

APPENDIX 3 – Changes to Contract Standing Orders

CONTRACT STANDING ORDERS

82. Definitions

The following definitions shall apply throughout these Contract Standing Orders (in alphabetical order):

<u>DEFINED TERM</u>	<u>DEFINITION</u>
Approved List	A list of contractors that meet the Council's minimum financial and technical criteria for specified types of supplies or works contracts.
Chief Officer	The Chief Executive and Strategic Directors.
Collaborative Procurement	Any arrangement between the Council and any other body under which the Council or the other body undertakes a procurement process with or on behalf of the other.
<u>Contract Value</u>	<u>The contract value or estimated contract value sum for the contract term (including extensions) that the Council believes is required to deliver the service or project, excluding VAT but including extensions.</u>
Contracts Finder	A web -based facility operated by or on behalf of the Cabinet Office for advertising tenders.
Contracts Register	The electronic register of contracts awarded by the Council and overseen by the Corporate Procurement Centre Department Service.
<u>Dynamic Purchasing System</u>	<u>A purchasing system operated electronically through which commonly used services, supplies or works may be purchased from providers that may at any time apply to join the system.</u>
Contract Value or Estimated Value	The contract's value or estimated value for the contract term excluding VAT.

<u>DEFINED TERM</u>	<u>DEFINITION</u>
E-Auction Facility	A web-based facility approved by the <u>Head of Procurement</u> Director of Legal, HR, Audit & Investigations which enables the electronic submission of prices for a Tender.
Electronic Tender Facility	A web-based facility approved by the <u>Head of Procurement</u> Director of Legal, HR, Audit & Investigations which enables the electronic despatch and receipt of Tender documents.
Electronic Tender Time Box	The feature within an Electronic Tender Facility which stores received Tenders and prevents viewing of them until after the appointed closing date and time.
European Procurement Legislation	The relevant EU Directives and corresponding UK Regulations as amended or replaced from time to time including the Public Contracts Regulations 2015 and the Concession Contracts Regulations 2016.
EU Thresholds	<p>The current EU thresholds under European Procurement Legislation for the following types of contracts are:</p> <ul style="list-style-type: none"> • in the case of contracts for public works, £4,733,252 • in the case of contracts for services or supplies, £189,330 • in the case of contracts for Schedule 3 Services, £663,540 • in the case of contracts for public works or services concession contracts, £4,733,252
<u>Evaluation Panel</u>	<u>The individuals officers who are tasked with reviewing tenders in accordance with the criteria for award.</u>
<u>Find a Tender / FTS</u>	<u>The UK e-notification service where notices in relation to procurements of contracts over relevant Thresholds commencing on or after 1 January 2021 are required to be published in place of notices in OJEU.</u>

<u>DEFINED TERM</u>	<u>DEFINITION</u>
Framework Agreement	An agreement for a specified term under which contracts for the provision of particular services, supplies or works can be entered into (" called <u>called-off</u> ") on agreed terms.
High Value Contract	Any contract <u>with a Contract Value of and over the that exceeds the following values stated for Medium Value Contracts.:</u> <u>for services or supplies contracts £2,000,000; and</u> <u>for Works contracts £5,000,000.</u>
<u>Local Brent Supplier Provider</u>	<u>A part that providers of services, supplies or works and that is based or has a local office situated within the London Borough of Brent.</u>
Low Value Contract	In the case of contracts for services (including Schedule 3 Services) or supplies: a contract with an estimated value over the life of the contract (including any period of extension(s) anticipated by the contract) <u>a Contract Value of between £25,000 and up to the amount which is and the current EU Threshold for services and supplies contracts (which is currently £189,330).</u> <u>In the case of a contract for construction or works: a contract with a Contract Value of between £25,000 and £250,000, provided that the contract is classified as a contract for works by Procurement Legislation.</u> In the case of a contract for construction or works: a contract with an estimated value over the life of the contract (including any period of extension(s) anticipated by the contract) of between £25,000 and up to £250,000, provided that the contract is classified as a contract for works and not services by the European Procurement Legislation.
Local Brent Provider	A party that provides services, supplies or works and that is based or has a local office situate in a postcode area falling within the London Borough of Brent.
Medium Value Contract	In the case of contracts for services (including Schedule 3 Services) or supplies: a contract with <u>a Contract Value an estimated value over the life of the contract (including any period of extension(s) anticipated by the contract) of</u>

<u>DEFINED TERM</u>	<u>DEFINITION</u>
	<p>between the amount which is the relevant EU Threshold for services or supplies contracts (which is currently £189,330) and £2m.</p> <p>In the case of a contract for construction or works, a contract with an estimated Contract V value of between £250,000 and £5m <u>£5,000,000</u>, provided that the contract is classified as a contract for works and not by European Procurement Legislation.</p>
Member	An elected member of Brent Council.
Monitoring Officer	<u>The</u> Director of Legal, HR-, Audit & Investigations.
<u>OJEU</u>	<u>The Official Journal of the European Union.</u>
Official Order	An order for services, supplies or works to the Council issued by an authorised officer using the Council's official order form.
OJEU	The Official Journal of the European Union.
Online Market Place	A web-based facility approved by the <u>Head of Procurement</u> Director of Legal, HR, Audit & Investigations which enables the procurement of specified types of services, supplies or works contracts.
<u>Procurement Legislation</u>	<u>The relevant (where applicable) UK Regulations as amended or replaced from time to time including The Public Contracts Regulations 2015 and The Concession Contracts Regulations 2016.</u>
<u>Purchase Order</u>	<u>An order for services, supplies or works to the Council issued by an authorised officer using the Council's official order form.</u>

<u>DEFINED TERM</u>	<u>DEFINITION</u>
Schedule 3 Services	Those social and other specific services listed in Schedule 3 of the <u>The</u> Public Contracts Regulations 2015.
Tender	An offer or bid or tender from a party to provide services, supplies or works to the Council including any offer, bid or tender which is subject to negotiation.
Tender Acceptance	An acceptance in writing <u>or electronically</u> of a Tender.
<u>Threshold(s)</u>	<p><u>The current thresholds under Procurement Legislation for the following types of contracts are:</u></p> <ul style="list-style-type: none"> • <u>in the case of contracts for Works, £4,733,252;</u> • <u>in the case of contracts for services or supplies, £189,330;</u> • <u>in the case of contracts for Schedule 3 Services, £663,540; and</u> • <u>in the case of contracts for public works or services concession contracts, £4,733,252.</u>
Very Low Value Contract	A contract or commitment with a value from £0 to £25,000.
<u>Works</u>	<u>The activities listed in Schedule 2 of The Public Contracts Regulations 2015.</u>

~~82.~~ 83. Contracts exempt from Contract Standing Orders

~~82.~~ 83. The following contracts are exempt from Contract Standing Orders:-

- (a) individual agency contracts for the provision of temporary staff (although it is mandatory to place such contracts through the Council's corporate agency staff arrangements);
- (b) ~~(b)~~ employment contracts; and
- ~~(c)~~ (e) contracts relating to an interest in land or property.
- ~~(e)~~.

84. General Requirements

(a) ~~(a)~~—Every contract entered into by the Council shall be entered into pursuant to or in connection with the Council's functions AND shall be procured in accordance with ~~all relevant domestic and European~~ Procurement ~~!~~Legislation and unless for good operational and/or financial reasons the Cabinet or individual Cabinet member (or, if appropriate, the General Purposes Committee) agrees otherwise, with these Contract Standing Orders and the Council's Financial Regulations.

(b) ~~(b)~~—In addition to the powers of the Cabinet, individual Cabinet member and the General Purposes Committee in paragraph 84(a) to grant an exemption from the requirement to procure in accordance with these Contract Standing Orders, the Director of Finance is also able to grant such exemptions:

(i)- on grounds of extreme urgency; or

(ii)- where the exemption sought is in relation to the requirement to obtain ~~3~~ three written ~~quotes-quotations~~ under Standing Order 86(c).

The Director of Finance shall only exercise his / her authority under this ~~paragraph~~ paragraph:

~~(i)~~ (i) following legal advice that there is no breach of Procurement Legislation ~~domestic or EU law~~ or the Council's own procedures in the exercise of the ~~authority~~ authority; or

~~(ii)~~ (ii) where there are good operational and / or financial reasons for doing so, after taking advice from the Head of Procurement.

(c) Chief Officers shall ensure, in undertaking any contract procurement, that:-

(i) ~~(i)~~—fair, transparent and auditable processes are followed at all stages;

(ii) ~~(ii)~~—tender exercises are conducted appropriate to the nature of the contract being procured;

(iii) ~~(iii)~~—all tenderers are treated equally and fairly;

(iv) ~~(iv)~~—these Contract Standing Orders are complied with;

(v) the Contracts Register is kept updated at all times as set out in Standing Order 110; and

(vi) appropriate steps are taken to prevent, identify and remedy any conflicts of interest.

(d) Contract tendering procedures are contained in the Council's Contract Procurement and Management Guidelines which shall be updated and amended from time to time to comply with these Contract Standing Orders. ~~—Advice on any of the requirements of these Contract Standing Orders shall be sought from the~~ Head of Procurement in the first instance and the Director of Legal, HR, Audit & Investigations ~~Monitoring Officer or Director of Finance~~ as appropriate.

(e) For the avoidance of doubt these Contract Standing Orders apply to:-

(i) the appointment of consultants; and

- (ii) the establishment of Framework Agreements and Dynamic Purchasing Systems.
- (f) Subject to paragraph (a) and (b) above, Standing Order 97 (mandatory Approved List and Online Market Place), all ~~medium~~ Medium and ~~high~~ High Value ~~contracts~~ Contracts shall be entered into and procured in accordance with the formal tendering procedures set out in these Standing Orders.

85. Partnership Arrangements and Collaborative Procurement

- (a) No Partnership Arrangements may be entered into unless they are approved by the Director of Finance and a formal agreement covering the arrangements is signed by the parties.
- (b) Any Partnership Arrangement or Collaborative Procurement which includes delegation of powers shall be approved by the Cabinet (or, where relevant, Full Council).
- (c) Any Collaborative Procurement shall comply with these Standing Orders and Financial Regulations unless:
 - (i) agreed otherwise in consultation with the Head of Procurement and in writing by ~~the~~ Director of Finance and the Monitoring Officer ~~Director of Legal, HR, Audit & Investigations~~; or
 - (ii) in the case of a High Value Contract, the agreement of the Cabinet or individual Cabinet member is obtained under Standing Order 84(a).

For the purposes of this Standing Order the ~~contract~~ Contract value ~~Value~~ shall be calculated on the estimated value of the Council's part of the contract only.

- (d) Any agreement between the Council and one or more other body which includes any payment by the Council in respect of the costs of carrying out a Collaborative Procurement shall comply with these Standing Orders unless agreed otherwise in writing by the Director of Finance ~~and the~~ Monitoring Officer ~~Director of Legal, HR, Audit & Investigations~~.

86. Contracts not subject to full tendering requirements

- (a) Certain contracts as set out in this Standing Order listed below, are not subject to the full tendering requirements of these Contract Standing Orders but are subject to any other relevant parts thereof.
- (b) No formal procurement procedures apply to **Very Low Value Contracts** apart from a requirement to secure best value. For Very Low Value Contracts, the best way to demonstrate best value is by seeking three quotes quotations or using an Approved List (where one exists) or the Online Market Place, ~~however this is not mandatory and it is open to a duly authorised officer to approve~~ another procurement route. As with all Council procurement, there is a mandatory requirement to keep an auditable record to demonstrate compliance and value for money.
- (c) ~~Save where required by~~ Under European Procurement Legislation, ~~no formal tendering procedures apply to,~~ for **Low Value Contracts** ~~except that~~ at least three written ~~quotes quotations should be~~ must be sought ~~and the quotes sought and/or obtained shall be recorded or alternatively the contract is procured through the Online Market Place. Where quotes are sought, a~~ Advice must be sought from the

~~Council's procurement~~ Procurement officers ~~Department~~ Service about how to select the three organisations to be invited to quote and how to structure the quotation process. Unless the Council's procurement officers advise that it is not necessary or appropriate, all ~~quotes~~ quotations shall be sought using the Electronic Tender Facility and at least one of the ~~quotes~~ quotations shall be sought from a Local Brent Provider, where possible.⁴ ~~Low Value Contracts do however~~ require formal approval for award according to Standing Order 88(a) from a duly authorised officer ~~w~~, where applicable, within the relevant Council Department.

- (d) Contracts which are procured using an Approved List or the Online Market Place in accordance with the rules prescribed pursuant to Standing Order 97, are not subject to full tendering requirements.
- (e) Subject to the proviso below, no formal tendering procedures apply where contracts are called off under:
 - (i)- a Framework Agreement established pursuant to these Standing Orders or otherwise established pursuant to a joint procurement involving the Council; or
 - (ii)- a Framework Agreement or Dynamic Purchasing System established by another contracting authority, where ~~call~~ call-off under the Framework Agreement or Dynamic Purchasing System is approved by the relevant Chief Officer to include confirmation that there is budgetary provision for the proposed call-off contract PROVIDED that the Director of Legal, HR-, Audit & Investigations has advised that participation in the Framework Agreement or Dynamic Purchasing System is legally permissible. Advice from the Director of Legal, HR, Audit & Investigations must be obtained each and every time a call off under another contracting authority's Framework Agreement is recommended by the relevant Chief Officer.
 - (iii) the Online Market Place (as detailed in Standing Order 97), where the ~~call~~ call-off is approved ~~by~~ the relevant Chief Officer to include confirmation that there is budgetary provision for the proposed call-off contract.

SAVE THAT any High Value Contract may only be awarded on the approval of the Cabinet or individual Cabinet member as required by paragraph 9.5 of Part 3 of the Constitution.

- (f) Subject to complying with any relevant parts of ~~the European~~ Procurement Legislation, Tenders need not be invited nor ~~quotes~~ quotations sought:
 - (i) where for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the services, supplies or works may only be provided by a particular provider or where there is only one provider who would be able to provide the services, supplies or works required PROVIDED that advice is sought from the Director of Legal, HR-, Audit & Investigations and Head of Procurement and in the case of High Value Contracts, approval is sought from the Cabinet or individual Cabinet member (or, if appropriate, the General Purposes Committee); or
 - (ii) in cases of extreme urgency where there is an immediate danger to life or limb or property and only to the extent necessary to procure services, supplies or works necessary to deal with the immediate urgent situation PROVIDED

that advice is sought from the Director of Legal, HR, Audit & Investigations and Head of Procurement; or

- (iii) for contracts providing individual personal services such as individual care arrangements or individual special educational needs provision and for the avoidance of doubt this exemption does not apply to any framework agreements or call off contracts that will facilitate the award of individual contracts providing such personal personnel.

87. Provision of goods, services and works by the Council

- (a) The Local Authorities (Goods and Services) Act 1970 (“the 1970 Act”) provides that local authorities may enter into contracts to provide goods and services to public bodies defined as such by the 1970 Act. —Section 96 of the Local Government Act 2003 provides that local authorities may do for a commercial purpose anything which they are authorised to do for the purpose of carrying on any of their ordinary functions provided this power is exercised through a company within the meaning of Part 5 of the Local Government Act 1989. The general power of competence in the Localism Act 2011 may also authorise the provision of goods, works and services by the Council.
- (b) Before entering into arrangements under any of these provisions, officers must comply with the relevant requirements of Financial Regulation in Part 2 of the Constitution.
- (c) Authority to enter into arrangements under any of these provisions must be agreed by the Cabinet (or if appropriate the General Purposes Committee) where:
 - (i) the ~~C~~contract ~~value-Value~~ would exceed £1m *per annum*; or
 - (ii) the gross cost to the Council of providing the relevant goods, services or works under the contract is estimated to exceed £1m *per annum* calculating the full costs over the term of the contract (including any period of extension(s) anticipated by the contract); ~~or~~
 - ~~(iii) (iii) —~~ where a company is to be set up for the purposes of the arrangements.
- (d) In all cases advice shall be sought from the Director of Legal, HR, Audit & Investigations and the Director of Finance prior to entering into any such arrangement and/or prior to seeking approval by the Cabinet.

88. Authority to go out to tender and enter into contracts

- (a) Chief Officers have delegated to them power to invite expressions of interest, agree shortlists, invite Tenders, negotiate, award, and terminate contracts in accordance with paragraph 9.5, of Part 3 of this Constitution. ~~No individual Member may enter into a contract on the Council's behalf.~~
- (b) Where approval to invite expressions of interest is required from the Cabinet (or if appropriate the General Purposes Committee or Pension Fund Sub-Committee) ~~or individual Cabinet member,~~ the Cabinet, the General Purposes Committee, ~~or the Pension Fund Sub-Committee~~ or individual Cabinet member as the case may be, shall receive and consider a report setting out the pre-tender considerations specified in Standing Order 89 and shall give such approval or approvals as it considers necessary.

- (c) Where approval to award or terminate a contract is required to be obtained or is in any event sought from the Cabinet (or the General Purposes Committee or Pension Fund Sub-Committee) or individual Cabinet member, the Cabinet, the General Purposes Committee, ~~or the Pension Fund Sub-Committee~~ or individual Cabinet member as the case may be, shall receive and consider a report setting out all relevant information necessary to enable it to give such approval or approvals as it considers necessary.
- (d) Chief Officers are responsible for ensuring that the relevant category manager in the ~~Corporate Procurement Centre~~ Procurement Department Service is notified of all proposed procurements of or exceeding £25,000 in value. The role of the ~~category~~ Category manager Manager under this Standing Order 88 is to advise on appropriate procurement routes, ensuring that the Service Area takes legal advice as necessary.

89. Pre-Tender Considerations

In procuring any contract, Chief Officers (or the Cabinet or individual Cabinet member for High Value ~~contracts~~ Contracts) shall, where appropriate, consider the following matters prior to inviting Tenders:

- ~~(i)~~ (i) — the nature of the services, supplies or works contract to be tendered;
- ~~(ii)~~ (ii) — the ~~estimated value~~ Contract Value;
- ~~(iii)~~ (iii) — the contract term and any period of extension(s) anticipated by the contract;
- ~~(iv)~~ (iv) — the tender procedure to be adopted including whether any part of the procedure will be conducted otherwise than by electronic means and whether there will be an e-auction;
- ~~(v)~~ (v) — the procurement timetable;
- ~~(vi)~~ (vi) — the evaluation criteria and process;
- ~~(vii)~~ (vii) — any business risks associated with entering the contract;
- ~~(viii)~~ (viii) the Council's Best Value duties;
- ~~(ix)~~ (ix) ~~The~~ the Council's duty under the Public Services (Social Value) Act 2012 (~~the~~ duty applies only to Medium and High Value Contracts for services but should be considered for all contracts with a Contract Value above £100,000);
- ~~(x)~~ (x) — any staffing implications including TUPE and pensions; ~~and~~
- ~~(xi)~~ (xi) — ~~the~~ relevant financial, legal and other considerations; ~~;~~
- (xii) Sustainability
- (xiii) Key Performance Indicators / outcomes; ;
- (xiv) London Living Wage; and
- (xv) Contract Management.

90. Contract Value

Chief Officers shall ensure that a Contract Value is prepared and recorded prior to the commencement of a tender exercise. Such estimate shall be calculated on the basis of the value of the contract over the life of the contract including any period of extension(s) anticipated by the contract whether or not a one-off service, supply or work. Where a contract has no fixed term, the value of the contract shall be calculated as if the term of that contract were 48 months.

910. Lots

Chief Officers in consultation with Procurement shall consider whether a contract should be subdivided into lots and if a decision is taken not to sub-divide into lots, shall record the reason for such decision in writing. Contracts must not, however, be sub-divided into lots to avoid competitive tendering or compliance with these Contract Standing Orders. The estimated value of contracts split into lots shall be calculated using the total value of all lots, to determine what threshold applies and the procurement process to be undertaken.

91. Estimated contract value

~~Chief Officers shall ensure that an estimated contract value is prepared and recorded prior to commencement of a tender exercise. Such estimate shall be calculated on the basis of the value of the contract over the life of the contract including any period of extension(s) anticipated by the contract whether or not a one-off service, supply or work. Where a contract has no fixed term the value of the contract shall be calculated as if the term of that contract was 48 months.~~

91. Lots

~~Chief Officers shall consider whether a contract should be subdivided into lots and if a decision is decided not to subdivide into lots, shall record the reason for such decision in writing. Contracts must not however be subdivided into lots to avoid competitive tendering. The estimated value of contracts split into lots shall be calculated using the total value of all lots, to determine what threshold and procurement process will be undertaken.~~

92. Procurement by consultants

Where consultants are appointed to undertake tendering on the Council's behalf they shall be instructed to comply with Contract Standing Orders and to ~~refer to~~ consult with the Head of Procurement and the Contract Procurement and Management Guidelines as appropriate. No consultant shall make a decision ~~as to whom to~~ about the award of a contract nor enter into contracts on the Council's behalf. Appropriate arrangements shall be implemented to monitor any procurement managed by consultants.

93. Appointment to the Evaluation Panel

For High Value Contracts the Director of Legal, HR , Audit & Investigations Services and the Director of Finance shall, if he/she considers it appropriate, be part of or appoint a representative to the ~~evaluation~~ Evaluation panel ~~Panel~~ or shall advise the ~~panel~~ Panel as he/she sees fit.

94. Prior Information Notice (PINs)

~~Chief Officers should ensure that a Prior Information Notice is published in OJEU as soon as possible after the commencement of each financial year detailing the intended total procurement for the year for services, supplies and works contracts to be tendered which are subject to European Procurement Legislation. Notwithstanding PINs being issued in Find a Tender prior to a tender process, Procurement will endeavour to advise the market on an annual basis by the issue of a PIN of forthcoming opportunities that may transpire during the forthcoming financial year.~~

95. Inviting Tenders for Contracts ~~at or over~~ EU Thresholds

~~(a)~~ (a) — Where a services, supplies or works contract has ~~an estimated~~ Contract value ~~Value~~ in excess of the EU Threshold(s), then Tenders shall be invited in accordance with ~~European~~ Procurement Legislation using the ~~open~~ Open, Rrestricted, ~~competitive~~ Competitive ~~procedure~~ Procedure with ~~negotiation~~ Negotiation, ~~competitive~~ Competitive dialogue Dialogue, ~~innovative~~ Innovative partnership Partnership or ~~negotiated~~ Negotiated (applicable to concession contracts only) procedure by placing a ~~notice~~ Notice in Find a Tender in accordance with Procurement Legislation ~~in OJEU~~ no later than any other advertisement placed in any other publication.

~~(a)(b)~~ (a)(b) ~~An advertisement~~ A Notice for such Tender will also be placed on Contracts Finder following the placing of the ~~notice~~ Notice in Find a Tender ~~on~~ in accordance with Procurement Legislation ~~OJEU~~.

~~(b)(c)~~ (b)(c) — Where a contract for Schedule 3 Services has a ~~an estimated~~ Contract value ~~Value~~ in excess of the EU Threshold, then Tenders may be invited using procedures outlined in paragraph (a) ~~(a)~~ above or such additional procedures as are consistent with ~~European~~ Procurement Legislation.

96. Inviting Tenders for Contracts below EU Thresholds

(a) Where a ~~contract~~ Contract Value is below the relevant EU Threshold, then Tenders shall be invited in accordance with:-

- (i) ~~any~~ all requirements in ~~the European~~ Procurement Legislation relating to below EU Threshold contracts, ~~if as~~ appropriate;
- (ii) these Contract Standing Orders; and
- (iii) the requirements of either (b) or (c) below:-

(b) Single Stage Tenders

~~(i)~~ (i) — Tenders ~~shall~~ be invited by way of a public notice published on Contracts Finder, ~~on~~ the Electronic Tender Facility ~~London Tenders Portal~~ and by such other additional means as is considered appropriate, stating

the nature of the contract being tendered and stating the last date when Tenders will be accepted, which shall not normally be less than 21 days after the date that the ~~notice-Notice~~ was first published.- The ~~estimated value of the contract~~Contract Value may also be included.

~~(i)~~ ~~(ii)~~—Where relevant to the subject matter of the procurement and proportionate, suitability assessment questions may be asked in order to ensure that the person or body meets the Council's requirements or minimum standards of suitability, capability, legal status or financial standing~~g~~.

(c) **Two-Stage Tenders**

For Medium Value Contracts and High Value Contracts for works or Schedule 3 Services that are below the appropriate EU-Thresholds, in addition to a Single Stage Tender process, tenders may also be invited as follows:

~~(i)~~ ~~(i)~~—Expressions of interest shall be invited by public notice published ~~on~~ on Contracts Finder, the Electronic Tender Facility~~London Tenders Portal~~ and by such other additional means as is considered appropriate, stating the nature of the contract being tendered ~~stating and~~ the last date when expressions of interest will be accepted which shall not normally be less than 21 days after the date that the ~~notice-Notice~~ was first published~~:-~~.

~~(i)~~~~(ii)~~—Information about the tender shall also be placed on Contracts Finder.

~~(ii)~~~~(iii)~~ ~~(ii)~~—Persons or bodies wishing to express an interest shall be ~~sent~~ directed to a selection questionnaire to be completed and ~~returned~~ submitted to the Council by the date specified in the ~~notice~~Notice~~:-~~.

~~(iii)~~~~(iv)~~ ~~(iii)~~—The response to the ~~selection~~ Selection questionnaire Questionnaire shall be used to evaluate whether the person or body meets the Council's minimum technical capacity and financial standing requirements ~~and~~, has relevant experience, and ~~whether they~~ should be included in a shortlist~~; and~~.

~~(v)~~ ~~(iv)~~—Tenders shall be invited from those persons or bodies who have been included in the shortlist.

97. Approved Lists and Online Market Place

(a) ~~(a)~~—The Council has agreed the use of a corporate Approved List. The Director of Legal, HR, Audit & Investigations in consultation with the Head of Procurement ~~in consultation with the Director of Finance~~ may prescribe the rules on how the ~~Corporate~~ corporate Approved List shall be compiled, used, monitored and reviewed and may amend such rules periodically.

(b) The use of the corporate Approved List shall be mandatory for all Low Value Contracts for services and supplies and for all Low and Medium Value contracts for works where a relevant corporate Approved List category exists, unless an exemption is granted pursuant to the rules prescribed under (a) above.

(c) ~~(e)~~—The Council has agreed the use of a Small Works and Services Approved List. The Head of Procurement in consultation with the Director of Legal, HR, Audit & Investigations may prescribe the rules on how the Small Works and Services

Approved List shall be compiled, used, monitored and reviewed and may amend such rules periodically.

| (d) ~~(e)~~—The use of the Small Works and Services Approved List shall be mandatory
| for all Low Value Contracts for services supplies and works where a relevant Small
| Works and Services Approved List category exists, unless an exemption is granted
| pursuant to the rules prescribed under (c) above.

~~(e)~~(e) ~~(e)~~—The Council has agreed the use of an Online Market Place. The Head of Procurement~~Director of Legal, HR, Audit & Investigations in consultation with the Director of Finance~~ may prescribe the internal rules ~~on as to~~ how the Online Market Place shall be used, monitored and reviewed and may amend such rules periodically.

~~(e)~~(f) ~~(f)~~—The Online Market Place shall consist of:

- (i) a contract or Framework Agreement established pursuant to these Standing Orders; or
- (ii) a Dynamic Purchasing System or Framework Agreement established by another contracting authority, PROVIDED that the Monitoring Officer, in consultation with the Head of Procurement, has advised that participation in the Dynamic Purchasing System or Framework Agreement and inclusion on the Online Market Place is legally permissible.

98. The Invitation to Tender

(a) The invitation to tender shall include the following details:-

- (i) a description of the services, supplies or works being procured;
- (ii) whether the Council is of the view that TUPE will apply;
- (iii) the tender timetable including the tender return date and time, which must allow a reasonable period for applicants to prepare their Tenders;
- (iv) a specification and instructions on whether any variants are permissible;
- (v) the Council's terms and conditions of contract;
- (vi) the evaluation criteria including either weightings or the order of importance;
- (vii) pricing schedules, if appropriate, and instructions for completion;
- (viii) whether the tenderer is required to price separately if the tenderer were required to offer appropriate pension provision and/or parent company guarantee and/or a performance bond;
- (ix) form and contents of method statements, if any, to be provided;
- (x) confirmation that Tenders are to be submitted electronically unless this is not possible or inappropriate;
- (xi) the rules and method for submitting Tenders;
- (xii) where Tenders are to be received electronically via the Electronic Tender Facility, a requirement that tenderers submit a signed hard copy of the form of tender, undertakings and any other original documentation upon request;
- ~~(xiii)~~ (xiii) whether ~~or not~~ an e-auction will be conducted;
- ~~(xiii)~~(xiv) information about Social Value, London Living Wage and Lots (where appropriate); and

- (xiv) any further information which will inform or assist applicants in preparing their Tenders.

~~(b) Except in the case of electronic tendering the invitation to tender shall state that no Tender will be considered unless contained in a plain sealed envelope and endorsed "Tender" followed by the subject to which it relates. In all cases the invitation to tender shall specify whether and if so to what extent, the terms of the contract or any part specified will be subject to negotiation between the parties.~~

99. Form of Tender

- (a) All Tenders shall be required to be submitted on the Council's form of tender which shall include the following details:

- (i) a statement that the Council will not be bound to accept any Tender;
- (ii) a section where the tenderer shall state whether ~~their~~its Tender is priced on the basis of TUPE applying or not;
- (iii) except where permitted by ~~European~~ Procurement Legislation, a statement that formal acceptance of the Tender by the Council will, until such time as a written contract can be executed, bind the parties into a contractual relationship; and
- (iv) except in the case of an e-auction, the price and whether this would be different if the tenderer were to offer a comparable pension and/or a parent company guarantee and/or a performance bond.

- (b) ~~Except in the case of electronic tendering, no Tender shall be considered unless it is contained in a plain sealed envelope and endorsed "Tender" followed by the subject to which it relates. In the case of electronic tendering, Tenders must be submitted and opened in accordance with the requirements of Standing Orders ~~401~~100 and 101.~~

100. E-Tendering and E-Auctions

The following rules apply to the use of an Electronic Tender Facility and/or an E-Auction Facility regardless of the value of the contract being procured:

- (a) Invitations to Tender should be submitted and Tenders received by electronic means via an Electronic Tender Facility. Except in the case of e-auctions no other form of electronic tendering shall be permissible. All e-tendering must comply with Procurement Legislation where applicable.
- (b) Tenders received electronically via the Electronic Tender Facility must be held securely until after the closing date and time.
- (c) Tenders securely held must all be opened at the same time by an authorised officer and the Tender details recorded.
- (e) In appropriate cases the submission of prices or values of quantifiable elements for a Tender may be conducted by e-auction using an E-Auction Facility. An E-Auction Facility may be used in conjunction with an Electronic Tender Facility.
- (f) Tenders conducted by e-auction must comply with Procurement Legislation where applicable and unless used in conjunction with an Electronic Tender

Facility, must follow the usual process for the invitation, submission and evaluation of Tenders (including this Standing Order 100) except that the submission of prices and/or values may occur via an online auction.

- (g) Except with the prior written approval of the Director of Finance, electronic tendering shall only be undertaken using the Council's Electronic Tender Facility or E-Auction Facility operated by the Procurement Department Service.

1001. Receipt and Opening of Tenders

In the event that tenders are submitted in hard copy, ~~the Head of Procurement Except in the case of electronic tendering via an Electronic Tendering Facility for which the rules in Standing Order 101 shall apply,~~ the receipt and openings of Tenders shall be conducted as follows:

- (a) All High Value Contract Tenders shall be addressed to the Council's Democratic Services Manager and the Tender shall remain in the custody of the Democratic Services Manager until the time appointed for its opening~~:-~~
- (b) High Value Contract Tenders shall be opened and Tender details recorded by an authorised representative of the Democratic Services Manager and at least one other officer~~:-~~
- (c) Medium Value Contract Tenders shall be addressed to the relevant Chief Officer and the Tender shall remain in the custody of the Chief Officer until the time appointed for its opening; and~~-~~
- (d) ~~Chief Officers and t~~he Head of Executive and Member Services shall make appropriate arrangements for the receipt, storage and opening of Tenders by an officer of appropriate seniority which ensures that each tenderer is treated fairly and equally and ensures probity.

101. — E-Tendering and E-Auctions

~~The following rules apply to the use of an Electronic Tender Facility and/or an E-Auction Facility regardless of the value of the contract being procured:~~

- ~~(a) — Invitations to tender may be despatched and Tenders received by electronic means via an Electronic Tender Facility. Except in the case of e-auctions no other form of electronic tendering shall be permissible. All e-tendering must comply with European Procurement Legislation where applicable.~~
- ~~(b) — Tenders received electronically via the Electronic Tender Facility must be held in an Electronic Tender Time-Box until after the appointed closing date and time.~~
- ~~(c) — Tenders held in an Electronic Tender Time-Box must all be opened at the same time by an authorised officer in the Procurement team after the appointed closing date and time for the Electronic Tender Time-Box has passed and the Tender details recorded.~~
- ~~(d) — Where any original Tender documentation is to be submitted in hard copy instead of electronically as part of the tender process using an Electronic Tender Facility, such documentation shall be addressed to the Head of Procurement and the Tender documentation shall remain in the custody of the Head of Procurement until the time appointed for its opening. At the time appointed for the opening of Tenders held in the Electronic Tender Time-Box, the hard copy Tender documentation shall be opened and~~

~~the details recorded by an authorised representative of the Head of Procurement and at least one other officer.~~

~~(e) — In appropriate cases the submission of prices or values of quantifiable elements for a Tender may be conducted by e-auction using an E-Auction Facility. An E-Auction Facility may be used in conjunction with an Electronic Tender Facility.~~

~~(f) — Tenders conducted by e-auction must comply with any specific European Procurement Legislation where applicable and unless used in conjunction with an Electronic Tender Facility, must follow the usual process for the invitation, submission and evaluation of Tenders (including Standing Order 100) except that the submission of prices and/or values may occur via an online auction.~~

~~(g) — Except with the prior written approval of the Director of Finance, electronic tendering may only be undertaken using the Council's Electronic Tender Facility or E-Auction Facility operated by the Procurement team.~~

~~(h) — Where tendering has been conducted by electronic means, Chief Officers shall ensure that signed hard copies of the form of tender, and where appropriate, the parent company guarantee undertakings and performance bond undertakings are obtained from the successful tenderer prior to award of contract.~~

102. Late Tenders

(a) Late Tenders shall not be considered except in special circumstances and only then if no other Tenders have been opened and only with the prior written approval of the Chief Executive or the Monitoring Officer on receipt of a written request specifying the special circumstances and why acceptance of a late Tender is justified. — A record of any such approval shall be kept with the record of Tenders received.

~~(b) — Where a late Tender is received in paper form, or partly in paper form, it will be opened for the sole purpose of identifying the applicant and will be returned to them immediately save where the late tender is accepted in accordance with Standing Order 102(a) above~~

(~~eb~~) If Tenders are received electronically via ~~an the~~ Electronic Tender Facility or by an E-Auction Facility, then if the Facility will still accept the submission of tenders after the appointed closing date and time for the submission of Tenders it will automatically flag late Tenders as “late”. Late Tenders flagged as such may only be accepted in accordance with Standing Order 102 (a) above. However, ~~once other tenders Tenders~~ have been opened on the Facility ~~then~~, no late Tenders can be accepted.

103. Record of Tenders and Contracts

(a) The ~~relevant Strategic or Operational Director~~ Procurement Department Service shall maintain a record of all Tenders invited and received by ~~it them~~, of all contracts entered into and Framework Agreements concluded on behalf of the Council. ~~Service and The Procurement Department Service~~ shall also record the reasons for awarding the contract to or concluding a Framework Agreement with a tenderer and the reasons for non-acceptance of a Tender or the rejection of a contractor who has not been included in a Tender short-list or Approved List.

(b) For contract award procedures conducted by electronic means, appropriate information shall be kept to document the progress of the procedure.

104. Tender Evaluation

- (a) Tenders subject to ~~European~~ Procurement Legislation shall be evaluated in accordance with the relevant regulations and the invitation instructions to tender. All other Tenders shall be evaluated in accordance with the criteria and procedures set out in the invitation to tender. - In both cases Tenders shall be evaluated in accordance with these Standing Orders save where there is a conflict with ~~any European~~ Procurement Legislation in which case ~~that the~~ legislation shall prevail.
- (b) Tenders for all contracts shall be evaluated and awarded on the basis of the most economically advantageous offer to the Council. The most economically advantageous offer to the Council will be determined using a combination of both quality and price evaluation criteria (except for certain works, supplies or energy supply contracts where price alone may be the sole evaluation criterion).

105. Departure from Tender Documents

- (a) Subject to paragraph (b) below where the Council has included non-negotiable terms and conditions with its instructions to tenderers then Tenders may only be accepted on those terms unless any revisions are notified to all tenderers prior to the tender return date.
- (b) Where contract terms and conditions are non-negotiable then no variations to them may be made after Tenders are received without the prior written approval of the ~~Director of Legal, HR, Audit & Investigations~~ Monitoring Officer.
- (c) Post-tender negotiations are only permissible where the ~~instructions-Invitation to tender-Tender~~ specified the areas to be subject to negotiation and where this is permitted by ~~European~~ Procurement Legislation. In all other cases, only clarification points or ambiguities may be raised with tenderers.

106. Bonds and Guarantees

Chief Officers shall ensure that sufficient security for the due performance of High Value Contracts is taken and for other contracts where such security is considered to be in the best interests of the Council.

107. Notification of Tender Decision, Standstill Period, Debriefing and Acceptance

- (a) Subject to the specific exceptions in ~~the European~~ Procurement Legislation, where the Contract is subject to the full application of ~~the European~~ Procurement Legislation (being a services contract, public works contract, public supplies contract, concession contract or Framework Agreement above the relevant EU Threshold) a mandatory standstill period of at least 10 calendar days must be observed between notifying all tenderers in writing of the award decision and the actual-planned award of contract. -The standstill period shall commence on the day after the written award notification is sent to all tenderers and the written notification must comply with the requirements of ~~the European~~ Procurement Legislation. -If an unsuccessful tenderer requests further information, such information must be provided in accordance with ~~the European~~ Procurement Legislation.
- (b) If a legal challenge to the procurement process or award decision is brought during a mandatory standstill period, the contract must not be awarded and tender acceptance must not be communicated to the successful tenderer without the prior written approval of the Monitoring Officer in consultation with the Head of Procurement ~~Director of Legal, HR, Audit & Investigations~~.

(c) Tender acceptance must not be communicated to the successful tenderer until after the expiry of any mandatory standstill period. -Where Standing Order 107(a) does not apply, tender acceptance shall be communicated to the successful tenderer as soon as possible but subject to any relevant call-in provisions. -Tender acceptance must be in writing and as a minimum must detail the date of the decision and the decision-maker.

108. Contract Award Notices

Chief Officers shall ensure that a contract award notice is published in [OJEU for procurements commenced on or before 31 December 2020 and in Find a Tender for procurements commenced on or after 1 January 2021](#) ~~OJEU and Contracts Finder~~ within 30 days of the award of any contract where required by ~~European~~ Procurement Legislation or, ~~alternatively~~ in the case of ~~dynamic~~ ~~Dynamic purchasing~~ ~~Purchasing systems~~ ~~Systems~~, ~~alternatively~~ ensure that grouped notices are sent within 30 days of the end of each quarter. [Officers shall ensure that relevant information is published on Contracts Finder where required by Procurement Legislation.](#)

109. Letters of Intent

Letters of ~~intent~~ [Intent](#) shall only be used as follows:

- (a) where the Council's form of tender has not included a statement that until such time as a formal contract is executed the Council's written acceptance of a Tender shall bind the parties into a contractual relationship; or
- (b) exceptionally where a contractor is required to provide services, supplies or works prior to written acceptance by the Council and only then with the prior written approval of the Monitoring Officer.

110. Contracts Register

- (a) Chief Officers shall ensure that all contracts awarded by the Council to the value of £25,000 or more over the term of the contract shall be entered on the Contracts Register.- The Contracts Register shall for each contract specify the name of the relevant Council's Service Area, the contractor, the services, supplies or works to be provided, the ~~contract~~ [Contract value](#) ~~Value~~ and contract term and, where relevant, any provisions for extension. Details of all such contracts awarded must be [sent to the Procurement Department](#) ~~Service~~ -entered on the Contracts Register within two weeks of award and in the required format.
- (b) Chief Officers shall also ensure that for all contracts on the Contracts Register, all contract extensions and variations, early terminations, assignments and novations are entered on the Contracts Register and notified to the relevant category manager in the ~~Corporate Procurement Centre~~ [Procurement Department](#) ~~Service~~.

111. Contract Terms and Conditions

Chief Officers shall ensure that contracts are drafted as appropriate to the nature of the services, supplies or works to be provided and contain provisions to protect the Council's overall interest.- Advice shall be sought from the [Monitoring Officer](#) ~~Director of Legal, HR, Audit & Investigations~~ as appropriate.

112. Extension and Variation of Contract

- (a) ~~(a)~~—Contracts subject to ~~European~~ Procurement Legislation may be extended in compliance with relevant legislative provisions. – Contracts may be extended in accordance with the provisions for extension contained in the contract if the parties agree and if the relevant Chief Officer is satisfied that the extension will achieve best value and is reasonable in all the circumstances. – Any such extension that will last for more than one year shall be notified to the ~~Monitoring Officer~~~~Director of Legal, HR, Audit & Investigations~~ and the Director of Finance. –All extensions (of any duration) shall be notified to the ~~Contracts Register Officer~~~~Procurement Department~~~~Service~~.
- (b) ~~(b)~~—Retendering of contracts shall be timetabled to ensure handovers can be effected at the end of the contract term. Where any retendering is delayed or is unsuccessful then temporary arrangements may be agreed by the relevant Chief Officer.
- (c) ~~(c)~~—Any temporary contractual arrangements necessary to cover periods between a contract expiring and a new contract commencing shall be kept to a minimum term possible and retendering shall be commenced or re-commenced as soon as is reasonably possible.
- (d) ~~(d)~~—Chief Officers have delegated to them power to extend, vary or renegotiate contracts in accordance with paragraph 9.5 of Part 3 of this Constitution. –Where approval to extend, vary or renegotiate a contract is required to be obtained or is in any event sought from the Cabinet (or the General Purposes Committee or Pension Fund Sub-Committee) or individual Cabinet member the Cabinet, the General Purposes Committee, ~~or the Pension Fund Sub-Committee~~ or individual Cabinet member as the case may be shall receive and consider a report setting out all relevant information necessary to give such approval or approvals as it considers necessary.

113. Early Termination of Contract

High Value Contracts may only be terminated by the Cabinet, the General Purposes Committee, ~~or the Pension Fund Sub-Committee~~ or individual Cabinet member as appropriate.

High Value and Medium Value Contracts may only be terminated:

- (a) by agreement between the Council and the Contractor; or
- (b) in accordance with the termination conditions of the contract

and provided that in either case the financial and legal implications or other relevant circumstances have been taken into account.

114 Assignment and Novation of Contract

- (a) Contracts may be novated or assigned provided that the novation or assignment would not breach ~~European~~ Procurement Legislation. Chief Officers have delegated to them the power to novate or assign contracts pursuant paragraph 9.5, of Part 3 of this Constitution provided that the novation or assignment does not substantially alter the terms and conditions of the contract and provided that the relevant Chief Officer is satisfied that the new contractor meets certain standards.

(b) ~~(b)~~—Where approval to novate or assign a contract is required to be obtained or is in any event sought from the Cabinet (or the General Purposes Committee or Pension Fund Sub-Committee) or individual Cabinet member, the Cabinet, the General Purposes Committee, ~~the or~~ Pension Fund Sub-Committee or individual Cabinet member as the case may be shall receive and consider a report setting out all relevant information necessary to give such approval or approvals as it considers necessary.