Contract Standing Orders

SYNOPSIS
To provide an overview to Full Council of the key changes to the revised Contract Standing Orders. This matter was considered by the Audit & Governance Committee at its meeting on 6th August 2014. The Committee are recommending approval.

1. Relevant Background Details
Following Corby Borough Council’s signing up to the use of external procurement services, offered by the Welland Procurement Unit, it was identified that the Council’s existing Contract Standing Orders required updating in order to effectively reduce the risk of challenge and bring the Orders in line with current best practice and case law.

2. Report
The initial rewrite of the Contract Standing Orders has been undertaken by colleagues from the Welland Procurement Unit, the revised document then went through a number of revisions in consultation with the Policy and Strategy Officer and Senior Solicitor (Contracts) before being discussed and agreed with the Legal Services Manager, Director of Corporate Services and Democratic Services Manager in his capacity as Monitoring Officer.

Revision of the Contract Standing Orders has served to make the document more concise and user friendly, with a number of amendments, outlined below, which seek to update the document in line with current legislation.

The following are the main changes proposed to the Contract Standing Orders:

1. Variable data, such as OJEU (Official Journal of the European Union) thresholds, contact details, etc, are now gathered together in a new Appendix 2. It is proposed that the Director of Corporate Services, or their nominated deputy, should have authority to make amendments to Appendix 2, to keep it up-to-date without the need to seek Committee approval.

2. The draft Contract Standing Orders do not now contain detail on conducting OJEU procurements, as it is proposed to ensure that all such procurements are supported by the Council’s external procurement advisers, currently the Welland Procurement Unit. Thresholds will be updated in Appendix A.

3. Clarity on the following key areas has been introduced to ensure that arrangements align with Regulation and best practice:
   a. Procurement Processes and Thresholds
   b. Advertising Requirements
   c. Tender submission and evaluation.

4. Please note that the Rules also allow for the introduction of E-Tendering. This is a requirement of the new EU Procurement Regulations and as such it will be necessary for all Councils to have access to such a system. Corby Borough Council will be able to access an E-Tendering system through the Council’s external procurement advisers

Following ratification by Full Council, training will be rolled out to appropriate Officers to raise awareness of the new Contract Standing Orders.
3. **Options to be considered (if any)**

Following consideration of the report, the Audit and Governance Committee are asked to make comment on the changes made to the Contract Standing Orders prior to presentation to Full Council.

4. **Issues to be taken into account:—**

   **Policy Priorities**

   Up-to-date and effective Contract Standing Orders are central to achieving the Council’s best value priorities, identified under priority 6.5 of the Council’s Corporate Plan.

   **Financial**

   Failure to adhere to these Contract Standing Orders could have severe financial implications, as challenge from potential suppliers for mismanaged procurement activities could cost the Council a substantial amount, not only in terms of compensation (if applicable), but also in having to re-run procurement exercises.

   **Risk (this may be financial, legal, reputational etc)**

   Risks associated with not having up-to-date and effective Contract Standing Orders are financial, legal and reputational, as the Contract Standing Orders promote good procurement practice and public accountability and to safeguard the Council against these risks. The Council could also be at risk of challenge, as out-of-date Contract Standing Orders may not effectively safeguard the Council against recent changes in procurement legislation.

   **Legal**

   By adhering to these Contract Standing Orders, we will ensure that all Legal aspects of procurement and contract procedures are undertaken in line with current legislation and should help to avoid any challenge from suppliers.

   **Performance Information**

   Adherence to these Contract Standing Orders will seek to ensure sufficient performance by Contracting Officers with regards to fair, transparent and legal procurement activity across the Council.

   **Best Value**

   Up-to-date and effective Contract Standing Orders are central to achieving the Council’s best value priorities.

   **Human Rights**

   Consideration will be given to Human Rights issues, on an individual basis, as required, throughout the contracting process identified in the Contract Standing Orders.

   **Equalities**

   The Contract Standing Orders adhere to the rules of fair competition identified in the Treaty of Rome and ensure fair and equal opportunity for all businesses to work with Corby Borough Council.

   **Sustainability**

   Sustainability considerations are typically addressed through the specification documents composed for procurement activities defined in these Contract Standing Orders.

   **Community Safety**

   There are no Community Safety considerations associated with the Council’s Contract Standing Orders.
5. **Conclusion**

The revisions to the Contract Standing Orders have been made to bring them up-to-date with current legislation, as well as making them easier to read and more user friendly, whilst retaining a level of detail necessary to ensure their effectiveness.

6. **Recommendation**

That:-

i) The updated Contract Standing Orders approved by the Audit & Governance Committee (6th August 2014) be ratified;

ii) Full Council agree the proposal to allow the Director of Corporate Services or their nominated deputy to make changes to the variable information included in Appendix 2 of the updated Contract Standing Orders: and in addition

iii) These updated Contract Standing Orders be implemented by November 2014 following appropriate training of the Council’s Contract Officers; and

**Background Papers**

None

**External Consultations**

Welland Procurement Unit

**List of Appendices**

- Appendix A: Draft Contract Standing Orders 2014

**Officer to Contact**

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Contract Standing Orders

A guide for all Contracting Officers

August 2014
## GLOSSARY

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<thead>
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<th>Term</th>
<th>Definition</th>
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<tr>
<td>Agent</td>
<td>Any person or organisation acting on behalf of the Council or on behalf of another organisation.</td>
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<tr>
<td>Assign / Assignment</td>
<td>Transfer of a contractual benefit to another party.</td>
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<tr>
<td>Authority</td>
<td>As detailed in the Constitution</td>
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<tr>
<td>Award Criteria</td>
<td>The criteria stated in the Quotation / Tender by which the successful Bidder is to be selected.</td>
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<tr>
<td>Bidder</td>
<td>Any person / organisation who asks for or is invited to submit a Quotation / Tender.</td>
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<tr>
<td>Call Off</td>
<td>A specific requirement which can be met under the terms of a Framework Agreement and which is issued under the terms of that Framework Agreement to form a contract.</td>
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<tr>
<td>Constitution</td>
<td>The Corby Borough Council Constitution which sets out how the Council operates, how decisions are made and the procedures that are followed to ensure these are efficient, transparent and accessible to local people.</td>
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<tr>
<td>Corporate Contract</td>
<td>A contract let by the Council.</td>
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<tr>
<td>Council</td>
<td>Corby Borough Council.</td>
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<tr>
<td>Destruction of Records Policy</td>
<td>The Council’s policy on the appropriate length of time documents relating to tenders, quotations and contracts need to be retained either in hard or electronic copy.</td>
</tr>
<tr>
<td>Dynamic Purchasing System</td>
<td>A completely electronic system of limited duration which is established by the Council to purchase commonly used goods, works or services; and is open throughout its duration for the admission of Suppliers who satisfy selection criteria specified by the Council and who submit an indicative tender to the Council, or body operating the system on its behalf and who comply with the Specification.</td>
</tr>
<tr>
<td>Exemption</td>
<td>Approval given by the relevant Head of Service or Committee of the Council as appropriate to exempt an Officer or Officers from adhering to these Contract Standing Orders.</td>
</tr>
<tr>
<td>EU Procedure</td>
<td>The procedure required by the EU for awarding contracts where the value exceeds the EU Threshold.</td>
</tr>
<tr>
<td>EU Procurement Regulations</td>
<td>Regulations which are given force of law in the UK through the Public Contracts Regulations 2006 as amended and any successor regulations which specify in detail the procedures by which public authorities shall undertake their procurement.</td>
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</table>
EU Threshold  The contract value at which the EU Regulations must be applied. See Appendix 2.

European Economic Area  The members of the European Union and Norway, Iceland and Liechtenstein.

Financial Health Check  A financial risk assessment of the finances of a company, parent or group of organisations in order to establish their liquidity, profitability, stability and capability to support a contract of the value required.

Financial Regulations  The Financial Regulations outlining the Officer’s responsibilities for financial matters as detailed in the Constitution.

Framework Agreement  A formal tendered arrangement which sets out terms and conditions under which specific purchases can be made from the successful Bidders in unpredicted quantities at different times during the term of the Framework Agreement.

Goods  Goods which are covered by the EU Procurement Regulations if they meet the relevant value threshold.

Government Procurement Agreement  The successor agreement to the General Agreement on Trade and Tariffs. The main signatories other than those in the European Economic Area are: USA, Canada, Japan, Israel, South Korea, Switzerland, Aruba, Hong Kong, China and Singapore.

Head of Service  The Council Officer primarily responsible for the Service Areas which make up Corby Borough Council.

Invitation  Invitation to Tender or Quotation in the form required by these Contract Standing Orders.

Major Projects  Contracts with a medium to high risk with a total estimated value of over £1 million.

Monitoring Officer  The role of Monitoring Officer is required by law. The officer is responsible for maintaining the Constitution, ensuring lawfulness and fairness in decision making and supporting the Standards Committee.

Non Commercial Considerations  Except as provided, the following matters are non commercial considerations:

a) The terms and conditions of employment by contractors of their workers or the composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces (“workforce matters”).

b) Where the terms on which contractors contract with their sub-contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self-
employed persons of their services only

c) Any involvement of the business activities or interests of contractors with irrelevant fields of Government Policy

d) The conduct of contractors or workers in industrial disputes between them or any involvement of the business activities of contractors in industrial disputes between other persons (“industrial disputes”).

e) The country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of contractors

f) Any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees

g) Financial support or lack of financial support by contractors for any institution to or from which the authority gives or withholds support

h) The use or non use by contractors of technical or professional services provided by the authority under the Building Act 1984

i) Workforce matters and industrial disputes, as defined above, cease to be non commercial considerations to the extent necessary or expedient to demonstrate value for money or where there is a transfer of staff to which TUPE applies.

Officer
An Officer of the Council, who is the Officer responsible for undertaking a purchase and for the administration of the completed contract to include ensuring compliance with its terms and conditions and implementation of any required variation.

OJEU Notice
Notice (advertisement) posted in the Official Journal of the European Union including a PIN, a Contract Notice or Award Notice.

One Stage or Open Procedure
Tendering under this procedure is “open” as any Supplier expressing an interest is automatically entitled to tender.

Orders
Contract Standing Orders

PIN
A Prior Information Notice. A PIN can be published before the procurement starts, when a requirement is above EU Thresholds, and makes it possible to reduce the time needed to complete a competition.

Parent Company Guarantee
A contract which binds the parent of a subsidiary company as follows – if the subsidiary company fails to do what it has promised under a contract with the Council, the Council can require the parent company to do so instead.
| Performance Bond | An insurance policy: if the Supplier does not do what it has promised under a Contract with the Council, the Council can claim from the Bondsman the sum of money specified in the Bond (10% of the contract value). A Bond is intended to protect the Council against a level of cost arising from the Supplier’s failure. |
| Procurement Officer | The Officer within the Council, responsible for giving advice on procurement related issues at Corby Borough Council |
| Publicly Available Contract | A contract let by a public purchasing organisation such as ESPO or Crown Commercial Service on behalf of the Council. |
| Purchasing Gateway Group (PGG) | A group of Council Officers responsible for offering collective advice on procurement, legal and financial issues amongst others. |
| Quotation | A quotation of price and any other relevant matter. |
| Section 151 Officer | The Officer within the Council, responsible for ensuring lawfulness and financial prudence of decision making. |
| Service Contracts | Contracts let by public authorities for services as defined in The Treaty of Rome which is for anything other than civil engineering and building works and works concession contracts. |
| Shortlisting | Where Bidders are selected to quote or bid or proceed to full evaluation. |
| Supplier | Any person or organisation, including companies or other bodies of persons providing, or seeking to provide, supplies, services or works to the Council. |
| Tender | A Bidder’s proposal submitted in response to an Invitation. |
| Terminate(d) | To end a contractual arrangement. |
| Total Value | The whole of the value or estimated value (in money or equivalent value) of the Contract, calculated as follows: |
| a) | Where the contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the contract period. |
| b) | Where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions over the coming 12 months. |
| c) | Where the contract is for an uncertain duration by multiplying the monthly payment by 48. |
| d) | For nominated Suppliers and sub-contractors, the Total Value shall be the value of that part of the main contract to
be fulfilled by the nominated Supplier or sub-contractor.

**TUPE**

These regulations apply to the transfer of an economic entity or service provision change. Where TUPE does not apply, public bodies should refer to the Cabinet Office Statement of Practice (“COSOP”).

TUPE is to protect employees by:
1. Prohibiting dismissals because of the transfer (but redundancies are permitted)
2. Maintaining most of their terms and conditions
3. Restricting changes to terms and conditions of employment made because of a transfer
4. Providing the right to be informed and / or consulted

**Value for Money**

Is not necessarily the lowest price, it combines goods or services that fully meet the needs with the level of quality required, delivered at the time needed and at an appropriate price.

**Works Contract**

Contracts let by public authorities for civil engineering and building works and works concession contracts.
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INTRODUCTION AND PURPOSE

CSO 1 BASIC PRINCIPLES

1.1. All procurements must comply with these rules, the Financial Regulations, English law and European law in force in England.

1.2. Whether or not a procurement is subject to the EU Procurement Regulations, it must be conducted in accordance with the basic EU Treaty Principles. In particular this means all procurements must be carried out in a fair, open and transparent way.

1.3. Any change to the relevant English or European law must be observed until these Orders are revised. If these Orders or the Procurement Toolkit conflict in any way with English law or European law in force in England then the legislation shall take precedence. In addition, the Council reserves the right to consider the application of intervening government guidance.

1.4. The strategic advice of, where relevant, Legal Services and / or the Procurement Officer must be sought during the earliest stages of planning any procurement.

1.5. All procurements must realise Value for Money by achieving the optimum combination of the Total Value and quality of outcome.

1.6. These Contract Standing Orders are designed to ensure that procurements:

1.6.1 Achieve best value for public money spent;

1.6.2 Is consistent with the highest standards of propriety;

1.6.3 Are allocated in a fair and compliant manner;

1.6.4 Comply with all legal requirements and established government and commercial codes of conduct;

1.6.5 Support the Council’s own corporate aims and service policies;

1.6.6 Comply with the Financial Rules, health and safety, equality and environmental sustainability requirements; and

1.6.7 Manage the Council’s risk effectively.

1.7. The Officer must ensure they have the necessary Authority prior to the commencement of any procurement activity.

Advice and Guidance

1.8. It is a mandatory requirement that advice and guidance on all procurement activities equal to and above £10,000 must be sought in the first instance from the Purchasing Gateway Group (PGG).

1.9. Notwithstanding 1.8 above advice and guidance can be obtained from the PGG by any Officer who wishes to participate in a procurement activity of any value.

1.10. Advice on compliance with legislative requirements may be obtained from Legal Services, who will liaise with the Council’s external procurement advisors as appropriate.
CSO 2 OFFICER RESPONSIBILITIES

Officers

2.1. The Officer responsible for the procurement must comply with these Contract Standing Orders and the Financial Rules.

2.2. The Officer is responsible for ensuring that any Agents acting on behalf of the Council agree in writing that they will also comply with these Orders.

2.3. The Officer must keep the records required by CSO 5.

2.4. Where the EU Procedure is required, the Officer must contact the Procurement Officer, who will liaise with the Council’s external procurement advisors as appropriate, before embarking on the procurement.

2.5. Officers should take all necessary legal, financial and other professional advice.

2.6. When any employee of the Council or of an external service provider may be affected by any transfer arrangement, the Officer must ensure that TUPE issues are considered and obtain advice from the Legal Services Manager before proceeding with any procurement.

2.7. Officers must ensure that the contracts for which they are responsible are effectively managed and monitored to ensure they deliver the requirement as intended.

2.8. Where an Officer has a potential conflict of interest with a Supplier from whom a Quotation / Tender is being sought, the Officer must declare this immediately to the Monitoring Officer. The Officer may be required to withdraw from the procurement process. Any Officer who fails to declare such a conflict of interest may be subject to disciplinary proceedings and sanctions and risks being prosecuted under the Bribery Act 2010.

Heads of Service

2.9. Any Head of Service is authorised to nominate on behalf of the Council any person designated as a Contracting Officer. The name of the person so nominated shall be recorded in the Register of Contracting Officers as maintained by the Assistant Chief Executive (and which is open to inspection by the public at all reasonable times).

2.10. Heads of Service must ensure that they and their Officers comply with these Contract Standing Orders;

2.11. Heads of Service must ensure that Value for Money is achieved in all procurements within his or her service area;

2.12. Heads of Service must ensure that they have in place a scheme of delegation that records in writing what action Officers in their Directorates are authorised to take under these Orders;

2.13. Heads of Service must, in the interests of forward planning, prepare, maintain and review a rolling schedule in respect of purchasing activities within their Directorate estimated to be over £10,000.

2.14. Heads of Service must support the Procurement Officer in the maintenance of the central register which records contracting decisions made (e.g. awarding, extending,
terminating, assigning contracts) in respect of contracts over £10,000 which shall include such details as:

- Date of decision;
- Contract title;
- Decision made; and
- The decision maker

2.15. Where a Head of Service has a potential conflict of interest with a Supplier from whom a Quotation / Tender is being sought, the Head of Service must declare this immediately to the Monitoring Officer and Legal Services. The Head of Service may be required to withdraw from the procurement process. Any Head of Service who fails to declare such a conflict of interest may be subject to disciplinary proceedings and sanctions and risks being prosecuted under the Bribery Act 2010.

2.16. Heads of Service must keep records required by these Orders.

2.17. Heads of Service must keep a register of:

2.17.1. Contracts completed by signature (rather than by the Council's seal) and arrange their safekeeping on Council premises with Legal Services.

2.17.2. Exemptions must be recorded under these Orders in order that the Monitoring Officer may monitor their use.

2.17.3. Notify the Procurement Officer of all contracts over £10,000 who will maintain a register on behalf of the Council for auditing purposes.

CSO 3 EXEMPTIONS

3.1. The exemptions listed below do not apply to procurements subject to the EU Procedure.

3.2. The relevant Officer with approval from their Head of Service, Section 151 Officer, Monitoring Officer, Leader and Chief Executive may grant formal Exemptions which fulfil one or more of the following criteria:

3.2.1. Sole source of supply – where suitable supplies or services are genuinely only available from one supplier (e.g. if patent, copyright or other exclusive design rights exist). Similarly, for any, highly specialised / niche services where, for all practical purposes, no realistic alternative source of supply exists. Exemption requests made on this basis will be tested by the relevant Head of Service.

3.2.2. Genuine emergencies – critical preventative or remedial work where there is a real and imminent risk to the safety of people or property arising from an hitherto unforeseen ‘catastrophic’ event or incident such as fire, bombing, flood, major landslide etc.

3.2.3. Collaborative / Joint Purchasing – where another authority / public body is acting as ‘lead buyer’ and provided that the person(s) awarding the contract can demonstrate the arrangements comply with the requirements of Value
for Money and other applicable legislation including, where relevant, the EU Procurement Directives. This includes any recognised wider public sector agreements, including, for example Crown Commercial Service (CCS) or successor contracts, etc.

3.2.4. Procurements which have been registered as Partnerships or Grants.

3.2.5. Works orders placed with utility companies, e.g. for re-routing cables or pipe work. The term ‘utilities’ does not include telecommunications.

3.2.6. Urgent situations not of the Council’s own making – the urgency must have been reasonably unforeseeable (e.g. existing supplier going into liquidation, urgently imposed statutory changes, etc.) and genuinely be a case of ‘time is of the essence.’ However, urgency arising through problems of the Council’s own making (whatever the cause and regardless of whether it involved previous delays or shortage of resources, etc.) shall not in itself normally justify exemption.

3.2.7. Reasons of compatibility – if compatibility with existing supplies, equipment or services is essential and where those supplies cannot be sourced from another supplier (e.g. spare parts / components for existing equipment) or where additional units are being purchased to match existing equipment and there is an overwhelming case for matching the existing items on the grounds of functionality, aesthetics etc.

CSO 4 RELEVANT CONTRACTS

4.1. All relevant contracts made by or for any part of the Council must comply with these Contract Standing Orders.

4.2. This means any arrangement under which the Council pays or receives money or equivalent value and it includes:

4.2.1. the permanent supply or disposal of assets / goods;

4.2.2. execution of works;

4.2.3. the temporary hire, rental or lease of a supply, not including the lease of land or property;

4.2.4. the provision of services (including agency contracts for interim or temporary staff, consultancy contracts, contracts with the voluntary sector);

4.2.5. Any combination of the above.

4.3. For the avoidance of doubt, these Orders do not apply to the following contracts:

4.3.1. Employment contracts making an individual a direct employee of the Council; or

4.3.2. Land transactions to acquire or dispose of some interest in land (which are covered by the Financial Rules); or

4.3.3. Lending or borrowing of money.

CSO 5 PROCUREMENT PLAN
5.1. Prior to the commencement of each financial year, the Procurement Officer shall prepare a Procurement Plan setting out information on those contracts to be awarded in the period covered by the Plan.

5.2. The Procurement Plan shall set out the following:

5.2.1. Body Name;
5.2.2. Body;
5.2.3. Service Area;
5.2.4. Department;
5.2.5. Title of Agreement;
5.2.6. Scope;
5.2.7. Contract Reference Number;
5.2.8. Description;
5.2.9. Start Date;
5.2.10. End Date;
5.2.11. Extension Period;
5.2.12. Contract Value;
5.2.13. Supplier Name;
5.2.14. Supplier Organisation Type;
5.2.15. Contract Manager;
5.2.16. Procurement Category.

5.3. The Procurement Plan shall indicate which Contracts are Major Projects. However, Heads of Service are responsible for identifying other Major Projects on the basis of initial risk assessment.

5.4. The Procurement Plan shall be continuously updated to incorporate requirements that were not foreseen at the beginning of the financial year.

COMMON COMPETITION PRINCIPLES

CSO 6 RECORDS

6.1. Where the total value is less than £50,000, the document containing the Invitation to Quote as well as the Quotes received from Bidders must be kept as well as:

- A written record of any exemption and the reasons for it;
- A written record of the reason if the lowest priced quote is not accepted;
6.2. Where the total value exceeds £50,000, the Officer must record:

- The method of obtaining Tenders (see CSOs 10 and 11);
- Any contracting decision and the reasons for it;
- Any exemption and the reasons for it;
- The Award Criteria in descending order of importance;
- Tender documents sent to and received from Bidders;
- Pre-tender market research;
- Clarification and post tender negotiation (to include minutes of meetings);
- The contract documents;
- Post contract evaluation and monitoring;
- Written records of communications with Bidders and with the successful Bidder throughout the period of the contract.

6.3. Written records required by these Orders must be kept in accordance with the Council’s policy on Document Retention.

CSO 7 ADVERTISING

7.1. For procurements with a value below £25,000, no advertising is required unless the procurement has corporate implications (as identified by the Procurement Officer) which are perceived to be significant.

7.2. For procurements over £25,000 but below the EU Threshold, an advertisement shall be published in at least two of the following media (two versions of the same medium are acceptable):

- The local newspapers in circulation in the Borough;
- The Council’s website;
- Source Northamptonshire;
- Other websites recognised for offering local government tender opportunities;
- Appropriate national press;
- Appropriate trade journals.

7.3. The advertisement shall contain details of the proposed contract and specify a time limit within which interested parties may express an interest in quoting / tendering for the contract.
7.4. Where the EU Procedure applies, the Procurement Officer will liaise with the Council’s external procurement advisors as appropriate to manage the advertising required under those Directives.

7.5. When advertising a Framework Agreement, the advertisement must indicate:

7.5.1. that it is a Framework Agreement which is being tendered;

7.5.2. the duration of the Framework Agreement (which must not exceed four years including any extensions);

7.5.3. the expected maximum number of suppliers;

7.5.4. the estimated total value of the contracts to be covered by the Framework Agreement;

7.5.5. The award criteria for choosing suppliers and subsequent criteria for placing orders.

CSO 8 FRAMEWORK AGREEMENTS (SOMETIMES KNOWN AS APPROVED LISTS) AND DYNAMIC PURCHASING SYSTEMS

Framework Agreements (sometimes known as Approved Lists)

8.1. A Framework Agreement is a formal tendered arrangement which sets out terms and conditions under which specific purchases can be made from the successful Bidders in unpredictable quantities and at different times during the term of the Framework Agreement.

8.2. Framework Agreements must comply with these Orders; this includes but is not limited to, the following:

8.2.1. A Framework Agreement should be procured in accordance with the Procurement Thresholds set out in these Orders. The value of the contract in relation to a Framework Agreement is the estimated maximum value over its lifetime.

8.2.2. In any case where a Framework Agreement is in place:

8.2.2.1. Subsequent Call-Offs from that Framework Agreement must not contain substantial amendments to the original terms of the Framework Agreement;

8.2.2.2. Orders to be placed against a known price do not require further competition unless required by law;

8.2.2.3. In circumstances where the price was not specified under the Framework Agreement an order can only be placed if three quotes have been requested from the list of suppliers specified in the Framework Agreement or, if there are fewer than three supplier specified, all of them.

8.3. Where an Officer wishes to use a Framework Agreement offered by another public sector body, he or she must demonstrate (to a Head of Service) that Value for Money will be achieved. Costs of procurement should be included within this consideration.
Dynamic Purchasing Systems

8.4. When using a Dynamic Purchasing System, the Council shall comply with the Regulations and Directive which set out the full details of the legal requirements. In order to access a Dynamic Purchasing System, contact the Procurement Officer, who will liaise with the Council’s external procurement advisors as appropriate, for support and advice.

8.5. A Dynamic Purchasing System established by the Council shall not operate for more than four years, except in duly justified and exceptional circumstances.

E-Auctions

8.6. E-auctions may be used where appropriate and in circumstances where this approach will provide the Council with value for money.

8.7. Before entering into an E-Auction, advice and guidance must be sought from the Procurement Officer, who will liaise with the Council’s external procurement advisors as appropriate.

CSO 9 COMPETITION REQUIREMENTS

9.1. The Officer must establish the Total Value of the procurement (for the life of the Contract including any potential extension periods which may be awarded). If the Total Value cannot be calculated, the annual value multiplied by four should be used instead.

9.2. Based on this value, Quotations or Tenders must then be invited in line with the financial thresholds detailed in CSO 11.

9.3. Where the procurement is below the EU Threshold, at least one of the Quotations / Tenders should be sought from a local supplier, where local means within the Borough or sub-region.

9.4. Where the procurement is above the EU Threshold, the advice and support of the Procurement Officer, who will liaise with the Council’s external procurement advisors as appropriate, before any competition is started.

9.5. An Officer must not enter into separate contracts nor select a method of calculating the Total Value in order to minimise the application of these Rules.

CSO 10 PRE-PROCUREMENT MARKET RESEARCH AND CONSULTATION

10.1. The Council may consult potential suppliers, prior to the issue of the Invitation to Tender or Request for Quotation, in general terms about the nature, level and standard of supply, contract packaging and other relevant matters, provided that this does not prejudice any potential Supplier.

10.2. When engaging with potential suppliers, the Council must not seek or accept technical advice on the preparation of an Invitation to Tender or Request for Quotation from anyone who might have a commercial interest in the process, and where this may prejudice the equal treatment of all potential bidding organisations or distort competition.

10.3. In conducting Pre Procurement Market Research, the Council must ensure that:
10.3.1. No information is disclosed to one supplier which is not then made available to all suppliers involved in the process or who are subsequently invited to bid;

10.3.2. No supplier shall be led to believe that the information they offer will lead to them being invited to quote, or awarded the contract;

10.3.3. A written record, including any communications made and notes of any meetings held and the responses and names of individuals present, shall be kept by the Officer.

10.4. In undertaking any market testing activities, the Officer responsible should refer to guidance in the Procurement Toolkit.

The Public Services (Social Value) Act 2012

10.5. This Act requires contracting authorities to consider at the pre procurement stage of any service contract and service Framework Agreement (including goods and works contracts procured in combination with services) above EU Thresholds (including Part B services):

- How the proposed procurement may improve the economic, social and environmental wellbeing of an area;
- How the contracting authority may act with a view to securing that improvement in conducting the process of procurement; and
- Whether to undertake any community consultation on the above.

10.6. Appropriate records should be kept of these considerations, including the reason for any decision regarding the matter of community consultation.

PROCEDURE BY VALUE OF REQUIREMENT

CSO 11 PROCUREMENT THRESHOLDS

Values under £10,000

11.1. At least one written quotation must be obtained for requirements under £10,000 before any order is processed and this must specify:

a. The goods, services or works to be supplied;
b. Where and when they are to be supplied;
c. The value of the transaction;
d. The Terms and Conditions including Payment Terms.

11.2. The Contract Award must be authorised by the Officer and a relevant Head of Service.

Values over £10,000 but under £50,000

11.3. At least three comparable written quotations must be sought; at least one of those quotations should be from a local supplier, where possible, where local means in the
Borough or sub-region. Where fewer than three potential suppliers can be identified, the Officer should keep a written record or the reason and all potential suppliers should be invited to quote.

11.4. Where a requirement is valued at between £25,000 and £50,000, it must be advertised in accordance with CSO 7.

11.5. The Contract Award must be authorised by the Officer and the relevant Head of Service.

**Values over £50,000 up to EU Threshold**

11.6. A full tender exercise needs to take place in accordance with CSO 12.

11.7. Tenders should be advertised in accordance with CSO 7.

11.8. The contract award must be authorised by the Officer and relevant Head of Service.

**Values over the EU Threshold**

11.9. Where the EU Procedure is required, the Officer must contact the Procurement Officer, who will liaise with the Council’s external procurement advisors as appropriate, before embarking on the procurement.

**Quick Reference Table**

<table>
<thead>
<tr>
<th>Values</th>
<th>Procurement Method</th>
</tr>
</thead>
<tbody>
<tr>
<td>Values under £10,000</td>
<td>At least one written quotation must be sought which demonstrates suitable Value for Money.</td>
</tr>
<tr>
<td>Values over £10,000 but under £50,000</td>
<td>At least three comparable written quotations must be sought. Contracts for values between £25,000 and £50,000 must be advertised in accordance with CSO 7.2.</td>
</tr>
<tr>
<td>Values over £50,000</td>
<td>A full tender process must be carried out.</td>
</tr>
<tr>
<td>Values over EU Threshold</td>
<td>A full OJEU tender process must be carried out where a Framework Agreement cannot be utilised.</td>
</tr>
</tbody>
</table>

**CSO 12 TENDERING PROCEDURES AND TIMESCALES**

**Two Stage or Restricted Procedure**

12.1. This is the default procedure to be used for all procurements where a formal tender is required. The Restricted Procedure consists of two distinct stages: the selection of suitable bidders from those expressing an interest (usually via a Pre Qualification Questionnaire (PQQ)) and the Invitation to Tender.

12.2. Pre Qualification Questionnaires should be evaluated according to the published criteria and only those Bidders selected will be sent the Invitation to Tender documents.
12.3. Tenders should be evaluated in accordance with CSO 13.

One Stage or Open Procedure

12.4. The use of the Open Procedure must be approved by The Procurement Officer.

12.5. An Officer responsible for conducting an Open Procedure will need to allow adequate time for the completion of the process. More time may be required for complicated procurements.

12.6. Where the Invitation to Tender documents contains pre-qualification criteria, responses to those criteria must be evaluated before evaluation of the rest of the criteria can begin.

CSO 13 STANDARDS AND AWARD CRITERIA / PROCEDURE

13.1. The Officer must ascertain what relevant British, European and International Standards apply and include the standards that are necessary to describe the required quality. The Officer must ensure that the Council does not discriminate in favour of British Standards.

13.2. The Officer must define the Award Criteria in the Invitation which must
   • Be relevant to the works, services or goods to be provided under the contract; and
   • Secure an outcome which will provide Value for Money for the Council.

13.3. Award Criteria may include:
   • Most Economically Advantageous (where considerations other than price are important); or
   • Lowest price (where the price is the prime factor); or
   • Highest price (where payment is to be received by the Council).

13.4. If using the most economically advantageous award criteria, the Officer must define the relevant factors by reference to sub-criteria which may cover factors such as the following, depending on what is to be provided under the contract:
   • Price (permission must be sought from the EnCor Financial Services Manager if price is to account for less than 50% of the final score.)
   • Quality and performance;
   • Running costs;
   • Technical merit;
   • Economic advantage based on past experience;
   • Delivery date;
   • Environmental considerations;
• Aesthetic and functional characteristics;
• Safety;
• After sales service;
• Technical assistance;
• Other relevant matters.

13.5. Issues that are important to the Council in terms of meeting its corporate objectives can be used to evaluate bids. The criteria can include economic and social considerations such as sustainability considerations, support for the economy or the use of sub-contractors.

13.6. The procurement documentation should clearly explain the basis of the decision to bidding organisations, making clear how the evaluation criteria specified in the process will be applied, how weightings will be distributed etc.

13.7. Award criteria / Award Procedures must not include:

• Non commercial considerations other than those permitted under the Social Value Act;
• Matters which discriminate against suppliers from the European Economic Area or signatories to the Government Procurement Agreement.

CSO 14 INVITATIONS TO TENDER / QUOTATIONS

14.1. The Invitation to Tender or Quotation must specify what is to be provided in sufficient detail to enable the submission of competitive offers.

14.2. The Invitation to Tender or Quotation must state that the Council is not bound to accept any Quotation or Tender and that late submissions may be rejected.

14.2.1. At its discretion, the Council may either waive or insist on strict compliance with any requirement set out in the Invitation to Tender or Quotation. The Invitation to Tender or Quotation will include or be deemed to include such discretion of the Council.

14.3. Invitations to Tender (above £50,000) must specify that no Tender will be considered unless it is enclosed in a sealed envelope which bears the word ‘Tender’ followed by the name of the contract but with no name or mark which indicates the sender (including a franking mark). Where a Tender or Quotation is personally delivered to the Council, the Bidder is to be informed to obtain an official receipt noting the date and time of receipt by the Council.

14.4. The Invitation to Tender or Quotation must specify the latest date and time for the delivery and the name and address to which the returns are to be made.

14.5. The Invitation to Tender or Quotation must specify the Award Criteria and Procedure.

14.6. The Invitation to Tender or Quotation should include the contract terms, specification and other supporting documents that will apply to the Contract.
14.7. The Council will introduce an Electronic Tendering System and it is expected that Invitations to Tender will be published and Tenders received via that on system following its introduction.

CSO 15 SUBMISSION, RECEIPT AND OPENING OF TENDERS / QUOTATIONS

15.1. Bidders must be given a sufficient period to prepare and submit a proper Tender or Quotation, consistent with the urgency and complexity of the contract requirements. Procurements over the EU Thresholds must abide by the time periods laid out in the Regulations.

Quotations

15.2. Quotations between £10,000 and £50,000 must be returned to the relevant Officer.

15.3. Quotations valued above £10,000 will not be accepted if received by fax or other electronic means unless they have been sought in accordance with an approved Electronic Tendering System.

15.4. It shall be the responsibility of the relevant Officer to keep safe Quotations above £10,000 until the appointed time of opening. Each Quotation must be:

15.4.1. Suitably recorded so as to be able to subsequently verify the date and precise time it was received and opened;

15.4.2. Adequately protected immediately on receipt to guard against amendments to its contents;

15.4.3. Recorded in the Quotation Register held within the Directorate.

15.5. The relevant Officer must ensure that all Quotations are opened at the same time when the period for their submission has ended. The Officer or their representative must be present. Quotations above £10,000 must be opened in the presence of two officers, one of whom should not be from the service responsible for the purchase.

Tenders

15.6. All Tenders of a value greater than £50,000 must be returned to The Democratic Services Manager, Corby Borough Council, Corby Cube, Parklands Gateway, George Street, Corby, Northamptonshire NN17 1QG.

15.7. Tenders received by fax or other electronic means will be rejected unless they have been sought in accordance with an approved Electronic Tendering System.

15.8. The Democratic Services department shall be responsible for the safekeeping of Tenders until the appointed time of opening. Each Tender must be:

15.8.1. Suitably recorded so as to be able to subsequently verify the date and precise time is was received and opened;

15.8.2. Adequately protected immediately on receipt to guard against amendment of its contents;

15.8.3. Recorded in the Tender Register held within the Directorate.
15.9. The Democratic Services department must ensure that all Tenders are opened at the same time when the period for their submission has ended. The Officer or his / her representative must be present at the opening and Tenders must be opened in the presence of two officers, one of whom should not be from the service responsible for the purchase.

15.10. The opened tenders must be date stamped and signed by the two Officers at the time of opening on the page containing the overall contract value, alternatively on the pages containing the price information, where no overall value is quoted.

15.11. Tenders received after the closing date and time or tenders who are not submitted in accordance with these Orders will be disqualified unless it is agreed otherwise by Legal Services.

15.12. An original version of the successful Tender must be retained for a period of six years from the expiry date of the Contract. Unsuccessful Tenders must be kept for twelve months from the commencement date of the Contract.

**CSO 16  CLARIFICATION PROCEDURES**

16.1. The Council can ask Bidders for clarification of any details submitted as part of their bid. However, such clarification must not involve changes to the basic features of the Bidder's submission.

16.2. When requesting clarification, the Officer should discuss this with the Procurement Officer.

**CSO 17  EVALUATION, AWARD AND DEBRIEFING**

17.1. The evaluation of bids must be conducted in accordance with the evaluation criteria set out in the procurement documents provided to the Bidders and in line with any guidance contained within the Procurement Toolkit.

17.2. All Bidders must be notified of the Award decision simultaneously in writing (via email is preferable) by the Officer, whether or not their Bid was successful.

17.3. For all Tenders (including those below the EU Threshold) the requirements of the EU Regulations in relation to the information in the Award Notice should be adhered to, these requirements are available in the Procurement Toolkit.

17.4. Where a Tender is subject to the EU Regulations, the Officer must inform all Bidders of their intention to award a contract to the successful Bidder. The Officer must allow a period of not less than 10 days after announcing the intention to award, to provide unsuccessful Bidders with the opportunity within that period to challenge the decision before the contract is awarded.

17.5. Where the Officer is not certain of the application of EU Regulations to a Tender, or is unsure of the need to publish an OJEU Notice, the Officer should consider use of a VEAT (Voluntary Ex Ante Transparency) Notice and seek advice from the Procurement Officer, who will liaise with the Council’s external procurement advisors as appropriate.

17.6. If a Bidder requests in writing, a further debrief in relation to the award, the Officer must give the appropriate information within 10 working days of the written request.
17.7. The confidentiality of Quotations and Tenders and the identity of Bidders must be preserved at all times and information about one Bidder’s response must not be given to another Bidder.

**CONTRACT AND OTHER FORMALITIES**

**CSO 18 CONTRACT DOCUMENTS**

18.1. All contracts must be in writing.

18.2. Every contract valued over £10,000 must, as a minimum state clearly, in a form approved by Legal Services:

18.2.1. That the Supplier must not assign or sub-contract without prior written consent;

18.2.2. That the Council may terminate the contract and recover from the Contractor any amount of loss resulting from the termination in the case of Bribery or Corruption;

18.2.3. That the Council may terminate in the event that the Contractor fails to carry out the work, or deliver the goods, or deliver any portion thereof, or perform the service (as the case may be) within the time specified;

18.2.4. That the Council may terminate the Contract over a reasonable period of time;


18.2.6. Any insurance requirements;

18.2.7. Requirements relating to legislation;

18.2.8. Equalities requirements;

18.2.9. Sustainability requirements;

18.2.10. A right of access to relevant documentation and records of the contractor for monitoring and audit purposes, if relevant;

18.2.11. Pricing mechanism and arrangements for payment;

18.2.12. Rights of termination.

18.2.13. Publicity and media and Intellectual Property.

18.2.14. Other provisions that should be considered include:

18.2.14.1. Health and Safety requirements;

18.2.14.2. Intellectual Property Rights; and

18.2.14.3. Publicity and Media.
18.3. The formal advice of Legal Services must be sought prior to award for the following contracts:

18.3.1. Where the total value exceeds £10,000;
18.3.2. Those involving lease arrangements;
18.3.3. Those which are complex or involve a recognisable risk;
18.3.4. Where it is an extension to an existing contract within its terms that will take the overall value over £10,000;
18.3.5. Where invoice payments are made to finance or factoring companies;
18.3.6. Those involving the transfer of non land assets;
18.3.7. Those involving TUPE or pension arrangements, and / or
18.3.8. Where it is proposed to use the supplier’s own terms over £10,000.

18.4. All contracts above £500 must be concluded or evidenced in writing before the supply, service or work begins, except in genuinely exceptional circumstances where the Legal Services Manager confirms in writing that the contract delivery can begin beforehand.

18.5. Contract documents must be retained in accordance with the Council’s Document Retention Policy.

Letters of Intent

18.6. Letters of intent are strictly prohibited under these Orders unless special authority is obtained from Legal Services.

Performance Bonds

18.7. A Supplier shall be required to provide a Guarantee Bond and / or Parent Company Guarantee, in such form as may be approved by Legal Services, in respect of any contract that equals or exceeds in value £100,000.

18.8. Consideration shall be given to the risk involved in all cases and Bonds / Parent Company Guarantees may be required in other appropriate cases as specified by the Legal Services and Section 151 Officer.

18.9. Where it is proposed to waive the need to require a Bond or Parent Company Guarantee, the Officer should seek the advice of Legal Services in the first instance.

Execution of Contracts

18.10. Every Contract entered into by or on behalf of the Council that equals or exceeds in value (in money or money’s worth):

18.10.1. £100,000 shall be in writing and sealed by affixing the Common Seal of the Council and attested by the Mayor / Leader and the Chief Executive or other as set out in General Standing Orders;
18.10.2. Over £10,000 but less than £100,000 shall be in writing and signed by the appropriate Head of Service and Legal Services Manager or their authorised signatory;

18.10.3. Up to £10,000 shall be in writing and signed by the Head of Service who shall maintain a record of such Contract.

18.11. Every Contract exceeding £10,000 in value shall be evidenced in writing in a form approved by the Legal Services.

18.12. A record of each Contract executed in accordance with 18.10 above shall be entered in to the Procurement Plan maintained for that purpose by Legal Services.

18.13. If after acceptance of its tender a Supplier fails within a reasonable period of time and without reasonable justification to sign or enter into a formal written Contract, the Council reserves the right to withdraw the Supplier from the Contract. This decision to withdraw the Supplier is the responsibility of the relevant Head of Service and Legal Services.

**CSO 19 PREVENTION OF CORRUPTION / DECLARATION OF INTERESTS**

**Officers**

19.1. The Officer responsible for the contract must comply with the Council Code of Conduct and must not invite or accept any gift or reward in respect of the award or performance of any contract.

19.2. Officers must avoid giving advice to Members on pecuniary or Code of Conduct interests either immediately before or during a meeting. If Officer advice is required, it is important that adequate time for consideration of that advice is given.

19.3. Officers should have regard to and comply with the Council’s Anti Fraud and Corruption Policy when procuring goods, services and works.

**CSO 20 CONTRACT MANAGEMENT / VARIATION / EXTENSION / TERMINATION**

**Contract Management**

20.1. Heads of Service will name an Officer as noted in the Contracts Register for each new contract within their area of responsibility. All contracts must have a named Officer for the entirety of the contract and that Officer is responsible for the application of these Orders.

20.2. For all contracts with a value over £50,000, the Officer must identify the risks, maintain a suitable risk register, manage the identified risks and ensure contingency measures are in place as appropriate.

20.3. During the life of the contract, the Officer must monitor the overall performance of the contract closely in order to ensure any issues of under performance are addressed as soon as possible and that the contract remains within budget.

**Variation**

20.4. In any case, where a variation means that the value of a contract would exceed the relevant EU Threshold, or where there is any material change to the contract, the
contract must be treated as a new procurement under these Orders. A material change is one which:

20.4.1. Would have allowed the admission of other Bidders or the acceptance of another tender;

20.4.2. Extends the scope of the contract considerably to goods, services or works not initially covered;

20.4.3. Changes the economic balance in favour of the contractor in a manner not provided for.

20.5. For clarity, a change will be deemed immaterial if the value of the modification is both below the EU Threshold and below 10% of the original contract value (15% for works) after any contract indexation.

Extension

20.6. A contract should not be extended beyond its term unless the contract documents specifically allow for this.

20.7. A Framework Agreement shall only be extended if its contract documents allow this and the original term and extension added together do not exceed four years except in exceptional circumstances.

20.8. Where a business need has been identified which means that a contract is required to be extended beyond the term permissible in the contract, advice must be sought from the Procurement Officer and Legal Services.

20.9. The Officer must be satisfied that such an extension would achieve Value for Money and be reasonable in all relevant circumstances. The Officer must record in writing the reasons for reaching these conclusions.

20.10. Where the contract is subject to EU Regulations and the OJEU Notice and contract documentation did not state that the contract may be extended, advice must be sought from the Procurement Officer, who will liaise with the Council’s external procurement advisors as appropriate, and Legal Services on how to proceed.

Termination

20.11. Contracts should be terminated by Legal Services on instructions from the Head of Service.

Assigning Contracts

20.12. A Contract can only be assigned with the approval of the Officer and Head of Service.
APPENDIX 2: VARIABLE INFORMATION

The following information is subject to change during the currency of these Contract Procedure Rules and shall be updated as changes occur.

EU Thresholds

From 1st January 2014 to 31st December 2015, the EU Thresholds are:

- Supplies and services: £172,514
- Works: £4,322,012

These values are applicable until the 31st December 2015 and will then be revised. The thresholds are revised every two years.

Audit Recommendations

Consider and include, as appropriate, any recommendations made by internal or external Audit, unless these are substantial, at which time any recommendations will be brought to Committee for approval.

Officer Job Titles

Any and all details pertaining to Officer’s job titles can be changed to reflect the current structure of the Council, as necessary

Advertising websites

Quotations (from £25,000 upwards) and Tenders (from £50,000 upwards) may be advertised without charge on Source Northamptonshire.

External Procurement Advisors

The Welland Procurement Unit are the Council’s current external procurement advisors and work with six councils in the East Midlands. Before commencing any procurement activity, you should, in the first instance, contact the Council’s internal Procurement Officer, who will liaise with the Welland Procurement Unit as appropriate. Members of the Welland Procurement Unit may be contacted as follows:

Tony Hall (Head of Welland Procurement Unit)
07768 915875
thall@melton.gov.uk

Paul Large (Procurement Strategy Manager)
07769 918574
plarge@melton.gov.uk

Clare Ellis (Welland Procurement Officer)
07876 574944
cellis@melton.gov.uk

Receipts of tenders by email by use of a locked tender box facility

OJEU tenders may not be returned to the Council through conventional email. This is not secure and any such tenders will be disqualified. A locked tender box is available through
certain proprietary email systems and may be accepted for use by the Legal Services Manager. Corby Borough Council does not currently have access to a locked email tender box facility.