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Contract Standing Orders

Contributors:

Legal and democratic Services

Finance and Management Information
Systems

Neighbourhood and Development

COPELAND BOROUGH COUNCIL
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CONTRACT STANDING ORDERS

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CONTRACT STANDING ORDERS

1. MANAGEMENT SUMMARY

Managers' quick guide as to what is included:

- 1.1. The value of a contract is its total cost; various elements of the whole supply must be added together. Where over a fixed period of years total cost of all applies. Where over an indeterminate period of years the cost for four years shall be taken.
 - 1.2. A budget must be available before a contract can be entered into.
 - 1.3. The Contract Standing Orders apply to all contracts over the value of £10,000.
 - 1.4. A duty remains on managers to act efficiently and achieve value for money where the value is below the threshold.
 - 1.5. For contracts in the range of £10,000 to Key Decision threshold (currently £50,000 but subject to review - ensure you are aware of applicable level) managers are required to obtain written prices, quotations or tenders from at least three suppliers, accept the most economically advantageous, and obtain Head of Service approval. Managers may open and accept.
 - 1.6. For contracts in the range of above the Key Decision threshold (currently £50,000) to OJEU threshold managers are required to advertise tenders, establish Ad Hoc lists (Technical & Financial appraisal), obtain Service Head approval of the lists, invite tenders, evaluate and select and obtain Executive approval of the most economically advantageous. In addition for contracts above the OJEU threshold the European Competitive tendering regulations must be complied with. The value differs between services, negotiated contracts, supplies and works.
 - 1.6.1. A Contract Notice must be placed in the European Journal (two types open – for anyone to apply and be allowed to tender, restricted – for selection of applicants to an Ad Hoc list), this precludes the requirement to advertise otherwise.
 - 1.6.2. A prequalification questionnaire may be needed or the Notice used to enable Technical & Financial appraisal, obtain Executive approval of the lists, invite tenders, evaluate and select and obtain Executive approval. The award of a tender must be recorded in the OJEU.
 - 1.6.3. Executive approval of the lists is required, Tenders can then be invited, evaluated and selected and Executive approval obtained.
 - 1.6.4. There are restrictions on timescales; there is an opportunity for unsuccessful tenderers to challenge the process in accepting a tender.
 - 1.7. Use of consortia or framework contracts is allowed (OGC, NWIEP, EPiC), but in doing so managers must demonstrate a robust approach to obtaining value for money.
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- 1.8. Every Contract must have a number.
- 1.9. Compliance with Council policies is required
- 1.10. Full life cost of a contract shall be assessed, evaluation shall include a balance between cost and quality to ensure the most economically advantageous tender is identified.
- 1.11. There is provision for dealing with errors.
- 1.12. There is provision for extending existing contracts.
- 1.13. Performance guarantees are required for contracts over £100,000 in value, but see 5.4 for exceptions.
- 1.14. Heads of service are required to maintain a record of contracts, authorised staff etc., and confirm details to finance.
- 1.15. Post tender negotiations are allowed but conditions are imposed.
- 1.16. There may be exceptions to the above and the CSO's confirm how these are to be dealt with, including urgent and emergency contracts.
- 1.17. Managers must advise Heads of Service if a breach occurs.
- 1.18. Contracts for the acquisition and disposal of land set out the various requirements
- 1.19. There are general clauses about health and safety, general administration, variations and increases in cost
- 1.20. Procedures for dealing with corruption and determination issues are provided.

REQUIREMENT TO USE CONTRACT STANDING ORDERS

1.21. De Minimis.

- 1.21.1. These Contract Standing Orders shall not apply to contracts having an estimated value of less than £10,000, except that:
- 1.21.2. When the cost level is less than £10,000 the Officer responsible shall satisfy himself/herself that best value is being obtained and that the goods, services, or works for which contracts are sought are necessary and appropriate.

1.22. Aggregation

- 1.22.1. Contracts shall be aggregated as follows to estimate their value:

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- 1.22.2. Where the contract provides for periodic payments the contract value shall be the total of the anticipated payments to be made during the whole life of the contract.
- 1.22.3. contracts for the supply of the same type of goods, services or works to fulfill the same requirement over a continuous period of time shall be aggregated;
- 1.22.4. the value of a contract, where either party has an automatic right to renew, will include the value of both the initial and the subsequent term or terms of the contract;
- 1.22.5. Framework agreements which provide for goods, services or works (or a combination of these) to be ordered will be valued on the basis of a reasonable estimate of the total value of the goods, services and works to be provided under the agreement. Where Agreements are open-ended the expected value should be aggregated over four years.
- 1.22.6. If at any time it appears to the Project Manager that by virtue of the aggregated value of an ongoing contract, the formalities contained within these Contract Standing Orders including EC Procurement rules, would otherwise have had to be dealt with differently, the Project Manager shall immediately inform the Head of Legal and Democratic Services.

2. DEFINITIONS

- 2.1. In these Contract Standing Orders, unless the context otherwise demands, the following terms shall have the meaning:

"Chairman" - the duly appointed chairman of the Executive, or, in their absence, the duly appointed vice, or deputy chairman. Where there is no such duly appointed person available then, for the purposes of urgent action, a person selected under the Constitution to preside at the last meeting of the Executive shall have powers of the chairman for the purposes of these Contract Standing Orders.

"Chief Executive" – shall mean the Chief Executive of Copeland Borough Council being the Head of the Council's paid service; in his absence, and in relation to delegated powers, his deputies for the time being, namely the Corporate Director (Neighbourhood and Development) and Corporate Director (Services and Performance).

"Contract" – shall mean a binding agreement between two or more persons that is enforceable by law.

"Copeland" - the area for which Copeland Borough Council is the District Council as defined in the Local Government Act 1972.

"Corporate Director (Neighbourhood and Development)" – the employee of the Council who is appointed as Head of the Directorate.

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"Corporate Director (Services and Performance)" – the employee of the Council who is appointed as Head of the Directorate.

"Council" - Copeland Borough Council.

"Executive" – a forum of Members having the powers and duties set out in the council's Scheme of Delegation".

"Financial Regulations" - the current edition of the Council's document with that title.

"General Standing Orders" - the current edition of the Council's document with that title.

"Head of Finance and Management Information Systems" - the employee of the Council with responsibility for the Council's finances under S.151 Local Government Act 1972.

"Head of Legal and Democratic Services"- the employee of the Council who is appointed as Solicitor to the Council.

"Order" – a commercial document used to request someone to supply something in return for payment and providing specifications and quantities

"Project" – A contract requiring application of project management techniques to ensure satisfactory delivery.

"Project Manager" – The person who manages a Contract on behalf of the Council.

"Service Manager" - An employee of the Council who is appointed as Head of a Service and shall include the Chief Executive and Corporate Directors if they shall enter into a Contract on behalf of the Council or a person who is deemed by the Council or Executive to have responsibilities equivalent to those of a person appointed the Head of a Service or are otherwise authorised to have such status for the purpose of these Orders.

"Tender Register" - the Register of Tenders maintained by the Council.

"Valuer" – an employee of Capita plc holding the qualification of MRICS or FRICS and appointed as the Council's Valuer, or an alternative person appointed having the equivalent qualifications.

"Works" - in relation to any contract "works" shall mean the provision of building and/or maintenance services as the main part of the contract.

2.2. Unless the context otherwise requires, the singular includes the plural and the plural includes the singular, and the male gender shall include the female and vice versa.

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2.3. Any reference in any Contract Standing Order to a numbered or lettered paragraph is, unless the context otherwise requires, a reference to the paragraph of that Contract Standing Order bearing that number.

3. COMPLIANCE

- 3.1. The provisions of these Contract Standing Orders shall be subject to any overriding statutory requirements of the European Community or Central Government.
- 3.2. Contract Standing Orders shall apply to the entering into of all Contracts unless Executive has authorised otherwise. In that event Executive shall specify in what way it intends there to be an exception to Contract Standing Orders. Other exceptions are detailed in CSO 13, 14 and 15.
- 3.3. Where goods, services, or works are available only at one fixed price without any discounts or where no alternative comparable goods services or works are available the Council or Executive or a Service Manager may approve the supplier from whom a quotation or tender is to be sought after consideration of a written report and shall submit such report to the next meeting of the Executive if the value of the contract exceeds Key Decision level. If the value of the contract is Key Decision level or less then the Service Manager may approve this ensuring that a written record is made of the Service Manager's reasoning for his decision.
- 3.4. For requirements relating to Consortia and Framework Agreements please refer to Clauses 13.3 to 13.6.
- 3.5. Nothing in these Contract Standing Orders shall require quotations, prices or tenders to be obtained or invited where the Council has been awarded a contract and the Service Manager concerned requires sub-contractors for goods, services or works to which that contract relates where:
 - 3.6. the sub-contractor concerned has provided a price quotation or tender for the purposes of tendering for the contract which the Council won;
 - 3.7. The Service Manager is satisfied that value for money will be obtained by the award of the sub-contract.
- 3.8. Every Contract entered into shall be within the Council's Capital or Revenue Programmes. The Chief Executive or a relevant Corporate Director or Service Manager shall demonstrate the application of Project Management Techniques¹ to a project, or otherwise the Executive shall have approved the procedures to be followed.
- 3.9. Employees shall ensure that these Contract Standing Orders are complied with, that the Council obtains best value, that full life costs and adequacy of quality are taken into account, that goods, services, or works for which contracts are sought are necessary and appropriate, and that the records and registers required by these

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Contract Standing Orders are maintained. It is the responsibility of each Service Manager working with the Project Manager (if a separate person) to ensure the compliance of his or her Service.

- 3.10. Contracts are defined earlier and under Clause 3 Definitions and are enacted by the placing of an order for commodities over the full range of Council purchases, as well as for larger singular projects.

4. GENERAL ADMINISTRATIVE PROVISIONS

- 4.1. Service Managers shall provide the Head of Finance Management Information Systems with:

4.1.1. A list in writing of employees authorised to sign official orders and to enter into contracts² and advise of any changes required from time to time.

4.1.2. The employees authorised to decide if Contract Standing Order 6.10.3 is appropriate in particular cases and to record in writing the reasons for decision;

4.1.3. The employees authorised to determine whether an official order or other form of contract is appropriate (in consultation with the Head of Finance and Management Information Systems).

4.1.4. The Head of Finance and Management Information Systems will keep these records of authorised employees.

- 4.2. A Project Manager shall be appointed for every project

4.3. In the event that any employee believes there has been a breach of these Contract Standing Orders s/he will advise his/her Service Manager, who shall consult with the Head of Finance and Management Information Systems, and Head of Legal & Democratic Services, and institute appropriate action to remedy the breach and safeguard the Council's position which may include invoking the Council's disciplinary procedure.

4.4. Performance bonding³ in the form of security of a percentage of the total contract sum or in another similar form of security for the due performance of contracts shall be required for contracts over £100,000 unless the relevant Service Manager in consultation with the Head of Finance and Management Information Systems considers it appropriate for there to be no such bonding in which case the Service Manager shall be a written report to that effect to be kept by the Head of Finance and Management Information Systems. Performance Bonds will not normally be required for annual contracts.

4.5. Contracts will be in a form approved by the Head of Legal and Democratic Services prior to sending the invitations to tender (see 6.2) and shall, unless the Head of Legal & Democratic Services and Head of Finance and Management Information

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Systems agree otherwise, be signed as a Deed. The Contract shall contain the conditions required by Contract Standing Orders.

- 4.6. Where contracts are based on Standard Documents these shall be provided to the Head of Legal & Democratic Services with any amendments clearly marked for approval¹².
- 4.7. Wherever possible standard terms and conditions of contract should be used that have been agreed by the Head of Legal and Democratic Services as being satisfactory for use by the Council.
- 4.8. Any contract that is being relet and amounts to a transfer of an undertaking shall include such information relating to the Transfer of Undertakings (Protection of Employment) Regulations 1981, as amended, as the Head of Legal & Democratic Services shall from time to time prescribe.
- 4.9. Notwithstanding the requirements of national and EC Legislation, all contracts shall be advertised locally unless special circumstances (such as that there are known to be only a few national suppliers) make it inappropriate to do so.

5. CONTRACT PROCUREMENT LEVELS

5.1. Contracts Estimated To Have A Value Between £10,000 And Key Decision threshold.

- 5.1.1. Service Managers shall obtain prices from consortia or framework price lists, or invite written quotations or prices from no less than three suppliers (there is no requirement to advertise).
- 5.1.2. Service Managers shall demonstrate that they have achieved competition and value for money in selection of these suppliers by recording in writing the reasons and the criteria for such selection and the actions they have taken.
- 5.1.3. The results of the competition shall be recorded in writing, which shall include the reasons for selecting a supplier.
- 5.1.4. Where less than the minimum suppliers are invited to quote an explanatory note shall be placed on the contract file explaining why this has occurred. The Service Manager may send out the tender documents in the meantime.

5.1.5. Procedure

- 5.1.5.1. Contracts in this range shall be placed by official order or in another form approved by the Head of Finance and Management Information Systems who shall have the discretion to vary the terms of the official order or contract where appropriate and in the Council's interest.

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5.1.6. Contents of Official Order

- 5.1.6.1. In completing the official order the employee placing the order shall clearly specify:
 - 5.1.6.2. the Council or Executive or delegated authority for the expenditure;
 - 5.1.6.3. the goods, services or works to be supplied and the standard required for such goods, services or works where appropriate;
 - 5.1.6.4. where appropriate the start and finish dates for carrying out the contract and the maintenance and defects liability periods;
 - 5.1.6.5. the price to be paid or exceptionally if the price is unknown and cannot reasonably be determined at the time of entering into the contract how the price is to be determined;
 - 5.1.6.6. any discount or other deduction appropriate to the contract;
 - 5.1.6.7. where appropriate the amount of liquidated and ascertained damages to be paid by the supplier if the contract is not completed by the specified date or extended date in accordance with the contract;
 - 5.1.6.8. the general contract conditions required under Contract Standing Order 16 and other relevant contract conditions.
- 5.1.7. The approval of the Head of Legal and Democratic Services and the Head of Finance and Management Information Systems shall be obtained to the supplier selected to undertake any project.
- 5.1.8. Approval for acceptance of a quotation or price that is not the most economically advantageous shall be obtained from Executive (see Contract Standing Order 6.10.3).

5.2. Contracts Estimated To have a Value over the Key Decision threshold.

- 5.2.1. Service Managers shall advertise for expressions of interest for each contract.
- 5.2.2. Service Managers shall invite formal tenders from no less than four suppliers.
- 5.2.3. Alternatively approved framework contracts may be used as a basis of selecting tenderers, or partnering contracts may be undertaken.
- 5.2.4. Select or Ad Hoc lists of tenderers shall be established: approval of Head of Service shall be obtained to the tenderers selected to tender for a project.
- 5.2.5. Where less than the minimum number of suppliers are invited to tender a report explaining why this has occurred shall be made to the next Executive. The Service Manager may send out the tender documents in the meantime.

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5.2.6. Approval for acceptance of a tender that is not the most economically advantageous shall be obtained from Executive (see Contract Standing Order 7.6.3).

5.3. Contracts above the EU competition minimum threshold levels

5.3.1. In addition to Contract Standing order 6.2 the following also applies:

5.3.2. Advertising and selection shall be in accordance with the EU Regulations;

5.3.3. Approval of Executive shall be obtained to the list of tenderers selected to tender for a project

5.3.4. Where less than the minimum suppliers are invited to tender a report explaining why this has occurred shall be made to the next Executive. The Service Manager may send out the tender documents in the meantime;

5.3.5. All Contracts must be approved by the Chief Executive prior to any offer being made to ensure the Council's legal position is not compromised.

5.3.6. An extract from the EC Procurement Thresholds from 01 January 2008 is shown below, Thresholds are net of VAT:

5.3.7. For Services, Works and Utilities in other Entities obtain further details¹⁰.

	SUPPLIES	SERVICES	WORKS
Other public sector contracting authorities	£139,893	£139,893	£3,497,313 ³
[Copeland BC]	€ 206,000	€206,000	€ 5,150,000

5.4. Tender requirements (to apply above key decision level)

5.5. **Tender invitations** - Every invitation to tender shall be approved by the Head of Legal & Democratic Services and shall stipulate the following:

5.5.1. The deadline for receipt of tenders (date and time) [For the avoidance of doubt tenderers should be advised that they should not rely upon couriers data post or similar third parties for delivery of tenders];

5.5.2. The Tender evaluation criteria for the assessment of quality and price⁵.

5.5.3. A statement that the Council reserves the right to accept a tender other than the one which is the most economically advantageous or not to accept any tender at all⁷;

5.5.4. Confirmation by the tenderer that it has read understood and will comply with Council Policies; currently, but not limited to:

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- (i) Contract Standing Orders
- (ii) Financial Regulations
- (iii) No collusion
- (iv) No canvassing
- (v) Equality and Diversity
- (vi) Whistleblowing
- (vii) Race relations
- (viii) Sustainability

5.6. **Tender formats** - tenders may be delivered in paper form, or electronically.

5.6.1. Where paper tenders are required each shall be submitted in the manner prescribed in the advertisement or the invitation to tender documents.⁹

5.6.2. Where electronic tenders are required each shall be submitted in the manner prescribed in the advertisement or the invitation to tender documents⁹, generally to a designated postbox that can only be opened after the return deadline;

5.6.3. Each Tenderer shall obtain evidence to confirm that its transmission was successful and is recorded;

5.7. Tender Receipt and Opening

5.7.1. Where paper tenders are required each shall be delivered in a plain sealed envelope addressed to the Democratic Services Manager and bearing the words "Tender for" followed by the subject to which it relates, the tender reference number and the date and time by which the tender is to be received but no other name or mark indicating the tenderer.

5.7.2. Electronic tenders are to be kept in a separate secure structure which cannot be opened until the deadline has passed for receipt of tenders by the officer conducting the procurement.

5.7.3. Tenders will be considered only if they have been received in accordance with this Contract Standing Order 6.7 and will be kept by the Head of Legal & Democratic Services until they are opened.

5.7.4. No tenders received after the date and time fixed for the receipt of tenders shall be opened or considered unless the Service Manager and the Head of Legal & Democratic Services are both satisfied that there is clear evidence of posting or electronic transmission in time for delivery by the due date in the normal course of post or internet delivery and the other tenders have not already been opened;

5.7.5. The Head of Legal & Democratic Services shall maintain a register of all tenders received and keep such record for a period of six years after the date of opening of the tenders ("The Tender Register").

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5.7.6. All tenders which have been received prior to the date and time fixed for the receipt of tenders shall be opened at the same time and in the presence of two Members of Council and two employees one of whom shall be an employee given this duty by the Democratic Services Manager. Each person present at the opening of the tenders shall check the entry in the Tender Register and sign the Tender Register.

5.8. Errors in Tenders.

5.8.1. Where the lowest tender is found to contain a mathematical error:

5.8.2. The Project Manager responsible for the contract shall notify the Head of Finance and Management Information Systems who shall keep a register of such notifications;

5.8.3. The tenderer shall be given details of the errors and given the opportunity of confirming or withdrawing the tender offer;

5.8.4. if the tenderer stands by the error the priced tender document shall be adjusted by applying the difference as a proportionate reduction or addition to all tendered rates and prices (except for where applicable preliminaries items, contingencies, prime costs and provisional sums. This revision to the tender shall be signed by both parties to the contract.

5.9. Negotiations

5.9.1. If a Service Manager, upon receiving tenders or quotations under these Standing Orders, considers that the most economically advantageous price does not represent best value, he may enter into post-tender negotiations with suppliers under the terms of this Standing Order.

5.9.2. The Service Manager shall record his reasons for wishing to undertake post tender negotiations including with whom and why, shall set out his strategy for the negotiations including resources required and expected outcome, and shall obtain prior agreement from the Head of Finance and Management Information Systems, and Head of Legal and Democratic Services

5.9.3. The Service Manager shall:-

5.9.3.1. Undertake negotiations in writing

5.9.3.2. Confirm to the supplier or suppliers the reasons for negotiating

5.9.3.3. Seek the same / equivalent adjustments from these suppliers

5.9.4. Negotiations will be conducted by the Service Manager plus at least one other person from a list of authorised officers drawn up by the Chief Executive and approved by the Head of Legal & Democratic Services and the Head of Finance and Management Information Systems.

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- 5.9.5. Once a decision to negotiate has been proposed the contract between officers conducting the negotiation and the supplier or suppliers will be in writing or by formal minuted meeting only until negotiations are complete.
- 5.9.6. All correspondence or formal meeting minutes shall be copied to the Head of Legal and Democratic Services and the Head of Finance and Management Information Systems and all decisions relating to post-tender negotiations shall be documented and recorded.
- 5.10. **Acceptance of an offer.**
- 5.10.1. A quotation, price or tender shall only be accepted where it is the most economically advantageous, can be accommodated within the available budget and has been obtained in accordance with these CSO's
- 5.10.2. In order to determine the most economically advantageous offer, bids shall be evaluated. The evaluation must take into account the whole life costs and benefits of the contract. The whole life costs comprise all costs to the authority of acquiring, owning, maintaining and disposing of goods, services or works. This may include the initial price, delivery and installation, operative resources, in-house management resources, consumables, spare parts, licenses, taxes, maintenance, energy consumption, depreciation and disposal.
- 5.10.3. A Service Manager may authorise a contract to be entered into with a contractor for a contract between £10,000 and the Key Decision threshold and may authorise a contract other than the most economically advantageous provided:
- 5.10.3.1. he does so before the contract is entered into i.e. not retrospectively;
 - 5.10.3.2. he is satisfied upon consideration of a written report that it is in the interests of the Council to do so;
 - 5.10.3.3. he has consulted with and obtained the written approval of the Head of Finance and Management Information Systems;
 - 5.10.3.4. each case is recorded in a register by the relevant Service Manager which register shall contain the particulars of the contract, the written report, and the written approval of the Head of Finance and Management Information Systems.
- 5.10.4. Where only one tender has been received, or where budget provision is insufficient to cover the contract costs, or where it is not the most economically advantageous, or where Executive have given special instructions, a contract may only be awarded following a report to the Executive covering all necessary issues.
- 5.10.5. No tender shall be accepted unless the relevant Service Manager or an employee authorised by him has signed a certificate in a form prescribed by the Head of Finance and Management Information Systems, that he or she has taken all

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reasonable steps to ensure that there is budget provision and that the contractor has the technical ability to perform the contract and that for contracts over the key Decision threshold the contractor is financially viable.

5.11. **Withdrawal of Offers**

- 5.11.1. If a quotation, price or tender is withdrawn without appropriate reason in the opinion of the Service Manager, or upon being called to do so, the contractor refuses to enter into a contract after his quotation, price or tender has been accepted then that supplier shall not be allowed to bid for three years thereafter unless the Council or Executive resolves to the contrary.

6. **PROCUREMENT OF SUPPLIERS**

6.1. There is no requirement to advertise or maintain select or ad hoc lists for obtaining prices from consortia or framework price lists, or for obtaining quotations or prices from suppliers where the value is between £10,000 and Key Decision threshold.

6.2. Where the value is above the key Decision threshold the following shall apply:

6.3. Any Select List shall be advertised, the expressions of interest shall be evaluated⁵ and a list established. Suppliers shall be advised that they will be categorized into predetermined types of work and values, and that a basis for selecting a minimum of four suppliers for each specific contract shall be used. The list and selection process shall be approved by Executive. Details of any suppliers that have not met the minimum evaluation criteria and reasons shall also be provided. Once approved the list shall be reviewed bi-annually and any changes confirmed to Executive. Any additions to the list or changes to the process shall not be implemented without prior approval of Executive.

6.4. Contract opportunities for Ad Hoc lists for contracts over Key Decision level shall be published:

6.4.1. in at least one local newspaper; and in at least one trade newspaper or journal circulating among such persons or bodies who undertake such contracts, or

6.4.2. The European Journal, and/or

6.4.3. In the North West Centre of Excellence 'Chest', and/or,

6.4.4. The Council website

6.5. The advertisement⁸ shall:

6.5.1. Give details of the contract into which the Council wish to enter, or give details of the Select list categories and values;

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- 6.5.2. Invite persons or bodies interested to apply for inclusion on a select or ad hoc list; and
- 6.5.3. Specify a time limit, being not less than ten days, within which such applications are to be submitted to the Council.
- 6.6. Persons or bodies undertaking such contracts who do not respond to the advertisement referred to in 7.3 above may be invited to apply to be included in any such select list only with the written consent of the Chief Executive, or Executive.
- 6.7. After the expiry of the period specified in the advertisement the applications shall be evaluated in accordance with a procedure approved by the Head of Finance and Management Information Systems.
- 6.8. The select lists of statutory bodies, trade bodies and government departments may be used where appropriate and, in so far as it is practicable, in accordance with the procedures adopted by such body or department for the use of that list, subject to approval by the Executive.

7. POST TENDER NEGOTIATIONS

- 7.1. Except where the negotiated procedure referred to in paragraph 6.9 applies, negotiation after receipt of formal tenders and before the award of contract is only permitted:
 - 7.1.1. With those tenderers submitting the most economically advantageous tender, and
 - 7.1.2. with a view to obtaining an improvement in content in circumstances which do not put other tenderers at a disadvantage,
 - 7.1.3. when this does not distort competition or adversely affect trust in the competitive tendering process, and
 - 7.1.4. If the prior authority of the Head of Service has been obtained.
- 7.2. There may be circumstances where an officer authorised by the Head of Service may contact a contractor in order to clarify an ambiguous tender. This does not constitute post tender negotiations.
- 7.3. All communication with contractors under this Contract Standing Order must be in writing or recorded in writing.

8. ACCEPTANCE OF OFFERS

- 8.1. Contracts shall be placed by official order or in another form approved by the Head of Finance and Management Information Systems who shall have the discretion to

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vary the terms of the official order or contract where appropriate and in the Council's interest.

8.2. In completing the official order the employee placing the order shall clearly specify:

8.2.1. The authority for the expenditure;

8.2.2. The goods, services or works to be supplied and the standard required for such goods, services or works where appropriate;

8.2.3. Where appropriate the start and finish dates for carrying out the contract and the maintenance and defects liability periods;

8.2.4. The price to be paid or exceptionally if the price is unknown and cannot reasonably be determined at the time of entering into the contract how the price is to be determined;

8.2.5. Any discount or other deduction appropriate to the contract;

8.2.6. Where appropriate the amount of liquidated and ascertained damages to be paid by the supplier if the contract is not completed by the specified date or extended date in accordance with the contract;

8.2.7. The general contract conditions required under Contract Standing Order 16 and other relevant contract conditions.

8.2.8. All contracts shall be entered onto the Council list of Contracts¹¹.

9. DUTY TO GIVE REASONS FOR DECISIONS

9.1. This Contract Standing Order applies to the following decisions in relation to any potential tenderer, namely:

9.1.1. in relation to an Ad Hoc List, a decision to exclude it from the list¹²;

9.1.2. in relation to a proposed supply or works contract:

- (i) where it has asked to be invited to tender for the contract, and a decision has been made not to invite it to tender;
- (ii) a decision not to accept the submission by him of a tender for the contract;
- (iii) where it has submitted a tender for the contract, a decision not to enter into the contract with it; or
- (iv) a decision to withhold approval for, or to select or nominate, persons to be sub-contractors for the purposes of the contract;

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9.1.3. in relation to a subsisting supply or works contract with it:

- (i) a decision to withhold approval for, or to select or nominate, persons to the sub-contractors for the purposes of the contract; or
- (ii) A decision to terminate the contract.

9.2. Where the Council either through its Executive or employees makes a decision to which this Contract Standing Order applies, it shall be the duty of the Council forthwith to notify the supplier of the decision and if that supplier so requests in writing within the period of 15 days beginning with the date of the notice (10 days in respect of contracts above the E C Thresholds), to furnish him with a written statement of the reasons for the decision

10. EXTENSION OF AN EXISTING OR EARLIER CONTRACT

10.1. Where a Service Manager considers that any contract is an extension of an existing contract and should not be subject to competitive quotation/tender and such extension increases the value of the contract by not more than £25,000 or 25%, whichever is the lower, he shall submit to Executive a written report for their approval to authorise the Service Manager to dispense with tendering and appoint the supplier undertaking the existing contract setting out the circumstances which establish:

10.1.1. That it is truly an extension of an existing contract;

10.1.2. That it is appropriate not to seek competitive tenders;

10.1.3. That the Council is obtaining Best Value

10.2. No contract shall be considered an extension of an existing or earlier contract if the said earlier or existing contract has been completed, or will be completed, more than twelve months before the start, or likely start, of the later contract, or such later contract is higher in value than the existing or earlier contract.

11. EXCEPTIONS TO NORMAL PROCEDURE

11.1. Subject to statutory requirements (including those of the European Community) prices, quotations or tenders need not be invited in accordance with the foregoing provisions of these Contract Standing Orders when the provisions of Contract Standing Orders 13, 14 or 15 apply or one or more of the following circumstances apply:

11.1.1. The goods or materials have to be proprietary articles, or articles that are unique in respect of their design, manufacture or performance;

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- 11.1.2. The prices of goods, services, or works are wholly controlled by statutory bodies, trades, organisations or government order;
- 11.1.3. The work to be executed, the goods, materials, or service to be supplied necessarily involves the use of a proprietary part which can only be obtained from one, or through one, suppliers.
- 11.2. PROVIDED THAT the appropriate Service Manager shall record in writing, on the file for the project or contract, sufficient information to establish that the contract is within one of the above exceptions. The written record should also indicate specifically, by clause number and letter, which exception, or exceptions, above applies. In addition the Service Manager shall report in writing the circumstances and the contents of the record to the Executive as soon as practicable if the value of the contract exceeds Key Decision level.
- 11.3. Tenders invited by a Consortium: Competitive prices tenders or quotations need not be invited in accordance with these Contract Standing Orders where they have been invited by or on behalf of any consortium or similar body to which the Council is affiliated or connected or is a Member, where such invitation has been in accordance with the method normally adopted by such body.
- 11.4. Where prices tenders or quotations are invited by an employee of this Council, on behalf of any such consortium or similar body, the seeking, delivering, opening and acceptance of any such prices tenders or quotations shall comply with the provisions of these Contract Standing Orders unless they are inconsistent with the method by which tenders or quotations are dealt with by the said consortium or other body provided that any EC tendering legislation is followed.
- 11.5. Partnerships: Partnership procurement processes shall comply with the best practice guidance detailed in "Rethinking Service Delivery" Volume 3 published June 2006 published by the ODPM.
- 11.6. Such activities shall be based upon provision of a challenging option appraisal. Where partnering is the preferred option, the type of partnership model must be considered. The preferred model must be identified in a business case before procurement starts.

12. EMERGENCY CONTRACTS

- 12.1. There shall be no requirement to seek competitive tenders, prices or quotations where the contract needs to be let quickly to facilitate the immediate action to forestall or address an emergency as defined at 13.2 below.
- 12.2. An emergency shall mean for the purposes of these Contract Standing Orders a situation that offers substantial threat to life, health or property and requires, alleviating or avoiding or removing such threat, immediate action.

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- 12.3. Wherever practicable if the estimated value of the contract shall exceed £25,000 the Service Manager shall consult with the Head of Finance and Management Information Systems and the Chairman before letting a contract under this Contract Standing Order.
- 12.4. As soon as practicable the appropriate Service Manager shall place on the appropriate file a written report giving all the circumstances making letting of a contract under this Contract Standing Order necessary and justified and the financial and other implications of such action. This report will establish that the Council is obtaining value for money through the contract, in so far as is possible in all the circumstances.
- 12.5. For every contract of an estimated value or value of more than Key Decision level the Service Manager shall submit, as a report, his written record to the next meeting of Executive.
- 12.6. If there is a civil emergency the Chief Executive shall, subject to domestic and European legislation, have the power to let any contract that is urgently required in connection with such emergency.
- 12.7. As soon as possible after acting under 13.6 above the Chief Executive shall compile a written report justifying such action and submit such report to the next meeting of the Executive.

13. URGENT CONTRACTS

- 13.1. An urgent contract shall mean one where the circumstances make it necessary or highly desirable to let the contract so quickly as to make it impracticable to:
- 13.1.1. Obtain authority at a meeting of Executive; and/or
- 13.1.2. To obtain competitive prices, tenders or quotations in accordance with these Contract Standing Orders.
- 13.2. If the value of the contract exceeds Key Decision level where a Service Manager considers that it is an urgent contract he shall obtain any necessary authority, including authority not to seek competitive tenders, under General Standing Order 19 or the Executive Procedure Rules Urgent Action Procedure:
- 13.3. certify on a form approved by the Head of Finance and Management Information Systems that the goods services and works materials are required urgently and there is not time to invite quotations or tenders; AND
- 13.3.1. Consult and obtain approval of the Head of Finance and Management Information Systems before the contract is entered into for the urgent goods services and works; and

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- 13.4. Submit the certificate to the next meeting of Executive⁶.
- 13.5. The Chairman whom it is appropriate to consult under this Contract Standing Order, in respect of other aspects of the proposed contract, shall also be consulted in accordance with General Standing Order 19 or the Executive Procedure Rules Urgent Action Procedure with regard to dispensing with compliance with any part of Contract Standing Orders.
- 13.6. If the value of the urgent contract is Key Decision level or less a Service Manager shall:
- 13.6.1. certify on a form approved by the Head of Finance and Management Information Systems that the goods services and works are required urgently and there is not time to invite quotations or tenders and place the certificate on the contract file;
- 13.7. If it is not possible or practical to place a written official order an oral order may be placed provided that a written note of the order is made within 24 hours and confirmed by an official order dispatched to the supplier within two working days. Such an order must be marked "confirmation of telephone order". The official order number must be given to the supplier at the time the oral order is placed if practicable.

14. NOMINATED SUB CONTRACTORS AND NOMINATED SUPPLIERS

- 14.1. Contract Standing Orders 16.2 to 16.3 shall apply where a sub contractor or supplier is to be nominated to a main contractor by the Council.
- 14.2. Where the estimated amount of the sub contract or the estimated value of the goods to be supplied by the nominated supplier exceeds Key Decision level Contract Standing Order 7.3 shall apply unless in the opinion of the appropriate Service Manager it is not reasonably practical to obtain competitive tenders.
- 14.3. Any Service Manager who forms the view, in connection with this Contract Standing Order, that it is not reasonably practical to obtain tenders in respect of any sub contract or supply by a nominated supplier shall make a written record of the circumstances justifying such a decision and keep the same on the file for the project or contract. The Service Manager shall make a written report of the circumstances and contents of the record to Executive as soon as practicable after the decision is taken.

15. CONTRACT CONDITIONS GENERAL

- 15.1. Sealing: all contracts which are intended to take effect as a deed or which the Council may wish to enforce more than six years from the date of execution of the contract shall be sealed with the common seal of the Council in accordance with General Standing Orders.

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- 15.2. Essential terms: all orders and contracts shall specify the goods and services to be supplied or the works to be executed; the price or prices to be paid, together with a statement as to the amount of any discounts or other deduction; the period or periods within which the contract is to be performed, and such other significant conditions and terms as are agreed between the parties in writing, and all contracts over £10,000 in value shall be executed by both parties.
- 15.3. Liquidated damages: where practicable, contracts for works shall provide for the payment of liquidated damages where the contractor fails to complete the contract within the time specified therein.
- 15.4. British or European Standards: wherever practicable every contract shall require that all goods and materials used or supplied and all the workmanship shall be at least of the standard required by any of the appropriate British Standards specification, or European equivalent, or code of practice current at that time.
- 15.5. Alternative Suppliers: wherever practicable, contracts for the supply of goods shall enable the Council to obtain such goods from another supplier where the specified delivery dates are not met (without prejudice to any other remedy the Council may have) and enable the Council to recover the additional costs from the supplier.
- 15.6. Assignment: all contracts shall contain a clause that the supplier shall be prohibited from transferring or assigning directly or indirectly to any person or persons whatsoever any part of the contract without the written permission of the Council. Subletting of any part or parts of the work, except to the extent permitted in writing under the terms of the contract or by subsequent written amendment, shall be prohibited.
- 15.7. Official Orders: Official orders shall have the Council's standard contract conditions either on them or attached to them.
- 15.8. If an expert is appointed by the Council, the terms of his/her appointment shall be in writing and signed by the expert and the Council before work is undertaken, so that the responsibilities of each can be identified. References must be taken up and output specified before appointments are made.

16. CORRUPTION, CANCELLATION OR DETERMINATION

- 16.1. Every contract entered into by the Council must state that the Council can cancel the contract and recover any resulting losses if the contractor or his employees or agents with or without his knowledge:
- 16.1.1. Does anything improper to influence the Council, it's employees or its agents, to give him the contract, or

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16.1.2. Commits an offence under the Prevention of Corruption Acts 1906 and 1916, or Section 117(2) of the Local Government Act 1972.

17. HEALTH AND SAFETY

17.1. Every contract for works shall include terms to the effect that the supplier and any subcontractor shall in carrying out the contract comply with all relevant health and safety legislation. For the purposes of Construction Design and Management regulations the Council must comply with the regulations and confirm the competence of the CDM Coordinator and Principal Contractor.

17.2. In the event of any question arising as to whether the requirements of this Contract Standing Order are being observed the question shall, if not otherwise disposed of, be referred to an arbitrator chosen by the Council's Head of Legal & Democratic Services.

17.3. Suppliers shall be responsible for the observance of this Contract Standing Order by sub contractors employed in the carrying out of any works contract for the Council and shall if required notify the Council of the names and addresses of all such sub contractors.

17.4. If an employee of the Council shall have a reasonable ground for believing that the requirements of this Contract Standing Order are not being observed he or any consultant on his behalf shall be entitled to require proof of compliance with any relevant health and safety legislation.

18. INCREASES AND VARIATIONS IN THE COSTS OF CONTRACTS

18.1. Where the lowest correct tender, quotation or price exceeds by £10,000 the amount approved by the Council or Executive for the contract the appropriate Service Manager must make a written report to the Council or Executive with details of the relevant circumstances before the offer is accepted.

18.2. Where an employee or consultant responsible for the supervision of any contract has at any time after entering into the contract reason to believe that the costs of the contract will exceed by 10% or £20,000 (whichever is the lower) the agreed contract price he must immediately follow the procedure under 19.3.2 (see Financial Regulation C6).

18.3. If it is apparent that the costs of a contract may exceed the approved budget provision the relevant Service Manager shall:

18.3.1. For excess expenditure in aggregate of less than 10% or £20,000, whichever is the lower, consult with his Corporate Director and proceed only if the extra cost can be funded;

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18.3.2. for excess expenditure in aggregate of 10% or £20,000 or more (see Financial Regulation C6);

- (i) obtain the consent of Corporate team and proceed only if the extra cost can be funded; and
- (ii) obtain the consent of Executive for provision of additional funding, including consent to use contingency funds if these are required;

18.4. No payment in excess of the limits in 19.2 and/or 19.3.2 (ii) above shall be made without the Council or appropriate Committee approving any report referred to it except with the authority of the appropriate Service Manager in consultation with the Chairman and the Head of Finance and Management Information Systems in cases of urgency. A written record of the consultation shall be retained by the Service Manager on the file for the contract and referred to the next meeting of the Council or Executive.

19. FINANCIAL ADMINISTRATIVE PROVISIONS

19.1. The Head of Finance and Management Information Systems shall where requested or where s/he considers it to be appropriate carry out investigations to satisfy him/herself as to the financial viability of any contractor employed, or proposed to be employed, by the Council.

19.2. The employee responsible for supervising any contract valued at £10,000 or more shall maintain, in respect of that contract, a central register for the Service Unit which include, inter alia, details of:

19.2.1. the title and reference of the formal contract document and its location;

19.2.2. the contract start date, completion date and where relevant, the extended completion date;

19.2.3. all payments made under the contract;

19.2.4. payments of consultants fees relating to that contract;

19.2.5. the Council or Executive minutes, where applicable, giving authority to:

- (i) incur expenditure;
- (ii) incur expenditure in excess of original approved sums; and
- (iii) undertake the works or project facilitated by the contract.

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- 19.3. The employee responsible for the supervision of a contract shall in the case of contracts over Key Decision level inform the Head of Finance and Management Information Systems (of each tender that is to be accepted) and (when the legal contract has been formally executed by both parties.) Head of Finance and Management Information Systems shall ensure that no payment is made in respect of any contract until the relevant Service Manager has confirmed that a binding contract exists
- 19.4. The Service Manager shall maintain a contracts register for contracts⁴, when contracts are for a fixed period involving more than a one-off supply of goods or services, showing the name of the contractor, description and value of the contract, start date, contract end date, lead time needed and date to start preparation for letting the new contract.

20. WORKS CONTRACTS - FINANCIAL PROVISIONS

- 20.1. This Contract Standing Order shall apply to works contracts only.
- 20.2. Payments to contractors shall only be made on a formal certificate⁵ signed by the Service Manager responsible for supervising the contract or the person appointed by such Service Manager or other duly authorised person to supervise the contract.
- 20.3. For contracts under Key Decision level the Head of Finance and Management Information Systems may approve payments on invoices signed by the appropriate Service Manager, architect or contract supervisor.
- 20.4. Every variation, addition or omission on a works contract shall be authorised in writing by the appropriate Service Manager or other person appointed to supervise the contract in consultation with such Service Manager and where the contract is in excess of Key Decision level a copy of the authority, with details of an estimate of the financial cost of the variation, addition or omission, shall be forwarded to the Head of Finance and Management Information Systems.
- 20.5. The final certificate on any contract in excess of Key Decision level shall not be issued until the appropriate employee, private architect, engineer or consultant has produced to the Head of Finance & Management information Systems a detailed statement of account together with any further relevant documents that he may require for examination and the Head of Finance and Management Information Systems given his approval, which shall comply with the contract conditions, to the issue of the final certificate.
- 20.6. Head of Finance and Management Information Systems shall to the extent he considers necessary examine any current scheme and final account for any contract and he shall be entitled to make all such enquiries and receive such information and explanations as he may require in order to satisfy himself as to the accuracy of the accounts and contract records.

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20.7. Where completion of a contract is delayed beyond the contract period or an approved extended period, it shall be the duty of the supervising officer to inform the appropriate Service Manager that the contractor is liable for liquidated damages if such provision is included in the contract. The Service Manager shall enforce the provision for liquidated damages unless in exceptional circumstances there are reasons why liquidated damages should not be imposed, in which case the matter should be referred to the Head of Legal & Democratic Services for consideration of the Council's legal position and to the Head of Legal & Democratic Services for its financial implications and a report made to Executive. No commitment to forgo liquidated damages shall be given until approved by Executive.

21. THE DISPOSAL AND ACQUISITION OF LAND

21.1. In this Contract Standing Order the following definitions shall apply:

21.1.1. "land" shall include buildings in addition to land and shall include leases, licences, easements and other rights or interests created in or over land;

21.1.2. "Value" shall be the value of the interest in the land and shall be determined by "valuation" which shall include a valuation by the Valuer or any suitably qualified member of his staff.

21.1.3. "long leasehold" for the purpose of Contract Standing Order 23.2 shall mean a lease where the rental is not more than £50 per annum and a capital "premium" payment is made for the grant of the lease. The length of lease should not be taken into account for the purposes of what is set out below.

21.2. No transactions in respect of land should take place without the authority of:

21.2.1.1. The Head of Finance and Management Information Systems in consultation with the Head of Legal & Democratic Services who has delegated power to deal with land transactions:

- (i) where the freehold value or long leasehold premium payment is £100,000 or less; or
- (ii) where the leasehold is for a period not exceeding 10 years and the initial rental (discounting concessions) for that period does not exceed £10,000 per annum; or
- (iii) unless s/he is given delegated authority for specific matters by the Executive or the Council.

21.2.1.2. The Chief Executive in consultation with the Chairman who has delegated powers to deal with land transactions where:

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- (i) the freehold value or long leasehold premium payment is more than £100,000 and less than £250,000; or
- (ii) the leasehold is for a period not exceeding 21 years and the initial rental (discounting concessions) for that period does not exceed £10,000 per annum; or
- (iii) s/he is given delegated authority for specific matters by the Executive or the Council.

21.2.1.3. The Council: where the freehold value or long leasehold premium payment or initial annual rental (discounting concessions) is £250,000 or more.

21.3. **Disposal at less than Valuation.** There shall be no disposal of land at less than value without:

21.3.1. where the value is less than £250,000 the consent of Executive; or

21.3.2. where the value is £250,000 or more the consent of the Council; and

21.3.3. where required the consent of the appropriate Secretary of State.

21.4. **Acquisition for more than Value.** There shall be no acquisition of land for more than value except with the approval of full Council.

21.5. **Auction** Council land shall only be put up for auction with a reserve price in place, such reserve price to be determined by the Valuer in consultation with the Auctioneer.

21.6. **Public Tender.** The tender procedures set out in these Contract Standing Orders shall relate to the sale of land by public tender except that the highest tender will be accepted rather than the lowest;

21.7. **Private Treaty.** Negotiations for sale or acquisition by private treaty which involve oral communication shall, where practical, take place in the Council's offices or at an appropriate alternative venue within normal office hours and where practical such negotiations for transactions with a value of £100,000 or more shall be attended by two officers together with the Valuer or his representatives and a written record of the meeting shall be made at the time, or immediately thereafter. Such record shall be retained on the file kept by the Valuer for that transaction.

21.8. Council land to be sold or acquired by private treaty and valued at £100,000 or more shall not be sold or acquired unless:

21.8.1. at least one independent valuation from a suitably qualified person, not being the Valuer of the Council, is obtained; and

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21.8.2. the Council's Authorised Officer approves that valuation.

22. AMENDMENTS TO AND REVIEW OF CONTRACT STANDING ORDERS

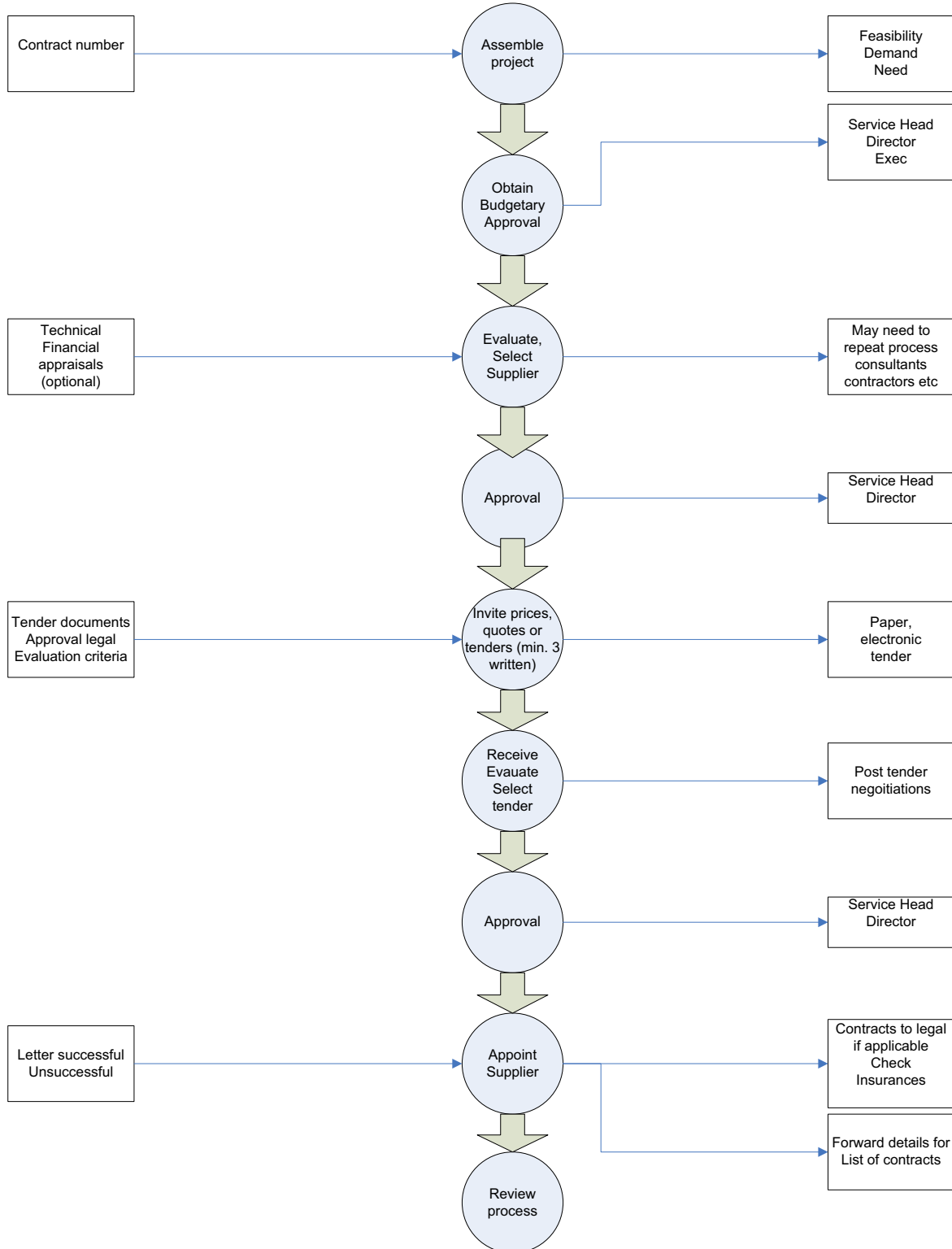
22.1. No amendment shall be made to these Contract Standing Orders unless approved by a meeting of the full Council, following the recommendation of Executive consequent on that Forum having approved a report submitted by the Head of Legal & Democratic Services recommending such amendment.

22.2. In this context "amendment" shall mean any addition, change, or deletion.

22.3. These Contract Standing Orders shall be reviewed at intervals of not more than three years.

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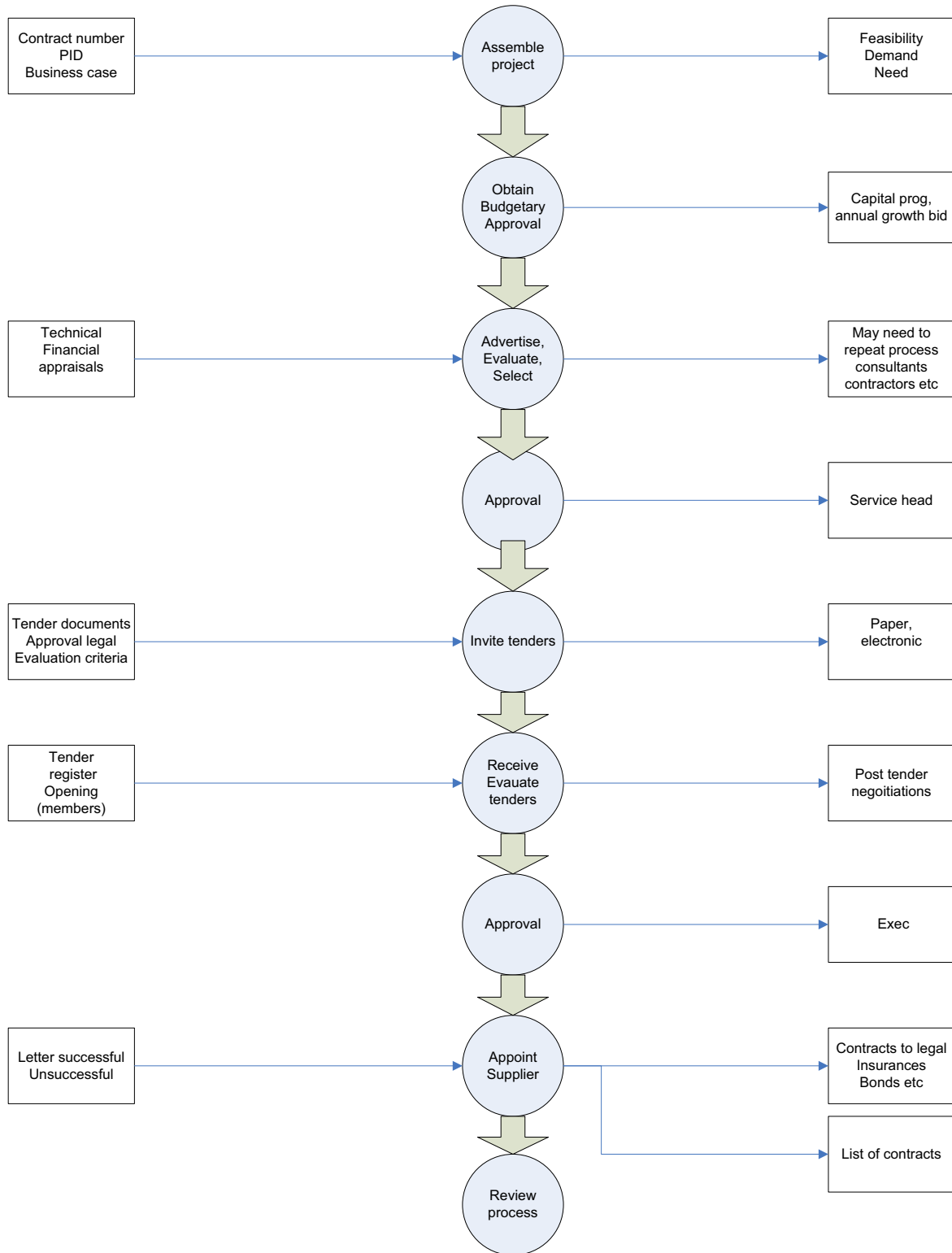
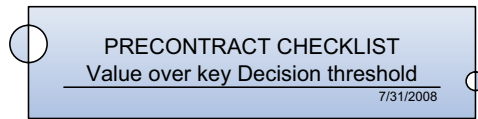
PRECONTRACT CHECKLIST
 Value below Key Decision threshold
 7/31/2008



PRECONTRACT CHECKLIST

CONTRACT STANDING ORDERS

Over OJEU Min Value



CONTRACT STANDING ORDERS

