

Public Document Pack



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12 June 2015

Dear Councillor

I am now able to enclose, for consideration at the meeting of the **GOVERNANCE COMMITTEE** on Thursday 18 June 2015 at 6.00 pm, the following reports that were unavailable when the agenda was printed.

13 **MODIFICATION OF PRESCRIBED STANDING ORDERS RELATING TO THE DISMISSAL OF STATUTORY OFFICERS** (Pages 2 - 6)

To consider the attached report of the Director of Governance. This is the tracked change copy for comparison.

14 **PROCEDURE RULES FOR WITHDRAWAL FROM MEETINGS** (Pages 7 - 9)

To consider the report of the Director of Governance.

15 **REVISION TO CONTRACT STANDING ORDERS** (Pages 10 - 29)

To consider the report of the Director of Finance, Housing and Community.

Yours sincerely

A handwritten signature in dark ink, appearing to be "N. Smith", written over a horizontal line.

Chief Executive

Prescribed Standing Orders

The following Standing Orders shall be known as 'Prescribed Standing Orders' and shall form part of the Council's Standing Orders.

Part I

Standing Orders relating to Staff

1. Appointment of Chief Officers

Where the Council proposes to appoint a Chief Officer, and it is not proposed that the appointment be made exclusively from among its existing officers, it shall:

- (1) draw up a statement specifying:
 - (a) the duties of the Officer concerned, and
 - (b) any qualifications or qualities to be sought in the person to be appointed;
- (2) make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and
- (3) make arrangements for a copy of the statement mentioned in paragraph (1) to be sent to any person on request.
- (4) Where a post has been advertised as provided in paragraph (2) the Council shall:
 - (a) interview all qualified applicants for the post, or
 - (b) select a short list of such qualified applicants and interview those included on the short list.
- (5) Where no qualified person has applied, the Council shall make further arrangements for advertisement in accordance with paragraph (2).
- (6) The steps under paragraphs (1) to (5) above may be taken by a Committee, Sub-Committee or Chief Officer of the Council if duly authorised in that behalf.
- (7) Every appointment of a Chief Officer shall be made by the Council, unless made by any duly authorised Committee or Sub-Committee of the Council, or a relevant joint Committee.
- (8) Where the duties of a Chief Officer include the discharge of functions of two or more local authorities in pursuance of Section 101(5) of the Local Government Act 1972:
 - (a) the steps under paragraphs (1) to (5) above may be taken by any duly authorised joint committee of those authorities, a sub-committee of

that committee or a chief officer of any of the authorities concerned, and

- (b) any chief officer may be appointed by such a duly authorised joint committee, a sub-committee of that committee or a committee or sub-committee of any of those authorities
- (9) Excluded from the application of paragraphs (1) to (5) shall be any appointment in pursuance of Section 9 (assistants for political groups) of the Act.

(Note: Any word or phrase contained within this standing order shall, if such word or phrase is given a meaning by the Local Authorities (Standing Orders) Regulations 1993, have that same meaning for the purposes of this standing order.)

2. Disciplinary Action

- (1) ~~No disciplinary action in respect of the head of the Council's paid service (unless he or she is also a council manager of the authority), its monitoring officer, or its Chief Finance Officer, except joint action described in paragraph (2), may be taken by the Council, or by a Committee, a sub-committee, a joint committee on which the Council is represented or any other person acting on behalf of the Council, other than in accordance with a recommendation in a report made by a designated independent person under regulation 7 of the Local Authorities (Standing Orders) (England) Regulations 2001 (investigation of alleged misconduct).~~

- ~~(2) The action mentioned in paragraph (1) is suspension of the officer for the purpose of investigating the alleged misconduct occasioning the action; and any such suspension must be on full pay and terminate no later than the expiry of two months beginning on the day on which the suspension takes effect.~~

- ~~(Note: In this standing order "Chief Finance Officer", "council manager", "disciplinary action", "head of authority's paid service" and "monitoring officer", shall have the same meaning as in Regulation 2 of the Local Authorities (Standing Orders) (England) Regulations 2001 and "designated independent person" has the same meaning as in Regulation 7 of those Regulations.)~~

- (1) A relevant officer may not be dismissed by the Council unless the procedure set out in Schedule 3 to the Local Authorities (Standing Orders) (England) Regulations 2001 is complied with.

(Note: In this standing order "relevant officer" means the chief finance officer, head of the Council's paid service or monitoring officer as the case may be.

3. Executive Arrangements

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- (1) In this Standing Order:
- "the 1989 Act" means the Local Government and Housing Act 1989;
- "the 2000 Act" means the Local Government Act 2000;
- "disciplinary action" has the same meaning as in the Local Authorities (Standing Orders) (England) Regulations 2001;
- "executive" and "executive leader" have the same meaning as in Part ~~H-1A~~ of the 2000 Act;
- "member of staff" means a person appointed to or holding a paid office or employment under the authority; and
- "proper officer" means the Head of East Kent Human Resources Partnership or his or her nominee.
- (2) Subject to paragraphs (3) and (7), the function of appointment and dismissal of, and taking disciplinary action against, a member of staff of the authority must be discharged, on behalf of the authority, by the officer designated under section 4(1) of the 1989 Act (designation and reports of head of paid service) as the head of the authority's paid service or by an officer nominated by him or her.
- (3) Paragraph (2) shall not apply to the appointment or dismissal of, or disciplinary action against:
- (a) the officer designated as the head of the authority's paid service;
 - (b) a statutory chief officer within the meaning of section 2(6) of the 1989 Act (politically restricted posts);
 - (c) a non-statutory chief officer within the meaning of section 2(7) of the 1989 Act;
 - (d) a deputy chief officer within the meaning of section 2(8) of the 1989 Act, or
 - (e) a person appointed in pursuance of section 9 of the 1989 Act (assistants for political groups).
- (4) (1) Where a committee, sub-committee or officer is discharging, on behalf of the authority, the function of the appointment ~~or dismissal~~ of an officer designated as the head of the authority's paid service, the authority must approve that appointment before an offer of appointment is made to that person him or her, or, as the case may be, must approve that dismissal before notice of dismissal is given to him or her.
- (2) Where a committee, sub-committee or officer is discharging, on behalf of the authority, the function of the dismissal of an officer designated as the head of the authority's paid service, as the authority's chief

finance officer, or as the authority's monitoring officer, the authority must approve that dismissal before notice is given to that person

- (32) Where a committee or a sub-committee of the authority is discharging, on behalf of the authority, the function of the appointment or dismissal of any officer referred to in sub-paragraph (a), (b), (c) or (d) of paragraph (3), at least one member of the executive must be a member of that committee or sub-committee.
- (5) (1) In this paragraph, "appointor" means, in relation to the appointment of a person as an officer of the authority, the authority or, where a committee, sub-committee or officer is discharging the function of appointment on behalf of the authority, that committee, sub-committee or officer, as the case may be.
- (2) An offer of an appointment as an officer referred to in sub-paragraph (a), (b), (c) or (d) of paragraph (3) must not be made by the appointor until:
- (a) the appointor has notified the proper officer of the name of the person to whom the appointor wishes to make the offer and any other particulars which the appointor considers are relevant to the appointment;
 - (b) the proper officer has notified every member of the executive of the authority of:
 - (i) the name of the person to whom the appointor wishes to make the offer;
 - (ii) any other particulars relevant to the appointment which the appointor has notified to the proper officer; and
 - (iii) the period within which any objection to the making of the offer is to be made by the executive leader on behalf of the executive to the proper officer; and
 - (c) either:
 - (i) the executive leader has, within the period specified in the notice under sub-paragraph (b)(iii), notified the appointor that neither he or she nor any other member of the executive has any objection to the making of the offer;
 - (ii) the proper officer has notified the appointor that no objection was received by him or her within that period from the executive leader; or
 - (iii) the appointor is satisfied that any objection received from the executive leader within that period is not material or is not well founded.

- (6) (1) in this paragraph, "dismissor" means, in relation to the dismissal of an officer of the authority, the authority or, where a committee, sub-committee or another officer is discharging the function of dismissal on behalf of the authority, that committee, sub-committee or other officer, as the case may be.
- (2) Notice of the dismissal of an officer referred to in sub-paragraph (a), (b), (c) or (d) of paragraph (3) must not be given by the dismissor until:
- (a) the dismissor has notified the proper officer of the name of the person who the dismissor wishes to dismiss and any other particulars which the dismissor considers are relevant to the dismissal;
- (b) the proper officer has notified every member of the executive of the authority of –
- (i) the name of the person who the dismissor wishes to dismiss;
- (ii) any other particulars relevant to the dismissal which the dismissor has notified to the proper officer; and
- (iii) the period within which any objection to the dismissal is to be made by the executive leader on behalf of the executive to the proper officer; and
- (c) either:
- (i) the executive leader has, within the period specified in the notice under sub-paragraph (b)(iii), notified the dismissor that neither he or she nor any other member of the executive has any objection to the dismissal;
- (ii) the proper officer has notified the dismissor that no objection was received by him or her within that period from the executive leader; or
- (iii) the dismissor is satisfied that any objection received from the executive leader within that period is not material or is not well founded.
- (7) Nothing in paragraph (2) shall prevent a person from serving as a member of any committee or sub-committee established by the authority to consider an appeal by:
- (a) another person against any decision relating to the appointment of that other person as a member of staff of the authority; or
- (b) a member of staff of the authority against any decision relating to the dismissal of, or taking disciplinary action against, that member of staff.

Subject:	PROCEDURE RULES FOR WITHDRAWING FROM MEETINGS
Meeting and Date:	Governance Committee – 18 June 2015 Council – 22 July 2015
Report of:	Director of Governance
Classification:	UNRESTRICTED
Purpose of the report:	To regularise existing practice in respect of Members withdrawing from meetings where they have an interest through the inclusion of the 'Withdrawal from Meetings Procedure Rules' in the Constitution.
Recommendation:	That the 'Withdrawal from Meetings Procedure Rules' be adopted as an appendix to the Council Procedure Rules in Part 4 – Rules of Procedure in the Council's Constitution.

1. Summary

This report seeks to regularise the position in respect of Members withdrawing from meetings where they have an interest by incorporating the previously agreed procedure rules as an appendix to the Council Procedure Rules.

2. Introduction and Background

- 2.1 The Council at its meeting held on 26 June 2012 adopted a new Code of Conduct (Minute Number 122). As part of the new Code it adopted a set of Standing Orders to amend the existing procedural rules governing the arrangements for Members withdrawing from meetings where a member had an interest.
- 2.2 However, as part of an on-going review of the Constitution it has been noticed that the Standing Orders do not appear to have been incorporated formally into the Council Procedure Rules and this report seeks to correct that situation.
- 2.3 Although the Director of Governance has been granted delegated authority to make amendments to administrative errors within the Constitution, due to the nature of the issue it was thought appropriate to submit a report to the Governance Committee and Council asking for their formal agreement to such an amendment.
- 2.4 There is no evidence that Members have failed to comply with the provisions of the Standing Orders set out in the Withdrawal from Meetings Procedure Rules in Appendix 1 of this report.

3. Identification of Options

- 3.1 Option A: To agree the inclusion of the Withdrawal from Meetings Procedure Rules as an appendix to the Council's Procedure Rules.
- 3.2 Option B: To not agree to the inclusion of the Withdrawal from Meetings Procedure Rules.

4. Evaluation of Options

- 4.1 Option A is the recommended option as it regularises the existing situation and maintains a good governance arrangements for the Council.

5. Resource Implications

5.1 There are no resource implications as the amendment to the Constitution is regularising existing practice.

6. **Corporate Implications**

6.1 Comment from the Director of Finance (linked to the MTFP): Finance have been consulted and there are no financial implications or further comments to add. S.G.

6.2 Comment from the Solicitor to the Council: The Solicitor to the Council has been consulted in the preparation of this report and has no further comments to make.

6.3 Comment from the Equalities Officer: This report does not specifically highlight any equalities implications however, in discharging their responsibilities members are required to comply with the public sector equality duty as set out in section 149 of the Equality Act 2010 <http://www.legislation.gov.uk/ukpga/2010/15>.

7. **Appendices**

Appendix 1 – Withdrawal from Meetings Procedure Rules

8. **Background Papers**

Council Agenda and Minutes – 26 July 2012

Contact Officer: Rebecca Brough, Team Leader – Democratic Support, 01304 872304

Withdrawal from Meetings Procedure Rules

1. A Member with a Disclosable Pecuniary Interest or Other Significant Interest in a matter to be considered, or being considered at a meeting must:-
 - (a) disclose the interest; and
 - (b) explain the nature of that interest at the commencement of that consideration or when the interest becomes apparent (subject to Procedure Rule 5 below); and unless they have been granted a dispensation;
 - (c) not participate in any discussion of, or vote taken on, the matter at the meeting; and
 - (d) withdraw from the meeting room whenever it becomes apparent that the business is being considered; and
 - (e) not seek improperly to influence a decision about that business.
2. A Member with an Other Significant interest, may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise. The Member will withdraw from the meeting room immediately after making representations, answering questions or giving evidence.
3. Where a Member with a Disclosable Pecuniary Interest or Other Significant Interest in a matter under discussion (unless a dispensation has been granted in accordance with Procedure Rule 1. above), chooses to participate in the discussion and vote, the Chairman will refuse to count the 'vote' of the Member concerned, for the 'vote' will have been cast illegally and cannot be considered to be a vote at all. In the case of a meeting of the Council, the Chairman may apply the rules in Council Procedure Rule 22.3 relating to 'disorderly conduct'.
4. The Chairman may request that a Member declare a Disclosable Pecuniary Interest or an Other Significant Interest and, if appropriate, leave the meeting room, should they have reason to believe that the provisions of the Code of Conduct and/or these Procedure Rules are being breached.
5. Where a Disclosable Pecuniary Interest or an Other Significant Interest has been agreed by the Monitoring Officer as being a Sensitive Interest, the Member need only disclose the existence of the interest but not its nature.
6. These Procedure Rules apply to:-
 - (a) meetings of the Council, and to committees of the Council and sub-committees
 - (b) meetings of the executive and to committees of the executive
 - (c) a Cabinet member acting alone under portfolio powers and to a ward Member who discharges functions at ward level.

Subject:	REVISION TO CONTRACT STANDING ORDERS
Meeting and Date:	Governance Committee – 18 June 2015 Council – 22 July 2015
Report of:	Director of Governance and Monitoring Officer
Portfolio Holder:	Councillor Conolly, Corporate Resources & Performance
Decision Type:	Non- Executive
Classification:	Unrestricted
Purpose of the report:	The purpose of this report is to propose revisions to Contract Standing Orders to the Council for adoption.
Recommendation:	<p>Governance Committee:-</p> <p>That the Governance Committee recommends to Council that the revised Contract Standing Orders appended to this report adopted</p> <p>Council:-</p> <p>That the Council, acting on the recommendation of the Governance Committee and the Monitoring Officer, adopts the revised Contract Standing Orders appended to this report.</p>

1. Summary

- 1.1 A requirement of the existing Contract Standing Orders (CSO's) is that they are reviewed and updated on a regular basis with any such recommendations made by the Monitoring Officer being agreed and adopted by the Council (after consideration by the Governance Committee).

2. Introduction and Background

- 2.1 Further to the New Public Contracts Regulations 2015 which largely came into place 26th February 15. The Council's Contract Standing Orders have been reviewed in the light of the new regulations. At the same time the opportunity has been taken to suggest further minor changes to tighten the controls operating over the Council's procurement processes and to support the government's objectives in relation to the electronic delivery of services..

Whilst there are a number of subtle amendments, the main changes of significance are:-

- Implementation of e-tendering - advertising opportunities, tender opening etc. (11. of CSO's)
- Changes in advertising requirements - derived from the new Public Contracts Regulations 2015 (7.4 of CSO's)

- Roles & responsibilities - requirement for quotations and tenders in excess of £10K to be undertaken in partnership with the Procurement Manager (5.4.6 of CSO's),
- Consultation with the Procurement Manager - contract extensions, variations etc. (3.7, 14.2, 15.2 of CSO's)

2.2 **E-Tendering** - The implementation of e-tendering not only supports the Governments overarching recommendations for electronic delivery of services and information (mandatory under the EU Regulations by 2018) but also provides the following benefits for the Council and Suppliers: -

Council Benefits: -

- Fully automates the quotation/tender process including, advertising opportunities, issuing and receiving quotation and tender responses, central contract store functionality (internally & externally facing) – ensuring all information is quickly/easily available/transmitted to Suppliers
- Opportunity to respond quickly to any Suppliers questions and points of clarification
- Can notify Suppliers in a standardised manner, ensuring there is no bias to any one Supplier
- Responses from Suppliers remain secure and privileged until the closing date (providing greater probity) and are opened 'electronically'
- All communications are tracked and recorded in the system to create a clear audit trail

Suppliers Benefits: -

- Reduced costs associated with, printing, copying, postage, administration etc. associated with a manual process
- Automatically notifies Suppliers electronically of future ITQ/ITT opportunities for all participating authorities negating the need for suppliers to continually monitor & search for future business opportunities across various council/authority websites etc.
- Ability to continually review/update their submission documentation right up to deadline
- Free of charge – web based, only requires internet access

2.3 Following a review of other South Eastern and neighbouring authorities DDC has implemented the Pro Contract e-Tendering Suite (in addition to utilising the Kent Business Portal for advertising future ITQ/ITT opportunities).

2.4 The CSO's have been reviewed to support the use of the e-tendering system for advertising, issuing and receiving quotations and tenders to the Council.

2.5 **Changes in Advertising Contract Opportunities** - As part of the Government's commitment to transparency the new Public Contracts Regulations 2015 now places

additional advertising requirements on contracting authorities in relation to upcoming contract opportunities (and contract award notices).

- 2.6 Where the Council publically advertises any contract opportunities (or award notices) (over £25K) there is also a requirement now to advertise the opportunities via the Governments centralised Procurement Portal – ‘Contracts Finder’.
- 2.7 The Councils e-tendering system and Procurement Portal (Kent Business Portal) outlined at 2.2 above links directly to the Governments mandatory system and automatically populates the necessary advertisements etc. ensuring compliance with the new legislation.
- 2.8 The impact of this legislation (and Government initiative to increase opportunities across the wider SME sector) will be reviewed in a future Procurement Strategy Report that will consider (amongst other key areas) how DDC can encourage and support the local economy.
- 2.9 **Roles & Responsibilities** – Part of the new Procurement Managers role is to build upon existing working practices and provide for a more robust, effective and accountable delivery of procurement.
- 2.10 This future approach to procurement would seek to ensure the benefits of existing local knowledge and service delivery/expertise is complimented by consistent, proportionate controls, processes and procedures.
- 2.11 The CSO’s have been reviewed to ensure that Officers work in partnership with the Procurement Manager which in essence maintain Services as the delivery experts, whilst Procurement (& Legal) ensure that all procurement activity is effective, legal and not open to challenge.
- 2.12 The Service and Procurement would however be jointly accountable for the successful delivery and improvement of the goods, services and works procured.

3 Corporate Implications

- 3.1 Comment from the Director of Finance: The Director of Finance has been consulted in the preparation of this report and has no further comments to make.
- 3.2 Comment from the Solicitor to the Council: The Solicitor to the Council has been consulted in the preparation of this report and has no further comments to make.

4 Appendices

Appendix 1 – Revised Contract Standing Orders

5 Background Papers

None

Contact Officer: Dean Coulls, Procurement Manager

CONTRACT STANDING ORDERS

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Contract Standing Orders

1. Introduction – Purpose of the Contract Standing Orders

- 1.1 Purchasing decisions and processes are important because the money involved is public money. The purpose of these Contract Standing Orders is to provide a structure within which procurement decisions are made and implemented (including the grant of service concessions) and which ensure that the Council:

- 1.1.1 Furthers its corporate objectives

- 1.1.2 Uses its resources efficiently

- 1.1.3 Purchases quality goods, services and works

- 1.1.4 Safeguards its reputation from any implication of dishonesty or corruption.

1.1.5 Improves the economic, social and environmental well being of the district

- 1.2 Procurement by the Council, from planning to delivery, shall incorporate (where appropriate) principles of sustainability, efficiency, whole life costings and cost savings.

- 1.3 These Contract Standing Orders are made in accordance with the requirements of Section 135 of the Local Government Act 1972.

- 1.4 These Contract Standing Orders do not provide guidelines on what is the best way to purchase works, supplies (goods) and services and grant service concessions. They set out minimum requirements to be followed. Further information and guidelines are set out in the Council's Procurement Guide [and the guidance documents available on the Intranet](#).

2. General Principles – Application and Compliance with Contract Standing Orders

- 2.1 These Contract Standing Orders apply to the purchase by or on behalf of the Council of works, supplies (goods) and services and the granting of service concessions.

- 2.2 These Contract Standing Orders apply to all contracts including all purchase orders, service concessions and contractual arrangements entered into by or on behalf of the Council, except for the specific types of contracts and purchasing methods which are listed in 2.3.

- 2.3 These Contract Standing Orders do not apply to:

- 2.3.1 Employment contracts

- 2.3.2 Contracts relating solely to the purchase or sale of interests in land

- 2.3.3 Contracts for retention of legal counsel and the appointment of expert witnesses in legal proceedings

- 2.3.4. Service level agreements setting out the conditions which the Council applies to its funding of particular voluntary sector bodies.

3. General Principles Applying to All Contracts

- 3.1 All purchases however small shall be in writing.

3.2 All contracts of a value of £10,000 or more shall be made using either:

3.2.1 the Councils *Standard Terms & Conditions of Contract* or

3.2.2 a standard form of contract (e.g. NEC, JCT, etc) or

3.2.3 the Suppliers Terms & Conditions

Advice and agreement must be sought from Legal Services prior to award include contract clauses relevant to the procurement. Contract clauses can be issued by Legal Services.

3.3 As a minimum, all contracts of a value of £10,000 or more shall include
-clauses which set out:

3.3.1 The works, supplies (goods), services, service concessions, material, matters or things to be carried out or supplied

3.3.2 Specify the price to be paid, the estimated price or the basis on which the price is to be calculated

3.3.3 The time within which the contract is to be performed

3.3.4 Quality requirements and/or standards which must be met

3.3.5 Requirements on the contractor to hold and maintain appropriate insurance

3.3.6 What happens in the event that the contractor fails to comply with its contractual obligations (in whole or in part)

3.3.7 Requirements on the contractor to comply with all relevant equalities and health and safety legislation

3.3.8 That the Council shall be entitled to cancel the contract and recover losses in the event that the contractor does anything improper to influence the Council to give the contractor any contract or commits an offence under the Bribery Act 2010 or s117(2) Local Government Act 1972.

3.4 Written contracts shall not include non-commercial terms unless these are necessary to achieve best value for the Council and necessary to enable or facilitate the Council's compliance with the public sector equality duty¹ imposed on it by the Equality Act 2010. In this context, "non commercial" means requirements unrelated to the actual performance of the contract.

3.5 All contracts shall include relevant specifications and/or briefs/technical requirements which are prepared taking into account the need for effectiveness of delivery, quality, sustainability and efficiency (as appropriate) and the information set out in the Council's Procurement Guide.

3.6 All contracts of a value of £10,000 or more ~~for~~ which involve a substantial risk to the Council, must be subject to a written risk assessment in line with the Council's Risk Management Strategy, which shall be proportionate to the value of the contract, and which shall be kept on the contract file ~~(and on the Council's Contract Register Database).~~

¹ Section 149 Equality Act 2010

4. Regulatory Context

- 4.1 All purchasing shall be conducted in accordance with Regulatory Provisions which are:
 - 4.1.1 All relevant statutory provisions
 - 4.1.2 The relevant EU Rules and EC Treaty Principles which are defined in the Council's Procurement Guide
 - 4.1.3 The Council's Constitution including these Contract Standing Orders, the Council's Financial Procedure Rules and Scheme of Delegation
 - 4.1.4 The Council's Procurement Guide and other policies and procedures of the Council as appropriate.
- 4.2 In the event of conflict between the above, the EU Rules will take precedence, followed by UK legislation, then the Council's Constitution, the Council's Procurement Guide and guidelines, policies and procedures.

5. Responsibilities of Directors, Heads of Service and Responsible Officers

- 5.1 Each Director shall have overall responsibility for the purchasing undertaken by his/her Directorate.
- 5.2 Each Head of Service shall be responsible for the purchasing undertaken by his or her service and shall
 - 5.2.1 be accountable to the Executive for the performance of his/her duties in relation to purchasing
 - 5.2.2 comply with the Council's decision making processes including, where appropriate, implementing and operating a Scheme of Delegation
 - 5.2.3 appoint a Responsible Officer in writing who shall be an authorised signatory
 - 5.2.4 take immediate action in the event of breach of these Contract Standing Orders which will include as a minimum promptly informing the Councils Monitoring Officer of such breach.
- 5.3 A Responsible Officer is an officer with responsibility for conducting purchasing processes for the purchase of works, supplies (goods) or services on behalf of the Council.
- 5.4 A Responsible Officer's duties in respect of purchasing are to ensure:
 - 5.4.1 compliance with all Regulatory Provisions (see 4.1) and integrity of the tender process
 - 5.4.2 that all relevant officers are reminded of the compliance with the relevant statutory provisions and the Council's requirements relating to declarations of interest affecting any purchasing process in order for them to comply with these requirements
 - 5.4.3 that there is an appropriate analysis of the requirement, timescales, procedure and documentation to be used

- 5.4.4 the purchasing process, from planning to delivery incorporates (where appropriate) principles of sustainability, efficiency, whole life costings and cost savings
- 5.4.5 compliance with the Council's decision making processes, in particular in relation to Key Decisions
- 5.4.6 that all ~~quotations or tenders sought~~~~contracts~~ of a value of £10,000 or more are undertaken in partnership with the Procurement Manager to ensure a corporate approach and delivery of the works, supplies (goods) or services included on the Council's Contract Register
- 5.4.7 that all contracts of a value of £10,000 or more are included on the Councils Contract Register
- 5.4.8 that proper records of all contract award procedures, waivers, exemptions and extensions are maintained, with separate files for each purchase of a value of £10,000 or more
- 5.4.~~98~~ that value for money is achieved
- 5.4.10 that adequate and appropriate security (such as a bond or guarantee) is taken to protect the Council in the event of non-performance.
- 5.5 In considering how best to procure works, supplies and services, Directors, Heads of Service and/or Responsible Officers (as appropriate in the context), shall consult with the Procurement Manager to take into account wider contractual delivery opportunities and purchasing methods including the use of Purchasing Schemes and e-procurement/purchasing methods, and the availability of local authority charging and trading powers under the Local Government Act 2003.
- 5.6 It is a disciplinary offence to fail to comply with these Contract Standing Orders and the Council's Procurement Guide. All employees have a duty to report breaches of Contract Standing Orders to the Monitoring Officer.
- 5.7 Any officer or Member who suspects any misconduct or corruption in relation to the purchase by or on behalf of the Council of works, supplies (goods) and services must immediately report that suspicion to the Council's Monitoring Officer.
- 6. **Scheme of Delegation**
 - 6.1 Council procurement may only be undertaken by officers with the appropriate delegated authority to carry out such tasks as set out in the Council's Scheme of Delegation. Officers with delegated authority may only delegate to other officers who have the appropriate skills and knowledge for the task and such delegation shall be recorded in writing by the officer delegating the task and notified to the relevant Director/Head of Service.
 - 6.2 Officers shall, where appropriate, be informed by their Director/Head of Service of the extent of any delegated authority and applicable financial thresholds.

7. Financial Thresholds and Procedures

- 7.1 The table below sets out the general rules applying to the choice of purchasing procedure for contracts at the stated threshold values.
- 7.2 There is a general presumption in favour of competition. Wherever possible contract opportunities should be advertised by way of a public notice. The Council must consider the potential effect of a contract on interstate trade (at a European level). If a contract may be of interest to contractors from other member states then this may result in a need to advertise in a manner which ensures that potential contractors from other member states are aware of the opportunity, even for small value contracts or contracts under the EU Threshold levels outlined below.
- 7.3 The public notice referred to at 7.2 may take the form of a notice or advertisement in an electronic or paper format, on an easily accessible website or other electronic media and/or in the press, trade journals or Official Journal of the European Union ("OJEU") (as appropriate). The Responsible Officer may choose to place one or more public notices in different media.
- 7.4 [In accordance with Part 4 of the Public Contracts Regulations 2015 and guidance issued by the Cabinet Office:](#)

[7.4.1 All contract opportunities with a value of £25,000 and above must be published on 'Contracts Finder' where the Council has advertised such opportunity in the form of a notice or advertisement as set out in 7.3 above.](#)

[7.4.2 All contract opportunities for which a Contract Notice was sent to OJEU for publication must also be published on 'Contracts Finder'.](#)

Table setting out financial thresholds and procedures

Total Value £	Type of contract	Procedure to be used
0 to £10,000-9,999	Works, Supplies and Services	At least one written quote in advance
£10,000 to £100,000-99,999	Works, Supplies and Services	At least three written quotes obtained by Procurement —in advance using the Councils Invitation to Quote document
100,000 to £1723,51934* **	Works, Supplies and Services	At least three written tenders obtained by Procurement in advance, using the Councils Invitation to Tender document following advertisement by public notice
£1723,51934* ** plus ** EU Threshold for supplies and services Note: £625,050 threshold applies for social and some specific services listed within the Public Contracts Regulations 2015	Supplies and Services	EU Rules apply – full competitive process following advertisement in the OJEU for supplies and some Part A* services . For social and some specific Part B* services reduced requirements apply under the EU Rules but there is a presumption in favour of advertising and a competitive process*
£1723,51934 to	Works	Full competitive process with

£4,322,01248,350**		tenders following advertisement by public notice
£4,322,01248,350** **EU Threshold for works	Works	EU Rules apply – full competitive process with tenders following OJ advertisement

* ~~If for the purposes of the EU Rules~~ apply to services contracts – are divided into two types and the EU Rules apply to a differing extent degrees depending on the service. Responsible Officers should act cautiously and seek advice when considering the procedure to be used and application of the EU Rules to services contracts

** or relevant threshold in force at the time under the EU Rules

- 7.5 Where contracts are of a type and value which means that they are subject to the EU Rules then there are ~~five~~ four main types of EU procedures available. These are the open, restricted, competitive dialogue, ~~and~~ competitive procedure with negotiation and innovation partnership procedures. Care must be taken to ensure that the correct and most appropriate procedure is used and assistance on the choice and use of EU procedure should be sought from the Procurement Manager and Legal Services ~~or a specialist consultant.~~

8. Financial Thresholds and Processes Applying to Approval and Execution of Contracts

- 8.1 For contracts over the relevant EU threshold (in force at the time), the choice of purchasing procedure to be used and the decision to proceed to advertisement must be authorised in writing by the relevant Director/Head of Service in advance acting in consultation with the Procurement Manager and/or Solicitor to the Council where appropriate.
- 8.2 When a decision is made to award a contract then the Responsible Officer must, in addition to complying with his/her general obligations under these Contract Standing Orders ensure, in particular, that:
- 8.2.1 the appropriate approvals have been obtained to authorise that decision; and
- 8.2.2 where appropriate, a standstill period complying with the EU Rules is incorporated into the final award process.
- 8.3 Any contracts valued at £100,000 or above shall be ~~executed as a deed or be signed~~ by at least two officers of the council with appropriate delegated authority or made under seal of the Council and attested by at least one officer. ~~}. All other contracts may be signed by officers with appropriate delegated authority. £100,000 shall be the threshold for the purposes of Regulation 8 of the Local Authority (Executive Arrangements) (Modification of Enactments and Further Provisions) (England) Order 2001.~~
- 8.4 Electronic signatures may be used in accordance with the Electronic Signature Regulations 2002 provided the sufficiency of security arrangements has been approved by the Senior ICT Manager.

9. Calculating the Contract Value

- 9.1 The starting point for calculating the contract value for the purposes of these Contract Standing Orders is that the contract value shall be the genuine pre-estimate of the value of the entire contract excluding Value Added Tax. This includes all payments to be made, or potentially to be made, under the entirety of the contract and for the whole of the predicted contract period (including proposed extensions and options).
- 9.2 There shall be no artificial splitting of a contract to avoid the application of the provisions of the EU Rules and/or these Contract Standing Orders.

- 9.3 The EU Rules can cover contracts, which are below the stated EU threshold, where they constitute repeat purchases and/or purchases of a similar type in a specified period. Responsible Officers should therefore seek advice [from the Procurement Manager](#) on the application of the EU Rules where they envisage that they may require repeat purchases and/or purchases of a similar type.

10. Principles Underlying Tendering Processes and Tender Evaluation

- 10.1 All tendering procedures (including obtaining quotes), from planning to contract award and signature, shall be undertaken in a manner so as to ensure:
- 10.1.1 Sufficient time is given to plan and run the process
 - 10.1.2 Equal opportunity and equal treatment
 - 10.1.3 Openness and transparency
 - 10.1.4 Probity
 - 10.1.5 Outcomes which deliver sustainability, efficiency and cost savings (where appropriate).

11. Submission and Opening of Tenders

- 11.1 An Invitation to Tender shall be issued by the Council for all contracts over £100,000 [via the Councils e-tendering system](#) and tenders shall be submitted in accordance with the requirements of the Invitation to Tender [Document](#).

- 11.2 Any tenders received [shall be kept secure electronically and unopened until the time and date specified for the opening](#) ~~(other than those received electronically, to which 11.3 shall apply)~~ shall be:

- ~~11.2.1 addressed to the Democratic Services Manager~~
- ~~11.2.2 in a sealed envelope marked "Tender" followed by the subject matter to which it relates~~
- ~~11.2.3 kept in a locked cabinet by Democratic Services~~
- ~~11.2.4 retained unopened until the date and time specified for its opening.~~
- 11.3 ~~Where the Council has indicated in the Invitation to Tender that a tender can or must be submitted electronically, then those tenders shall be:~~
- ~~11.3.1 addressed to the e-mail address as notified in the Invitation to Tender~~
- ~~11.3.2 in the format specified in the Invitation to Tender~~
- ~~11.3.3 stored in a secure mailbox, which requires a code or other appropriate security measure, to open it~~
- ~~11.3.4 retained unopened until the date and time specified for its opening.~~

- 11.34 No tender received after the time and date specified for its opening shall be accepted or considered by the Council unless [agreed by the Monitoring Officer in exceptional circumstances](#). ~~is satisfied that there is sufficient evidence of the tender having been~~

~~dispatched in time for it to have arrived before the closing date and time, or other exceptional circumstances apply and the other tenders have not been opened.~~

11.45 Tenders shall be opened, ~~certified and recorded electronically by an Officer appointed by the Monitoring Officer via the Councils e-tendering system, by a representative of the Democratic Services Manager, and either the Leader or the relevant Portfolio Holder, or other Portfolio Holder in their absence. An immediate record shall be made of tenders received including names and addresses and the date and time of opening. The record shall be certified by those opening the tenders.~~

~~11.6 The tender opening process is set out in detail at Appendix 1 to these contract standing orders.~~

12. Evaluation of Quotes and Tenders

12.1 All quotes and tenders shall be evaluated in accordance with evaluation criteria notified in advance to those submitting quotes/tenderers.

12.2 Tenders subject to the EU Rules shall be evaluated in accordance with the EU Rules.

12.3 Save in exceptional circumstances approved in advance by the Monitoring Officer all contracts shall be awarded on the basis of the quote or tender which represents best value for money to the Council and not on the basis of lowest price.

13. Waivers

13.1 The requirement for the Council to conduct a competitive purchasing process for contracts in excess of £10,000 may be waived in the following circumstances.

13.1.1 For contracts which are not subject to the EU Rules, the work, supply or service or grant of service concession is required as a matter of urgency and a delay would be likely to lead to financial loss, personal injury or damage to property; or

13.1.2 the circumstances set out in the Public Contract Regulations 2015~~96~~ Regulation 3244 apply (whether or not the contract is of a type which is subject to the application of the EU Rules); or

~~13.1.3 the contract is awarded under a Purchasing Scheme of a type where a competition has already been undertaken on behalf of the Council; or~~

13.1.3 if the goods or materials to be purchased are available from only one manufacturer; or

13.1.4 where the supply is for parts for existing machinery, or where the terms of supply of equipment require that maintenance be undertaken by a specified provider; or

13.1.5 where the Work is of a specialist nature, the skill of the contractor is of primary importance, and the supply market has been tested and found to be limited; or

13.1.6 where the supply is for maintenance to existing IT equipment or software, including enhancements to current software, which can only be performed by the licensed developer or owner of the system; or

13.1.7 at the discretion of the relevant Head of Service who may proceed in a manner most expedient to the efficient management of the service/Council with reasons recorded in writing.

- 13.2 A Responsible Officer who seeks a waiver of Contract Standing Orders, shall do so only in advance and only in exceptional circumstances. Further guidance on what may constitute exceptional circumstances permitting waiver of these Contract Standing Orders is set out in the Council's Procurement Guide.
- 13.3 All waivers from these Contract Standing Orders must be:
- 13.3.1 Fully documented
- 13.3.2 Subject to a written report in an approved format to be submitted in advance to the Monitoring Officer or Section 151 Officer, which shall include reasons for the waiver which demonstrate that the waiver is genuinely required
- 13.3.3 Subject to approval in advance by the Monitoring Officer or Section 151 Officer who shall record that they have considered the reasons for the waiver and that they are satisfied that the circumstances justifying the waiver are genuinely exceptional.
- 13.4 All decisions on waivers must take into account:
- 13.4.1 Probity
- 13.4.2 Best value/value for money principles.
- 13.5 For contracts subject to the EU Rules, any waiver from the requirement for competition must meet the conditions set out in the EU Rules in addition to the general requirements above.
- 13.6 A waiver shall not be applied for reasons of poor contract planning.

| 14. **Extensions and Other Variations to Existing Contracts**

- | 14.1 Where extensions or other variations to existing contracts are made the extensions must be determined in accordance with the contract terms, for a specified period and made in accordance with the principles set out in the Council's Procurement Guide.
- | 14.2 Any extension or other significant variation must be:
- 14.2.1 Fully documented
- | 14.2.2 Subject to a written report in an approved format to be submitted to the Monitoring Officer and Solicitor to the Council; which shall include reasons for the extension or other variation which demonstrate that the need for the extension or other significant variation is genuinely exceptional
- | 14.2.3 Subject to approval by the Monitoring Officer and the Solicitor to the Council, who shall record that they have considered the reasons for the extension or other significant variation and that they are satisfied that the circumstances justifying the extension are genuinely exceptional.
- | 14.3 Any extension or other variation must take into account:
- 14.3.1 Probity
- 14.3.2 Best value/value for money principles.

- 14.4 For contracts subject to EU Rules, any extension must meet the conditions set out in the EU Rules in addition to the more general requirements set out above.

15. Purchasing Schemes

- 15.1 A Responsible Officer may use Purchasing Schemes subject to the following conditions and the Council's Procurement Guide.

- 15.2 Responsible Officers must check in advance [with the Procurement Manager to ensure](#) that

15.2.1 The Council is legally entitled to use the Purchasing Scheme

15.2.2 The purchases to be made do properly fall within the coverage of the Purchasing Scheme

15.2.3 The establishment and operation of each Purchasing Scheme is in compliance with the EU Rules (where they apply) and meets the Council's own requirements.

- 15.3 A "Purchasing Scheme" may include:

15.3.1 Contractor prequalification lists/select lists

15.3.2 Framework arrangements (including those set up by The [Crown Commercial Service](#) ~~Government Procurement Service ("GPS")~~ (formerly ~~GPS-OGG~~)

15.3.3 Purchasing arrangements set up by central purchasing bodies and commercial organisations

15.3.4 Consortium purchasing

15.3.5 Collaborative working arrangements

15.3.6 Formal agency arrangements

15.3.7 E-procurement/purchasing schemes and methods

15.3.8 Other similar arrangements such as the [Government eLG Improvement and Development](#) Marketplace

- 15.4 Where a Purchasing Scheme is used then there shall be a whole or partial exemption from the obligations under these Contract Standing Orders in respect of the choice and conduct of procedures to the extent permitted and indicated in the Council's Procurement Guide.

16. Review and Changes to these Contract Standing Orders

- 16.1 These Contract Standing Orders shall be reviewed and updated on a regular basis. Save in the case of revisions to the EU Thresholds in Contract Standing Order 7, amended Contract Standing Orders shall be recommended by the Monitoring Officer and shall be agreed and adopted by the Council after consideration by the Governance Committee. The Solicitor to the Council will make revisions to the EU Thresholds as and when they occur.

17. Suspension of these Contract Standing Orders

17.1 These Contract Standing Orders may be suspended in accordance with Article 16 of the Constitution.

APPENDIX 1

Procedure for Receiving, Storing and Opening Tenders (See Contract Standing Orders – specifically Contract Standing Order No 11)

~~The officer responsible for inviting tenders will advise officers in the Democratic Support Section of the name of the scheme which is being tendered for, the number of firms invited to tender (hence the number of documents to be expected), the date on which the tender is to be returned and an estimate of the tender total. Details may be by memo or e-mail.~~

~~Democratic Support Officers now only become involved where the estimate is over £100,000. The officer sending out details inviting tenders must supply a yellow label to each of the firms completed with the name of the scheme and the return date. When required, these labels are kept in a tray beside the metal cupboard in the Democratic Support Room and show that the tender is to be returned to Democratic Support. Tenders valued below £100,000 are received and opened by the officer who issues the invitation; they can supply their own labels which must show to whom the tenders should be returned.~~

~~When details of the expected tender are received, a sheet is completed in the yellow ring binders kept in the metal cupboard. The originating officer's memo/e-mail is also attached.~~

~~Tenders valued at over £100,000 must be opened by the appropriate portfolio holder (or the Leader or another portfolio holder) in the presence of a DS officer. Therefore the portfolio holder must be contacted to check that they can come to the office at or after 2.00pm on the day the tenders are due to be returned. It is often helpful to have the originating officer present for these tender openings as the documentation can be complicated.~~

~~As tender documents are returned to the Council offices they will be received either by the Mail room staff or the Reception staff. These officers will write the date and time of receipt on the covering envelope and their signature. Democratic Support Officers **must record** the receipt of each envelope on the numbered sheet in the folder, number the covering envelopes in order of receipt and store the tenders securely in the metal cabinet until opening. Any markings on the envelope which identify the firm or company who has tendered must be removed or blanked out.~~

~~On the due date for return of the tender documents, a Democratic Support Officer must immediately after 2.00 pm check with reception staff and post room staff to see if there are any documents received but not yet delivered.~~

~~The opening procedure is:~~

~~_____ The Portfolio Holder opens the envelopes in the order in which they have been received.
On the summary of tender page, or whichever page shows the total figure, the rubber stamp~~

~~_____ *Opened by*~~

~~_____ *In the presence of*~~

~~_____ *DATE*~~

~~_____ must be imprinted together with the number from the covering envelope.~~

~~_____ The person opening signs in the *Opened by* space, completes the date and reads the name of the tendering firm and the total amount to the accompanying officer who enters these details in the numbered sheet.~~

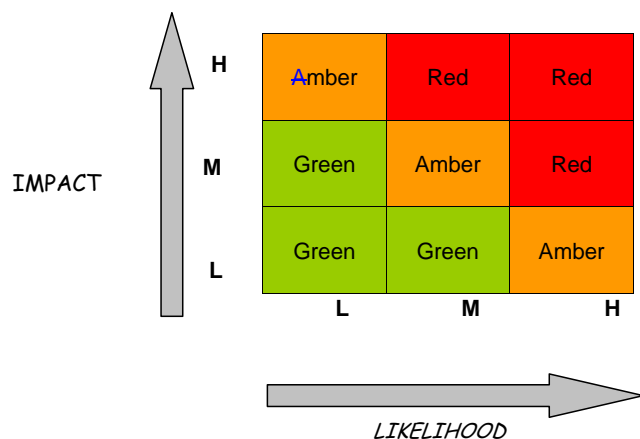
———When all tenders have been opened and the details entered, the accompanying officer reads back to the person doing the opening the names and amounts which have been entered on the sheet for confirmation of accuracy with the original document. The person opening initials the final box on the numbered sheet against each entry and the accompanying officer signs at the foot of the page against *In the presence of*.

———The originating officer must also sign at the foot of the page against *Handed to* before taking away the opened tender documents.

The completed pages and attached documents are then moved to the other yellow folder which is the register of tenders received. At the end of the Council year the register folder is emptied and the documents tied together and stored in the legal strong room.

In the event of a tender document arriving after the 2.00 pm deadline IT WILL NOT BE ACCEPTED. The envelope must be opened by a Democratic Support Officer to identify the sender and the envelope and contents returned to the sender with a covering letter stating that the document had been received after the 2.00 pm deadline and could therefore not be accepted. A note to this effect is then added on the sheet which was completed with the correctly submitted tenders.

Risk Prioritisation and Analysis Model



The form of assessment in use at Dover District Council is the 3 x 3 matrix. The colours red, amber, green reflect differing levels of overall risk with green and amber being acceptable and red requiring caution and ways of reducing/managing that risk.

The table below sets out suggested criteria for assessing the likelihood and impact to produce an overall score.

Ideally, scoring should be undertaken by more than one person to allow for different perceptions of risk; one person's high risk can be another's low to medium.

Where the scoring differs across the criteria for impact and likelihood, it is suggested that a cautious approach is to use the score, which is highest for any of the criteria rather than an average. However, be prepared to apply a common sense approach and score accordingly.

Likelihood

Score—1 (Low Risk) Unlikely	Score—2 (Medium Risk) Likely / Highly Likely	Score—3 (High Risk) Very Likely / Definite
Previous experience discounts this risk as being likely to occur but other organisations have experienced problems in this area.	The council has experienced problems in this area in the last three years.	The council is experiencing problems in this area or expects to in the next 12 months.
There are controls in place that whilst not tested appear to be effective.	Controls may be in place but are generally ignored or ineffective.	No controls are in place.

Impact

Score—1 Low	Score—2 Medium	Score—3 High
The financial impact would be extra costs or loss of income of no greater than £25,000.	The financial impact would be extra costs or loss of income of no greater than £100,000.	The financial impact would be greater than £100,000.
Some temporary disruption to the activities of one council service but not beyond this.	Regular disruption to the activities of one or more council services.	Severe disruption to the activities of all council departments.
It may cost more or there may be delay in delivering one of the council's corporate objectives.	A number of corporate objectives would be delayed or not delivered.	Unable to deliver most objectives.
Some loss of confidence and trust in the council felt by a certain group or within a small geographical area.	A general loss of confidence and trust in the council within the local community.	A disastrous loss of confidence and trust in the council within the local community.

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