract Award	Mandatory Standstill Period**	Contract Award Notice
<b>Open</b>	Minimum of 35 Days *				10/15 Days		Within 30 Days
<b>Restricted</b>	Minimum of 30 Days		Minimum of 30 Days *		10/15 Days		Within 30 Days
<b>Competitive procedure with negotiation</b>	Minimum of 30 Days		Minimum of 30 Days *		10/15 Days		Within 30 Days
<b>Competitive Dialogue</b>	Minimum of 30 Days		No explicit time limits for submission of initial/subsequent tenders		10/15 Days		Within 30 Days
<b>Innovation Partnerships</b>	Minimum of 30 Days		Minimum of 30 Days		10/15 Days		Within 30 Days
<b>Negotiated</b>	No explicit time limits given				10/15 Days		Within 30 Days

Note: \*Timescales between contract notice and receipt of tenders maybe reduced by five days when notices are advertised by using electronic means in accordance with the Regulations. Please seek advice from Central Purchasing Unit for further details.

\*\* Standstill Period is 10 working days if the contract award notice is sent electronically, or 15 working days if sent by other means.

The Council using the restricted procedure, competitive dialogue procedure and the competitive procedure with negotiation must aim to select a number of suppliers sufficient to

ensure a genuine competition. Provided there are sufficient suitable candidates, the Council needs a minimum of five for the restricted procedure, and three for the competitive dialogue and competitive procedure with negotiation.

If EU Procurement Regulations are not adhered to then this could result in the Council being fined, the contract not being awarded, the contract being ineffective or the contract period being shortened.

### **B3.4 STAGE 4 – EVALUATION**

The contract evaluation stage is split into the following two areas:

- 1) Evaluation of tenders or quotations
- 2) Accepting a tender or quotations.

#### **1 Evaluation of tenders or quotations**

**SO60** Tenders and quotations should then be evaluated as per the agreed evaluation criteria set out in the quotation documentation or ITT. The Council have an evaluation matrix spreadsheet that can be utilised for your agreed evaluation criteria. Please refer to the documents area of the procurement pages on Forestnet.

**SO61** The Contract Administrator must ensure that an evaluation of tenders takes place. Suitably experienced officers must carry out the evaluation of tenders. The results of the evaluation must be checked by another independent officer and approved by the appropriate Head of Service at a Gateway 3 Review.

**SO62** However, it is permissible to use consultants to assist with tender evaluation, but the final decision must be made by a NFDC officer with delegated authority.

**SO63** The results of the evaluation must be retained for the period of the contract.

**SO64** Save for EU Contracts, tenders and quotations must be evaluated as prescribed in the award criteria either as a price only evaluation or a most economically advantageous evaluation.

**SO64A** EU contracts must be evaluated in the award criteria as the most economically advantageous tender.

#### **2 Accepting a tender or quotation**

**SO65** A tender/quotation may only be accepted if it meets all of the following conditions:

- It is within the approved budget
- It meets all of the tender requirements
- It complies with the detailed specifications
- It is either the most financially beneficial to the Council (price only evaluation), or is the most economically advantageous tender (highest score).
- It is not a referential or qualified tender.

**SO66** DELETED

If a tender or quotation does not meet the rules set out in SO65, it is likely the process will have to be rerun. If the reason for the tender or quotation not meeting the rules is a matter within the Council's control (e.g. changing the available budget) the officer may be able to seek a virement in accordance with Financial Regulations or other appropriate authorisation.

### **B3.5 STAGE 5 – CLARIFICATION**

It is usually acceptable to clarify arrangements with tenderers following opening of Tenders. This might include areas of genuine ambiguity (not caused by the tenderer), liaison arrangements, and arrangements for interview or site visits.

**SO67 Any communication with tenderers should be documented on the tender file.**

**SO68 In certain restricted circumstances it may be acceptable to clarify amendments to tender prices. This must be done in a manner that does not disadvantage other tenderers and must be fully documented. You should take legal advice before carrying out post-tender clarifications especially where the contract is subject to the EU rules. No negotiations of tender prices or terms shall be allowed.**

### **B3.6 STAGE 6 - CONTRACT AWARD**



The contract award stage is split into the following three areas:

- 1) Notification of contract award
- 2) Signing and sealing of contracts
- 3) Awarded contracts register

A gateway stage three review (tender evaluation) must be undertaken at this stage of the process for contracts over £25,000.

#### **1 Notification of contract award**

**SO69 The successful and unsuccessful tenderers must be notified in writing of the result of the tender. Standard letter templates for the successful and the unsuccessful tenderers are available on the procurement pages on Forestnet.**

**SO70 All documentation of successful and unsuccessful applicants must be kept for the period of the contract.**

**SO71 All EU Tenders must follow the EU procedures and Council must not enter into the contract or conclude the framework agreement before the end of the mandatory standstill period. Please see Method D. A Contracts Award Notice for tendered contracts must also be published on Contracts Finder.**

If any supplier did not submit a tender you should write to the supplier to establish why a tender was not received.

## 2 Contract signing and sealing

**S072** Entering into contracts must strictly be approved in line with Councils Scheme of Delegations. The authorities for signing a contract are as follows:

POSITION	AUTHORITY LIMIT
Any member of the Executive Management Team	£Unlimited
Heads of Service	£0 - £1,000,000
Budget Responsible Officer	£0 - £10,000
Procurement Manager (P00218)	£0 - £50,000

**S073** Unsealed contracts must be signed by one officer in accordance with the authorities above. Two original copies should be signed by the Supplier before they are signed on behalf of the Council. Signed contracts that are not under seal will have a six year limitation period.

**S074** Once the contract is signed by both parties the contract must be held by the Contract Administrator for a period of at least six years.

**S075** All requests for sealing must be made to Legal and Democratic Services and a sealing form must be completed. The sealing form is available on the Procurement pages on Forestnet. All contracts over the value of £150,000 must be referred to Legal Services to confirm whether they require sealing. Separate forms are needed for additional documents such as performance bonds. The original tender or quotation documents are required (including drawings) along with the Contractor's response, Letter of Acceptance and any other correspondence. Sealed contracts provide a 12 year limitation period for actions to be taken arising from breaches of obligations under the contract (Limitations Act 1980)

**S076** Sealed contracts must be held and recorded by Legal and Democratic Services.

## 3 Awarded contracts register and records

**S077** Once a contract has been awarded and signed by both parties the Council's awarded contracts register must be updated to adhere to Central Government's Transparency Agenda. To add an awarded contract you will have firstly added a forthcoming contract see paragraph B3.1.

**S077A** For every EU contract or framework agreement the Council shall complete a report as required by the Regulations (a Regulation 84 report).

### B3.7 STAGE 7 - DELIVERY / CONTRACT MONITORING

Contract monitoring is the ongoing or periodic measurement of a supplier's / contractor's compliance with the terms, conditions and performance of a contract.

**SO78** The Contract Administrator is responsible for the administration of the contract and where appropriate, will arrange regular update meetings to an agreed agenda. These meetings should be subject to formal minutes.

**SO79** All instructions issued by the Contract Administrator must be in writing and it is vitally important that a record is kept by the Contract Administrator throughout the period of the contract.

**SO80** As well as progress during the period of the contract it is essential that budgetary control is also maintained throughout. Be aware that instructions that amend or change the requirements or extension of time may subsequently lead to a claim for additional costs, loss of profits and/or expenses and these changes need to be identified as early as possible and their impact upon the overall costs of the contract.

**SO81** Instructions which lead to additional costs that directly relate to the contract must be within budget (or revised budget). Contract Administrators can approve a total value of instructions up to £1,000. Instructions that total over £1,000 must be approved in line with the Council's authorised signatory policy. The total value of instructions must not exceed 10% of the contract value.

**SO82** It is recommended that for works contracts monthly reviews are held to estimate the final cost of the contract based upon known variances to date and that these are reported to the responsible manager on a regular basis.

### **B3.8 STAGE 8 - INVOICE PROCESSING / PAYMENT**

There are different payment processes depending on whether the contract is for

- 1) Works
- 2) Goods or Services.

#### **1 Works**

**SO83** Most works contracts are paid in stage payments on a payment certificate. Due to the nature of the works contracts the following authorities exist for the authorisation of works contract payments.

<b>POSITION</b>	<b>AUTHORITY LIMIT</b>
Any member of the Executive Management Team	£Unlimited
Head of Service	£0 - £500,000
Principal Engineer (P00226) Housing Asset & Performance Manager (P00381) Building Works Manager (P00191) Property Manager (P01392) Planning Policy Manager Coastal Engineering Manager	£0 - £100,000
Contract Manager (P01449) Senior Project Manager Senior Building Surveyor (P01233 / P01438) Operations Manager – Housing Maintenance (P01173) Building Works Supervisor (P00194)	£0 - £10,000

Maintenance Officer (P01194) Building Surveyor / Estimator (P00193)	
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**SO84** All works contract payments must be recorded in Internal Audit prior to sending to Accounts Payable

### 1.1 Final Account Review

A final account review is the process of releasing the final amounts due to a contractor on a works contract. The process ensures that the final amount to be released is accurate and has been agreed by the relevant parties. Once the final account is agreed a final payment certificate is produced which concludes the contract.

**SO85** All works contracts where retention is held must undergo a final account review before the final retention amount is released for payment.

**SO86** The final account should be a carefully compiled statement of account covering all adjustments to the Contract Sum supported by all relevant details and calculations demonstrating compliance with the Contract Conditions and compatible with the prices in the contract.

**SO87** The final account templates can be accessed through the Procurement pages on Forestnet.

**SO88** The following will need to be shown in the final account:

- Contract or order showing contract sum, contract period and the contract commencement and completion dates.
- Copies of all payment certificates made.
- Copy of all Contract Administrator instructions.
- Copy of practical completion certificate.
- Copy of the statement of final account.
- All relevant supporting documentation.

**SO89** The final account must be signed off by the relevant Business Unit Manager or Internal Audit.

Please note that Audit will not release the final retention payment until the final account documentation has been signed off.

## 2 Goods & Services

**SO90** All goods and services invoices for contracts can be paid in line with the Council's authorised signatories policy. The authorisations are as follows:

POSITION	AUTHORITY LIMIT
Any member of the Executive Management Team	£150,000 - £Unlimited

<b>Head of Service</b>	<b>£50,000 - £150,000</b>
<b>Budget Responsible Officer</b>	<b>£10,000 - £50,000</b>
<b>Budget Responsible Administrator</b>	<b>£0 - £10,000</b>

### B3.9 STAGE 9 – CONTRACT REVIEW



Once a contract is complete a review should be carried out of how the contract went. The following areas should be considered:

- Is there any feedback available from any users?
- Are the actual costs in line against tender price?
- How well did the supplier / contractor perform?
- Can any improvements be made on the process for future contracts?
- How well does the supplier / contractor feel the contract went?

#### SO91 DELETED

A gateway stage four review (project review) must be undertaken at this stage of the process for contracts over £25,000.

#### GLOSSARY

**Agency** – An individual or organisation called an ‘agent’ acts on behalf of the Council.

**Consortium** – A group of independent Authorities or suppliers that group together to achieve a common objective.

**Contract** - A binding written agreement made between two or more parties which is intended to be enforceable at law.

**Contract Administrator** – An employee of the Council who is responsible for the day to day administration of a contract and monitors the supplier’s / contractor’s compliance with the contract terms and conditions. The contract administrator must have the appropriate training, experience and skills in order to undertake this task.

**Corporate Governance** – Is the system by which the Authority is directed and controlled.

**Disaggregation** – Splitting the total value of a contract into smaller parts in order to reduce contract values.

**Electronic Procurement System (EPS)**: a system for e-procurement which has been approved for use by the Council.

**In-house Service** – A service or business unit which is a part of the Council’s structure and has been through an internal service review to demonstrate value for money.

**Nominated Officer** – An officer of a Business Unit that is independent of the procurement process that has the responsibility of receiving, retaining and recording quotations.

**OJEU** – Official Journal of the European Union. All contracts within the EU Procurement Thresholds are advertised in the OJEU.

**Procurement process** – Process of selecting suppliers / contractors, selecting the procurement method and contract terms and conditions.

**Public Services (Social Value) Act 2012** – An Act to require public authorities to have regard to economic, social and environmental well-being in connection with public services contracts; and for connected purposes.

**Quotation** – An official written offer for a low value contract from a supplier / contractor.

**Regulations:** The Public Contract Regulations 2015

**Supplier**– A party that supplies goods or services or is a contractor for works contracts.

**Tender** - An official written offer to an invitation that contains a specification or a brief of the works, services or supplies required and is provided in response to a tendering exercise. This normally involves submission of the offer in a sealed envelope to a specified address by a specified time and date.

**TUPE** – TUPE is the Transfer of Undertakings (protection of employment) Regulations.