

Resources & Transformation Overview & Scrutiny Panel – 19 September 2024

Updates to Contract Standing Orders

Purpose	For Review
Classification	Public
Executive Summary	<p>The Council’s Contract Standing Orders have been reviewed in alignment with the upcoming changes to procurement regulations on 28 October 2024. The review also included a benchmarking exercise with other similar Councils, and a feedback session with the Senior Leadership Team.</p> <p>This report sets out the proposed changes to Contract Standing Orders. The key proposed changes are:</p> <ol style="list-style-type: none"> 1. Increasing the transparency threshold (at which we advertise contracts openly to the market) from £50k to £100k. 2. Requiring all requests for quotations to include at least 1 supplier from the local and surrounding areas. 3. Increased scrutiny through a Breaches order, in which all known or discovered breaches of the Contract Standing Orders are reported to the Statutory Officers Group and the Audit Committee. <p>The proposed Contract Standing Orders are set out in Appendix 1.</p>
Recommendation	That the Panel note the proposed changes to Contract Standing Orders and provide any comments to the Cabinet.
Reasons for recommendation	<p>The UK’s public procurement regulations are being replaced with one set of regulations under the Procurement Act 2023. The new regime comes into force on 28th October 2024.</p> <p>The Council’s current Contract Standing Orders document was introduced in March 2018 and has not been subject to major scrutiny or review since then.</p>
Wards	All

Portfolio Holder	Councillor Jeremy Heron – Finance & Corporate
Strategic Director	Alan Bethune – Strategic Director Corporate Resources & Transformation
Officer Contact	Josie West Strategic Procurement Manager 02380 285741 Josie.west@nfdc.gov.uk

Introduction and background

1. The UK’s public procurement regime is being reformed, in which the four existing sets of regulations (including the Public Contract Regulations 2015) are being replaced with one set of regulations under the Procurement Act 2023. The new regime comes into force on 28 October 2024.
2. The current version of the Council’s Contract Standing Orders was introduced in March 2018 and has only had minor amendments and additions made since then. In keeping with the introduction of the new regulations, the Strategic Procurement Manager has undertaken a full review of the Contract Standing Orders and has proposed some changes to be outlined within this report.
3. This review has included consideration of the following:
 - i. New regulatory requirements as set out in the Procurement Act 2023.
 - ii. A benchmarking exercise against ten comparable Councils in the South (2 x City Councils, 4 x District Councils, 3 x Borough Councils and 1 x Unitary Council), with similar annual expenditure and population size.
 - iii. Feedback from the Senior Leadership team and their nominated Contract Administrators and Purchasing Coordinators, obtained as part of a Masterclass training session and via questionnaires.
 - iv. Assessment of the Council’s procurement data for 2023/24.

Key outcome sought

4. The key outcome sought is to provide any comments ahead of a recommendation for approval by Cabinet and Council of the proposed changes to Contract Standing Orders. The proposed Contract Standing Orders are set out in Appendix 1. It is

recommended that these changes are adopted from 28 October 2024 to align with the new regulations coming into force.

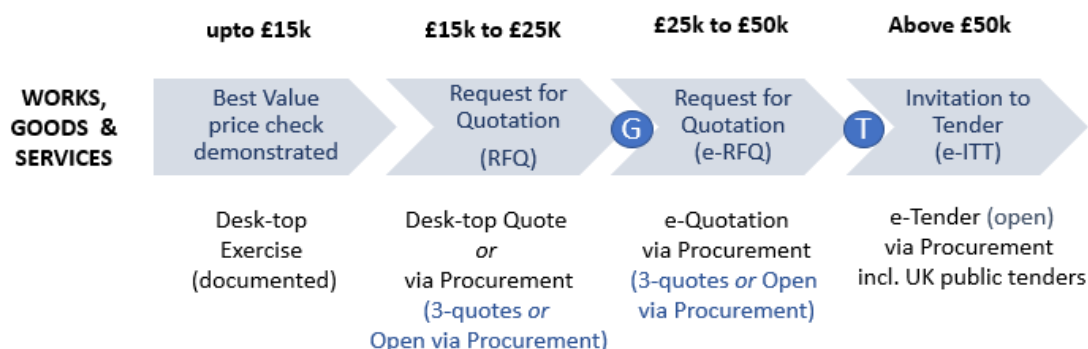
General and formatting changes

5. The format of the document has been changed for ease of use, with the document being split into three parts:
 - i. Part 1 – Introduction & Compliance
 - ii. Part 2 – Orders
 - iii. Part 3 – Appendices
6. A contents page has been added, with links to each section for convenience.
7. The previous Contract Standing Orders referred to 'Service Managers' which does not always correlate to the Council's current organisational structure. This has been modified throughout the document to 'Senior/Service Managers', with a definition added to clarify that these persons must be a member of the Senior Leadership Team.
8. The Scheme of Delegation at Annex B of the Contract Standing Orders has been updated to reflect the current organisational structure at the Council. It additionally aligns the authorisation levels for raising purchase orders and payment of invoices, with the authorisation levels for signing of contracts, thereby providing a more consistent and clearer approach.
9. It is recommended that the Contract Standing Orders are henceforth reviewed every 4 years.

Thresholds

10. Other than those thresholds set out by law, the current contract thresholds have not been amended since the introduction of this version in 2018, despite inflationary rises during this time.
11. The thresholds set out by law, at which the Council is legally required to openly advertise on the UK-wide Central Digital Platform are £214,904 for goods and services and £5,372,609 for works.
12. The current and proposed thresholds as set out in the Council's Contract Standing Orders are set out below.

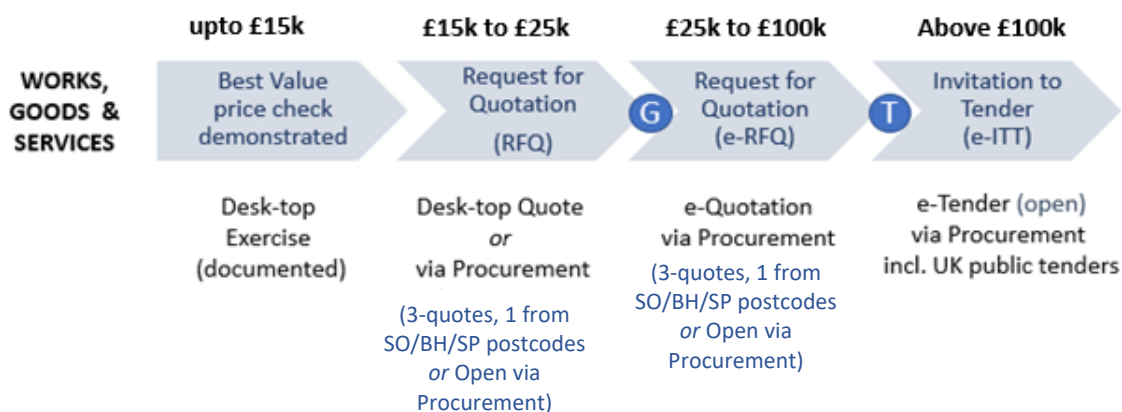
Current thresholds:



Key: **G** = Gateway Review required for any Contract exceeding £25,000

T = Transparency – All contracts £50k+ must be openly advertised via Procurement

Proposed thresholds:



Key: **G** = Gateway Review required for any Contract exceeding £25,000

T = Transparency – All contracts £100k+ must be openly advertised via Procurement

12. It is proposed that the minimum threshold for Gateway Review remains unchanged at £25,000 (excluding VAT). This aligns with the legislative requirement to consider any contracts over £30,000 (including VAT) as a 'regulated below-threshold contract'. For these contracts, the Council is required to publish a 'contract details notice' on the central digital platform.

13. It is proposed that the minimum threshold for an Open Tender is raised from £50,000 to £100,000 (excluding VAT). Benchmarking found that 80% of the Councils reviewed had an 'open tender' threshold of £100,000 or higher. Increasing the threshold for an open tender to £100,000 will provide the following benefits:
 - a. It will result in work being appropriately employed regarding the level of risk. For example, in many cases the service teams will only need to evaluate and score 3 quotations, instead of an open number of quotations which can sometimes be up to 15.
 - b. It will allow the Procurement team to focus resource on the high-value and high-risk contracts, in a timely manner, that are above the legislated thresholds and therefore attract increased obligations.
14. For contracts valued between £25k - £100k, the Procurement team will advise and agree, in conjunction with the service team, the most appropriate procurement route depending on the contract and the market. Nevertheless, the minimum requirement will be to request three quotations, one of which must be from a local supplier (where possible). A local supplier is defined, for this purpose, as operating within the SO, BH and SP postcode regions. This will support the Council's Procurement Strategy and align with its guiding principles:
 - i. 'Value' – A minimum of three quotations will ensure a competitive exercise takes place to achieve value for money.
 - ii. 'Fairness' – Stipulating that at least one quotation must be requested from a local supplier promotes engagement with local businesses and encourages them to bring forward solutions to help the Council deliver better services.

Contract modifications

15. The new Procurement regulations allow more flexibility to modify contracts. Previously, modifications were permitted up to a maximum percentage value (depending on whether the contract is for goods, services or works) of the **original** contract value. Under the new regulations, modifications are permitted up to a maximum percentage value of the **current** contract value. Therefore, modifications may now be made successively, allowing for multiple separate modifications, incrementally, increasing the contract value to the maximum percentage of the immediately preceding value of the contract each time. The Contract Standing Orders have been updated to reflect this.

16. Monitoring of contract modifications will be strengthened by a requirement to report them to the Executive Management Team twice yearly.

Exemptions

17. Under the current Contract Standing Orders, orders placed through a Framework Agreement are listed as exempt from the Contract Standing Orders. This has caused some confusion with service teams, as they should only be exempt from the Tendering Thresholds, and still subject to other provisions of the Orders, such as the Gateway Review Process. The Contract Standing Orders have therefore been updated to clarify this position.

Breaches and waivers

18. The Waivers order has been updated to reflect the new legislation and current organisational structure at the Council. It has also been strengthened by stating that alternative procurement options should be firstly explored and exhausted prior to seeking a waiver.
19. The Strategic Procurement Manager has identified that, whilst waivers are completed for short-term / one-off projects, there have been instances of ongoing, long-term expenditure occurring which is not being captured and reported under the waivers process. This results in an increased risk to the Council of a legal challenge. A Breaches order is therefore proposed, to assign responsibilities for reporting all known or discovered breaches of the Contract Standing Orders to the Statutory Officers Group, made up of the Chief Executive, Section 151 Officer and Monitoring Officer, and subsequently to the Audit Committee. This increased scrutiny will improve compliance with the Contract Standing Orders, as well as reduce the risk to the Council of litigation due to non-compliance with the Public Procurement Regulations.

Evaluation of bids

20. Feedback from the leadership team was that their teams would benefit from further guidance in respect of the evaluation process. It is therefore proposed to set out the roles and responsibilities in respect of the evaluation of quotations/tenders.
21. The requirements have been established based on value, to align with the thresholds, and should be considered a minimum requirement. Please refer to table below:

Tendering Threshold (Excluding VAT)	Evaluation Panel	Moderator
Up to £15k	Officer	None

£15k - £25k	Officer and Line Manager	None
£25k - £100k	Officer and Line Manager	None (Procurement Team if open tender)
£100k – UK Threshold	Officer and Line Manager (including Senior/Service Manager)	Procurement Team
UK Threshold +	Officer and Line Manager (including Senior/Service Manager)	Procurement Team

Climate & sustainability

22. The Council is committed to its responsibilities regarding climate change and sustainability and aims to embed consideration of these issues within the procurement process.
23. It is therefore proposed that, for all contracts valued at £100,000 or above, a minimum of 5% of the evaluation weighting must be allocated to climate change and sustainability actions.
24. This proposal was supported by the leadership team at a recent feedback session and aligns with the improvement goals for the Environment objectives as set out in the Procurement Strategy 2024, as well as the Climate Change and Nature Emergency Action Plan.

Corporate plan priorities

25. The Contract Standing Orders apply to all officers and provide a framework to enable all service teams to procure goods, services and works to support the activities of their service. It therefore supports all the priorities within the corporate plan.
26. It provides particular support to the Prosperity priority; changes to our request for quotation process proposed in this report will require officers to obtain quotes from suppliers within the district and neighbouring areas, which supports the business base and economic centres in and around the District and champions the local economy.

Options appraisal

27. An alternative option would be to only make the changes required from the new regulations coming into force. However, a holistic approach was preferred, and a review was undertaken which took into account benchmarking from other Councils as well as feedback from the service teams.

Consultation undertaken

28. Consultations were undertaken with the Senior Leadership team, Contract Administrators and Purchasing Coordinators, as well as the Finance and Legal teams.

Financial and resource implications

29. There are no direct financial implications as a result of this report. The revisions do however empower managers across the Council to make more procurement decisions in their service areas due to the increase in threshold for those contracts requiring an open tender. All expenditure incurred as part of these procurement processes will require an approved budget. Any approved budget will have gone through its own authorisation process in line with the financial regulations.

Legal implications

30. The new legislation will result in changes to procurement processes at the Council and these changes have been captured within this review. The Procurement team are preparing briefing sessions for Senior Managers at the Council, ahead of the changes going live on 28 October 2024.
31. The changes outlined within this report will ensure that the Council continues to comply with legal requirements. Although a review will take place as a matter of routine every 4 years, any changes in the legal framework will also prompt a review to ensure ongoing compliance. The breach reporting process will help mitigate the risk of non-compliance with the requirements.

Risk assessment

32. A formal risk assessment is not deemed to be required. The key risk associated with the proposals in this report is that Senior/Service Managers authorisation limits for raising purchase orders and authorising invoice payment are increasing. However, the new authorisation limits align with their current authorisation limits for signing contracts.

Environmental / Climate and nature implications

33. Environmental factors will be considered as part of the evaluation of bids for all contracts valued at £100,000 or above. This will result in increased obligations for suppliers and contractors to deliver environmental innovations and improvements throughout the contract lifecycle.

Equalities implications

34. None.

Crime and disorder implications

35. None.

Data protection / Information governance / ICT implications

36. None.

Conclusion

37. Up-to-date Contract Standing Orders ensure the appropriate processes are followed in relation to the procurement and management of contracts within the Council. They are a central point of reference for managers and form a mandatory framework for procurement within the Council.

Appendices

Appendix 1 – NFDC Contract
Standing Orders October 2024

Background Papers:

Procurement Act 2023
(legislation.gov.uk)