

Appendix 8(b)

STANDING ORDERS RELATING TO CONTRACTS

1st April 2019

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1. INTRODUCTION

Section 135 of the Local Government Act 1972 requires a local authority to make standing orders with respect to the making of Contracts by them or on their behalf for the supply of goods or materials or for the execution of works.

These Standing Orders relating to Contracts (the “Standing Orders”) are the standing orders required by the 1972 Act. They form part of the Council’s Constitution and are, in effect, the instructions of the Council, to Officers and elected members, for entering into contracts on behalf of the Council.

These Standing Orders provide a framework for procurement activity across the Council. They set out how contracts for goods, services and works should be put in place; the governance requirements associated with such activity, and the contract management of contracts once they are entered into.

These Standing Orders should not be regarded in isolation, but rather as part of the overall governance and regulatory framework of the Council as set out in the Constitution, including, but not limited to, the Council’s Scheme of Delegation, the Financial Scheme of Delegation, and the Financial Regulations. These Standing Orders cover UK and EU legislative requirements as well as good practice.

These Standing Orders are to protect the interests of the Council, its officers, elected members and the general public and must be complied with at all times.

2. GENERAL

2.1 Definitions and Interpretation

2.1.1 In these Standing Orders, the following words shall have the following meanings:

“Business Case”	means either of the Council’s two business cases for below £50,000 or £50,000 and above as set out in Standing Order 2.11;
“Client”	means the Council Officer who is responsible for the commissioning and delivery of works, goods, or services on behalf of the Council in their given role;
“Contract”	means an agreement with the Council for the execution of works or the supply of goods or services, including on a concession basis;
“Corporate Debit Card Policy”	means the policy of the Council in relation to the use of the Council’s corporate debit card;
“Council”	means Derbyshire County Council;
“Council Plan”	means a plan outlining the Council’s ambitions, values and overarching outcomes for Derbyshire as approved annually by Council;
“Departmental Service Plans”	means the departmental plans, which support the implementation of the Council Plan;

“Directive”	means Directive 2014/24/EU;
“Enterprising Council Initiative”	means the Council’s transformation programme, which is bold, ambitious and enterprising as set out in the report to Cabinet on 22 nd February 2018, entitled ‘Moving towards an Enterprising Council’;
“Financial Regulations For Schools”	means a document produced specifically in respect of financial regulations and procedures for schools;
“Financial Scheme of Delegation”	means the documents setting out the Officer financial authorisation levels for each Council Department;
“Firm”	means any business entity or person, including bodies corporate and corporations, associations, organisations, partnerships, co-operatives, trusts or other unincorporated bodies;
“Light Touch Regime OJEU Threshold”	means, for the purpose of these Standing Orders, the financial threshold for social and other specific services pursuant to regulation 5 of the Public Contracts Regulations 2015, which is set at £615,278 (equivalent to approx €750,000) as of, 1 st January 2018, and is revised every two years;

“Order Form”	means the order form used by the Council as part of the Council’s e-procurement system;
“Officer”	means an employee of Derbyshire County Council;
“Procurement and Award Procedure”	means the procurement and award procedures of the Council as set out in the eight Protocols detailed in Standing Order 3.2 and Appendix A of these Standing Orders;
“Procurement Connection”	means the area of the Council’s website that contains information and templates to assist with procurement activities;
“Procurement Professional”	means any Officer of the Council who is either (a) a qualified procurement professional, or (b) a procurement professional by way of their Council role as a purchaser of works, goods, or services;
“Procurement Strategy”	means the Council’s procurement strategy as may be amended and updated from time to time;
“Protocols”	means the procurement and award procedures of the Council as set out in Standing Order 3.2 and Appendix A.

<p>“Public Notice”</p>	<p>means a notice published on the Source Derbyshire website, the Contracts Finder website and, where appropriate, one trade newspaper or journal circulating among such Firms that undertake such contracts;</p>
<p>“Regulations”</p>	<p>means the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016, the Concession Contracts Regulations 2016, the Public Procurement (Amendments, Repeals and Revocations) Regulations 2016 as amended and updated from time to time;</p>
<p>“School Contract”</p>	<p>means a Contract let by the governing body of a school acting in the exercise of its powers in respect of a delegated budget;</p>
<p>“Senior Officer”</p>	<p>means an Officer of sufficient seniority as set out in the Financial Scheme of Delegation and where not set out in those documents, as determined by the appropriate Strategic Director;</p>
<p>“Standstill Period”</p>	<p>means the period of time within which the Council must not enter into Contracts as set out in regulation 87 of the Public Contracts Regulations 2015;</p>

“Terms & Conditions for Goods & Services”	means the Council’s corporate terms and conditions for goods and services;
“Terms & Conditions for Works”	means the Council’s corporate terms and conditions for works;
“Supplies and Services OJEU Threshold”	means, for the purpose of these Standing Orders, the financial threshold for supplies and services pursuant to regulation 5 of the Public Contract Regulations 2015, which is set at £181,302 (equivalent to approx €221,000) as of, 1 st January 2018, and is revised every two years;
“Works OJEU Threshold”	means, for the purpose of these Standing Orders, the financial threshold for works pursuant to regulation 5 of the Public Contracts Regulations 2015, which is set at £4,551,413 (equivalent to approx €5,548,000) as of, 1 st January 2018, and is revised every two years;

2.1.2 Any reference in these Standing Orders to a statute, statutory instrument or statutory provision includes a reference to that statute, statutory instrument or statutory provision together with all Standing Orders and regulations made under it as from time to time amended, consolidated or re-enacted.

- 2.1.3 Any reference in these Standing Orders to an Officer of a certain level shall include a reference to an Officer authorised by them to act on their behalf provided that such authorisation is contained within the Council's Scheme of Delegation, including, the Financial Scheme of Delegation.
- 2.1.4 For the purposes of these Standing Orders, in ascertaining whether an agreement falls within the definition of a Contract, the determining factor will be the substance of the agreement and not the form. For the avoidance of doubt, where the effect of the agreement is that the Council has works, services or goods delivered to it or on its behalf, then for the purposes of these Standing Orders, it will be a Contract. Using other words, titles or headings as descriptors of an agreement (e.g. Memorandum of Understanding, Grant, Memorandum of Agreement etc.) where the Council has works, services or goods delivered for it or on its behalf, does not avoid the application of these Standing Orders.
- 2.1.5 Supplier and contractor are used interchangeably in these Standing Orders and mean a third party organisation with whom the Council may contract.

2.2 Basic Principles

- 2.2.1 All procurement procedures must:
- (a) support all relevant Council plans, priorities and policies, including the Council Plan, the Enterprising Council Initiative and the Procurement Strategy, including social value;
 - (b) realise value for money by seeking to achieve the optimum combination of whole life costs and quality of outcome;

- (c) uphold the highest standards of integrity;
- (d) comply with all applicable legislative requirements, including National and European Union (EU) law;
- (e) ensure:
 - (i) transparency – both in terms of procedures and contract opportunities;
 - (ii) equality of treatment and non-discrimination of potential suppliers;
 - (iii) proportionality – both in terms of procedures and decision making during the procurement process;
 - (iv) mutual recognition – giving equal validity to qualifications and standards from other Member States, where appropriate.

2.3 Application of the Standing Orders

2.3.1 These Standing Orders apply to the procurement and letting of the following types of contracts by or on behalf of the Council:

- (a) the purchasing of any goods or materials;
- (b) the purchasing of any services, including consultancy services;
- (c) the renting, hiring or leasing of any equipment or goods;
- (d) the ordering or carrying out of any building or engineering works; and

(e) the purchasing of any goods or services using external funding.

2.3.2 Every procurement and award of a Contract made by or on behalf of the Council shall also comply with National law and EU law, including the Treaty of Rome and subsequent EU Directives.

2.3.3 The OJEU threshold for goods and services is the Supplies and Services OJEU Threshold; the OJEU threshold for works is the Works OJEU Threshold and the OJEU threshold in respect of social and other specific services is the Light Touch Regime OJEU Threshold, all of which apply to the application of these Standing Orders.

2.3.4 Should there be a conflict or discrepancy between these Standing Orders and any National or EU law, the law shall always prevail and must be followed.

2.3.5 The procurement and award of a Contract made by or on behalf of the Council shall not comply with these Standing Orders where:

(a) an exemption applies pursuant to Standing Order 2.4 below;

(b) a waiver of the Standing Orders has been granted pursuant to Standing Order 2.5 below;

(c) the Contract is a School Contract procured by the school, in which case it shall be procured and awarded in accordance with the Financial Regulations For Schools.

2.3.6 Where another local authority undertakes a procurement as the commissioning authority for and on behalf of the Council, including with any other parties, the standing orders, procurement procedures and financial regulations of that other local authority may be relied upon provided that the Procurement Professional, in conjunction with the Client, ensures that the procurement of the works, goods and/or services to which that Contract relates, is carried out in accordance with all applicable National law, EU procurement law, including the Treaty of Rome and subsequent EU Directives and Regulations, and they shall obtain confirmation in writing from the other commissioning local authority that such compliance has been achieved.

2.4 Exemptions to the Standing Orders

2.4.1 The following types of transactions and/or forms of Council expenditure are not required to be part of a competitive process pursuant to these Standing Orders. Please be advised that the following list is not exhaustive and advice should always be sought from Corporate Procurement or Legal Services where there is uncertainty:

- (a) expenditure under approved Council Contracts, which have already been appropriately procured in accordance with these Standing Orders;
- (b) disposals, acquisitions or transfer of interest in or over land/property, where such transactions do not form part of a wider works, goods or services transaction that is being procured;
- (c) items sold or purchased by public auction;

- (d) employment offers/contracts which makes the individual a direct employee of the Council;
- (e) expenditure with other Council departments that can provide works, goods or services to the Council;
- (f) Contracts for the execution of mandatory works by statutory undertakers, where the statutory undertaker is the only body that can perform the works.

2.4.2 Legal Services must be contacted for advice about whether a matter is exempt from the Standing Orders.

2.5 Waivers of Standing Orders

2.5.1 Any requirement of these Standing Orders may be waived by the Council, Cabinet, Cabinet Member or Executive Director, but only where it is satisfied that there are special circumstances justifying exemption and it is legal to do so.

2.5.2 All such waivers of these Standing Orders shall be formally minuted.

2.5.3 A waiver of these Standing Orders cannot circumvent the law and cannot as a matter of law excuse non-compliance with the law.

2.6 Procurement Strategy

2.6.1 The aim of the Procurement Strategy is to:

- (a) set out how the Council will carry out procurement and commissioning activities, in line with the National Procurement Strategy, to ensure value for money in the delivery of high quality services; and

(b) to recognise that the procurement and commissioning of goods, works and services can deliver additional benefits in the support of its strategic and policy objectives as set out in the Council Plan.

2.6.2 All procurement activities must be undertaken in accordance with the Procurement Strategy and Executive Directors must ensure that all requirements of the supply of goods, services and works are carried out in line with the Procurement Strategy and the Council's procurement Protocols.

2.6.3 The Chief Financial Officer is responsible for annually producing and updating the Procurement Strategy for approval by Cabinet.

2.7 Contract Value and Disaggregation

2.7.1 The value of a Contract must not be sub-divided or underestimated for the purpose of reducing the total value of the contract in order to bring the procurement exercise below the relevant EU threshold and, therefore, be exempt from the application of the EU Directives, the Regulations or these Standing Orders.

2.7.2 In determining how to calculate the estimated value of a procurement in order to comply with the Public Contracts Regulations 2015, please contact Corporate Procurement or Legal Services for advice.

2.7.3 The value of a Contract must also not be sub-divided or underestimated for the purpose of reducing the total value of the contract in order to bring the procurement exercise below the Council's thresholds in the Protocols so as to avoid the Council's procedural requirements.

2.7.4 Contract expenditure figures must be monitored quarterly, based on an assessment of risk, to ensure that the basis of any Contracts awarded remain appropriate and legal.

2.8 Conflicts of Interest

2.8.1 All Officers involved in any procurement process are required to adhere to the Officers' Code of Conduct and the Council's Anti-Fraud and Anti-Corruption Strategy. Furthermore, in accordance with the Officers' Code of Conduct as set out in the Constitution, where an Officer engages or supervises contractors or has any other official relationship with contractors and has previously had or currently has a relationship in a private or domestic capacity with a contractor, the Officer must declare that relationship to their Executive Director.

2.8.2 Contracts and purchases must be awarded on merit, in accordance with these Standing Orders and the Financial Regulations and no special favour should be shown to businesses run by, for example, friends, partners or relatives.

2.8.3 Any Officer involved in a tendering process for goods, services or works that is above the Supplies and Services OJEU Threshold, must declare any interest they have in the matter to which that procurement process relates, including a nil interest, by completing and signing a Declaration of Interest Form, which will be held by Corporate Procurement. Should the Officer's interest change during the course of the procurement process, that change in interest must be declared. Appropriate action must be taken pursuant to the interest that is declared, including removing the Officer from that particular procurement process.

2.9 Compliance and Breach

- 2.9.1 All Officers must comply with these Standing Orders and each Executive Director shall ensure that Contracts let by Officers in his or her service comply with these Standing Orders.
- 2.9.2 Where an Officer is found to be in breach of these Standing Orders, appropriate action will be taken as follows:
- (a) for an inadvertent breach the Officer's manager will provide guidance and support, including explaining the consequences and gravity of non-compliance;
 - (b) for a first deliberate breach the Officer's manager will meet with the Officer to formally discuss the breach and any required actions and details of the breach shall be recorded;
 - (c) for subsequent deliberate breaches the Officer's manager will meet with the Officer together with a senior Officer to the manager to formally discuss the matter. Such remedial action may be taken as the manager and senior Officer consider appropriate in the circumstances, including but not limited to, formal action under the Council's disciplinary procedure. Details of all subsequent deliberate breaches shall be recorded.
- 2.9.3 Any non-compliance with or breach of Standing Orders must be considered with regard to the requirements of paragraph 2Aa.7 of Financial Regulations. This details the action to be taken in all cases of suspected fraud, misappropriation or misuse of money, materials or equipment, or any mismanagement of money or other assets, or any other irregularities. In any case of doubt the Assistant Director of Finance (Audit) must be consulted.

2.10 Authority to Authorise

2.10.1 The Council's Scheme of Delegation, which forms part of the Council's Constitution, including the Financial Scheme of Delegation sets out the governance requirements in respect of delegations for decision making that all Officers and elected members must comply with.

2.10.2 High level decisions are reserved for Council, Cabinet and Cabinet Member and any matter that is not reserved for Council, Cabinet or Cabinet Member may be approved by the Executive Directors of each Department where such delegation is set out in the Council's Scheme of Delegation, including the Financial Scheme of Delegation.

2.10.3 Where goods, services or works are procured, Cabinet, Cabinet Member and Executive Directors have authorisation to approve the procurement process and the award of contracts (depending on value) as detailed in Standing Order 3 and the table in Appendix A to these Standing Orders, which sets out the Council's eight Protocols.

2.11 Business Cases

2.11.1 The following procurement processes require the submission of a Business Case to the Chief Financial Officer and the Director of Legal and Democratic Services for approval before the procurement process commences:

(a) Permission to use a non-Derbyshire County Council framework (Protocol 2A);

(b) Sole supplier (Protocol 8);

- (c) Material changes to Contracts (Protocol 9);
- (d) Extensions of Contract beyond originally awarded period or indicated spend (Protocol 10).

2.11.2 There are two Business Case templates, one of which is for procurements with a contract value below £50,000 and is simple in nature; and the other is for procurements with a contract value of £50,000 and above. This higher value Business Case is more detailed and includes an options risk assessment section. Both Business Case templates are located on Procurement Connection.

2.11.3 Advice on completing the Business Cases may be obtained from Corporate Procurement.

2.12 Social Value

2.12.1 Consideration must be given to how what is being procured might improve the economic, social and environmental well-being of Derbyshire residents as well as how that improvement might be secured. This applies to all procurements where it is relevant and it must be proportionate and in line with the Public Services (Social Value) Act 2012.

2.13 Departmental Service Plan

2.13.1 It is Council practice that all procurements of Contracts with a contract spend above £50,000 must be included within the appropriate Departmental Service Plan, which will be approved by Council. Where such approval to procure a Contract is included in the Departmental Service Plan, the award of the Contract can then be approved at Executive Director level.

2.13.2 If a procurement of a Contract is not detailed in the appropriate Departmental Service Plan, Cabinet or Cabinet Member (as appropriate) approval to procure the Contract must be obtained along with their approval to delegate the award of the Contract to the relevant Executive Director.

3. COMPETITIVE PROCESS

3.1 Procurement Overview

3.1.1 Officers must comply with National and EU procurement law and the Council's governance framework when undertaking the procurement of goods, services or works for or on behalf of the Council.

3.1.2 Pursuant to Standing Order 3.1.1, Officers must ensure that they comply with the Public Contracts Regulations 2015 when procuring goods, services or works.

3.1.3 There are seven main competitive processes permitted under the Public Contracts Regulations 2015 and they represent best practice for all procurements above the applicable OJEU thresholds:

- (a) Open Procedure;
- (b) Restricted Procedure;
- (c) Dynamic Purchasing System;
- (d) Framework Agreements (with or without mini-competitions);
- (e) Competitive Procedure with Negotiation;
- (f) Competitive Dialogue;
- (g) Innovation Partnership.

3.1.4 The Standing Orders pertaining to each of these is different and the process chosen to fulfil a supply requirement must not only

meet the business needs of the Council but also the purpose for which the process was designed. Each process also comes with selection risks and resource implications, to which due consideration must be given.

- 3.1.5 It is, therefore, essential that Officers appraise themselves of the various procedures and how best to utilise them to deliver Value for Money (“**VfM**”) and the right business solution.
- 3.1.6 The Council has also created eight Procurement and Award Procedures, which are set out in the eight Protocols detailed in Standing Order 3.2 below and Appendix A, which must be followed when procuring goods, services or works.
- 3.1.7 The Procurement and Award Procedures identify the required approach that must be followed for contracts and awards across the Council and specifically highlight the following information:
- (a) the type of spend that they cover;
 - (b) the process that is required to deliver a compliant procurement;
 - (c) the minimum advertising requirements to conform to Council and legal requirements;
 - (d) the requirements of a contract between the Council and a contractor;
 - (e) how a contract should be awarded;
 - (f) where the publication of the award shall take place;
 - (g) registration of the contract on a departmental contract database; and
 - (h) the requirements for inclusion on the Council’s financial system to allow payment of the supplier and monitoring of the tender/contract process.

- 3.1.8 It must be noted that all references to OJEU in the 'Award of Contract' column in the Procurement and Award Procedures table in Appendix A, means the Supplies and Services OJEU Threshold, irrespective of whether the procurement is for goods, services or works. All references to OJEU in the other columns in the Procurement and Awards Procedure table in Appendix A, means the relevant OJEU threshold for the activity undertaken.
- 3.1.9 It should be noted that the admission of a contractor onto the Council's financial system will be dependent on demonstrating that the correct process of market engagement and award has been followed.
- 3.1.10 All procurements must use standardised documentation, which is located on Procurement Connection.
- 3.1.11 All competitions shall be in accordance with the best practice guidance of the Chief Financial Officer and the Director of Legal and Democratic Services. Such guidance is available on Procurement Connection and defines the minimum standards required when undertaking procurement activity.
- 3.1.12 Where the procurement activity has a contract value that is below the relevant OJEU threshold for the activity that is being undertaken, Officers must ensure that they comply with EU Treaty principles, the Regulations, all relevant guidance, case law and advice from the Director of Legal and Democratic Services when undertaking tender processes or seeking quotations.
- 3.1.13 It is recommended that early advice from Corporate Procurement and Legal Services is sought before the commencement of a procurement process.

3.2 Protocols – The Council’s Procurement and Award Procedures

The Council’s Procurement and Award Procedures are comprehensively set out in the eight Protocols tabled in Appendix A. For the avoidance of doubt, any references to the OJEU threshold in the Award of Contract section of the Protocols, means the Supplies and Services OJEU Threshold, irrespective of whether the procurement is for goods, services or works. References to the OJEU threshold in the remainder of the Protocols, means the relevant OJEU threshold for the activity undertaken. The table in Appendix A clearly sets out the sections of the Protocols in seven columns. Below are some of the key features of each of the eight Protocols (please note that Protocols 4 and 6 are no longer in use and are not, therefore, highlighted below).

3.2.1 Protocol 1

3.2.1.1 Protocol 1 is applicable to all contracts above the relevant OJEU threshold, including Derbyshire County Council framework agreements, but excluding non-Derbyshire County Council framework agreements and, as such, the requirements of the Public Contracts Regulations 2015 must be complied with.

3.2.1.2 All such tendering must be carried out utilising the Council’s approved eTendering system.

3.2.1.3 It is important that advice is sought from the Director of Legal and Democratic Services at the earliest possible stage on the contract approach to be taken.

3.2.1.4 If a procurement is already included in the approved Departmental Service Plans, approval to award the contract must be sought from the Departmental Executive Director. If it is not included in the approved Departmental

Service Plan, approval to award must be sought from Cabinet Member or Cabinet, depending on value.

3.2.2 Protocol 2 (A)

3.2.2.1 Protocol 2 (A) must be followed where permission to use a non-Derbyshire County Council framework agreement is intended.

3.2.2.2 Under this Protocol the relevant value Business Case (below £50,000 or above £50,000) must be submitted to the Chief Financial Officer and the Director of Legal and Democratic Services, which must include total spend that justifies the use of the non-Derbyshire County Council framework agreement, VfM, local impact, and evidence that the framework agreement is legally compliant.

3.2.2.3 Approval of the terms and conditions of the framework agreement is required from the Director of Legal and Democratic Services.

3.2.2.4 If a procurement is already included in the approved Departmental Service Plan, the approval for permission to use a non-Derbyshire County Council framework agreement must be sought from the appropriate Strategic Director. If the procurement is not in the approved Departmental Service Plan, approval for permission to use the non-Derbyshire County Council framework agreement must be obtained from Cabinet Member or Cabinet, depending on value.

3.2.3 Protocol 2 (B)

3.2.3.1 Protocol 2 (B) sets out the award and procedure route for call-offs from a non-Derbyshire County Council framework agreement (established under Protocol 2 (A)).

3.2.3.2 The terms and conditions of the framework agreement must be complied with, including the requirements for mini-competition, where appropriate.

3.2.3.3 Approval to award a call-off contract from a non-Derbyshire County Council framework agreement must be sought from the appropriate Executive Director.

3.2.4 Protocol 3

3.2.4.1 Calling-off from a DCC Framework (established under Protocol 1 or 4) falls within Protocol 3.

3.2.4.2 The terms and conditions of the framework agreement must be complied with, including the requirements for a mini-competition, where appropriate.

3.2.4.3 Approval to award a call-off contract under a Derbyshire County Council framework agreement must be obtained from the appropriate Executive Director.

3.2.5 Protocol 5

3.2.5.1 Expenditure between £50,000 and the OJEU threshold must be actioned in accordance with Protocol 5.

3.2.5.2 If a procurement is already included in the approved Departmental Service Plan, approval to award the Contract must be obtained from the appropriate Executive Director. If the procurement is not in the approved Departmental Service Plan, approval to award the Contract must be obtained from the appropriate Cabinet Member.

3.2.6 Protocol 7 (A)

3.2.6.1 Protocol 7 (A) sets out the requirements for one-off purchases of up to £1,000. Where such purchases are to

be made, Protocol 7 (A) directs that one quotation is required.

3.2.6.2 Executive Directors must authorise the transactions made pursuant to this Protocol.

3.2.6.3 Where appropriate, purchases are to be made using the Council's Debit Card in accordance with the Corporate Debit Card Policy.

3.2.7 Protocol 7 (B)

3.2.7.1 Protocol 7 (B) states that purchases of above £1,000 and up to £50,000 require a minimum of three written quotations, which shall be invited from suppliers considered competent to perform the contract. Where the Strategic Director considers that this is impractical or problematical, arrangements for inviting tenders or negotiating contracts under competitive conditions shall be in accordance with procedures agreed with the Chief Financial Officer.

3.2.7.2 Consideration must be given to inviting quotations from local Derbyshire businesses where possible.

3.2.7.3 Executive Directors are responsible under this Protocol for approving the award of purchases under this Protocol.

3.2.8 Protocol 8

3.2.8.1 Protocol 8 sets out the procurement and award procedure in respect of sole suppliers.

3.2.8.2 Wherever possible the Council should avoid procurement involving sole suppliers of goods, services or works and should only act in accordance with the Public Contract Regulations 2015.

3.2.8.3 Specifications should be written so as to allow as many as possible in the market to submit solutions to Council requirements without any artificial constraints. There are, however, times when for compatibility or market reasons one supplier is the only viable source of a service, component, or software or is in a unique supply position.

3.2.8.4 By reason of the risks inherent in a sole supplier relationship, a Business Case is required to be submitted to and approved by the Chief Financial Officer and Director of Legal and Democratic Services, which justifies the use of a sole supplier. Where the use of such suppliers is above the relevant OJEU threshold, the award must be published in the OJEU, and if it is above £25,000 it must be published on Contracts Finder and on the Source Derbyshire website.

3.2.8.5 Depending on the value of the proposed contract with a sole supplier, approvals need to be sought from Cabinet, Cabinet Member or Executive Director.

3.2.9 Protocol 9

3.2.9.1 Protocol 9 sets out the procurement and award procedure in relation to material changes.

3.2.9.2 The requirement to make material changes to contracts should be avoided, however, the need to make material changes during the term of the contract may occur, where new unforeseeable circumstances occur.

3.2.9.3 Material changes to existing contracts produce a risk of challenge and it is, therefore, necessary to produce a Business Case with risk assessment to seek approval from the Chief Financial Officer and the Director of Legal and Democratic Services.

3.2.9.4 In making material changes to contracts, the Council should only act in accordance with regulation 72 of the Public Contract Regulations 2015.

3.2.9.5 Depending on the value of the contract, approvals need to be sought from Cabinet, Cabinet Member or Executive Director.

3.2.9.6 For changes to contracts, where the total cost of the contract is above £25,000, a notice must be published on the Source Derbyshire website and on Contracts Finder. For changes to contracts above the applicable OJEU threshold, a notice must also be published on OJEU in accordance with the Public Contract Regulations 2015.

3.2.10 Protocol 10

3.2.10.1 Extensions to contracts beyond the originally awarded period or indicated spend fall within Protocol 10.

3.2.10.2 Such changes produce the risk of challenge and it is, therefore, necessary to produce a Business Case with risk assessment to seek approval from the Chief Financial Officer and the Director of Legal and Democratic Services.

3.2.10.3 The Council should only act in accordance with the Public Contract Regulations 2015.

3.2.10.4 Depending on the value of the Contract, approvals need to be sought from Cabinet, Cabinet Member or Executive Director.

3.2.10.5 For extensions to Contracts where the total cost of the Contract including the extension is above £25,000, a notice must be published on the Source Derbyshire website and on Contracts Finder. For changes to Contracts above the applicable OJEU threshold, a

notice must also be published on OJEU in accordance with the Public Contract Regulations 2015.

3.3 Pre-Tender Market Testing

- 3.3.1 Before commencing a procurement procedure, the Council may conduct market consultations with a view to preparing the procurement and informing contractors of its procurement plans and requirements.
- 3.3.2 Advice may be sought, for example, from independent experts, authorities and market participants etc. and such advice may be used in the planning and conduct of the procurement procedure provided that such advice does not have the effect of distorting competition and does not result in a violation of the principles of non-discrimination and transparency.
- 3.3.3 Corporate Procurement should be contacted for further advice about pre-tender market engagement.

3.4 Invitation to Tender/Request for Quotations

- 3.4.1 Invitations to tender and requests for quotations must be issued in accordance with these Standing Orders.
- 3.4.2 All invitations to tender must be issued through the Council's approved eTendering system.
- 3.4.3 Only in exceptional circumstances may a procurement process be conducted by alternative means to Standing Order 3.4.1 (for example, due to technical failure), and permission to conduct a procurement process by alternative means must be obtained from the Chief Financial Officer and the Director of Legal and Democratic Services before the procurement process begins.

- 3.4.4 Tenders and quotations must be invited so as to give sufficient time for the market to respond to the requirement.
- 3.4.5 For all Contracts above the applicable OJEU threshold, the standard Selection Questionnaire (SQ) (see Procurement Connection website) must be used for multi-stage procurements and adapted for single stage procurements.
- 3.4.6 The Council is committed to minimising the burden on businesses and all tender documentation should be relevant, proportionate, appropriate to the goods, services or works required and in the standardised form located on Procurement Connection.
- 3.4.7 All tenders above the applicable OJEU threshold must conform to the requirements set out in the Public Contract Regulations 2015. The notice must be in the form prescribed by the Public Contract Regulations 2015. The electronic notice must be issued through the approved systems only.
- 3.4.8 The award of the Contract for tenders and quotations above £25,000 shall be disclosed on the Source Derbyshire website and Contracts Finder.

3.5 Clarification Questions

- 3.5.1 Where details of a tenderer's bid are unclear, the Council may ask the tenderer for clarification of the submitted details. However, the nature of the questions asked can only be for clarification purposes and the responses to the questions must not involve changes to the features of the tenderer's submission. The response to clarification questions must, therefore, simply clarify what has already been submitted as the bid.

3.5.2 Corporate Procurement should be contacted for further advice about clarification questions.

3.6 Submission, Receipt and Opening of Tenders/Quotations

3.6.1 An invitation to tender shall state clearly the closing date and time for its receipt and that:

(a) the Council does not bind itself to accept the lowest or any tender;

(b) all tender submissions must be made through the “response” feature of the Council’s approved eTendering system;

(c) proof of posting will not be accepted as proof of delivery where a procurement process has been conducted via alternative means pursuant to Standing Order 3.4.2 and the tender or supplementary information fails to arrive at the address shown on the additional bid information label before the closing date and time for the receipt of hard copy tenders and supplementary information; and

(d) only the electronic receipt issued within the Council’s approved eTendering system will be accepted as proof of an electronic submission.

3.6.2 No tender shall be accepted if it is received after the closing date and time and shall be instantly rejected, except in the following circumstances:

(a) where the delay in submission is the result of the electronic tendering system and this can be verified to be the case; or

(b) where the late submission is the only submission received, it is compliant in every other respect and the approval of the Chief Financial Officer and the Director of Legal and Democratic Services has been obtained to its consideration.

3.6.3 Any electronic tender submitted by any means other than through the Council's approved eTendering system will be deleted unread unless an alternative method to electronic tendering has been agreed pursuant to Standing Order 3.4.2.

3.6.4 Electronic tenders shall be kept within the secure area of the Council's approved eTendering system until the time and date specified for their opening.

3.6.5 Tenders received through the Council's approved eTendering system are subject to the electronic security protocols within that system, which require tenders to be opened electronically.

3.6.6 Where a procurement process has been conducted by alternative means pursuant to Standing Order 3.4.2 and hard copy tenders have been received, all tenders shall be opened at one time, which shall be as soon as possible after the closing date and time and only in the presence of three Officers appointed by the Director of Legal and Democratic Services and those Officers shall date and certify a list of tenders received.

3.7 Evaluation Criteria

3.7.1 In any procurement process, the successful tenderer must be the one that submits:

(a) the lowest price; or

(b) offers the most economically advantageous tender based on specific criteria that is linked to the subject matter of the contract and can be used to demonstrate the most economically advantageous offer.

3.7.2 Examples of criteria used to identify the most economically advantageous offer include, but are not limited to: price, cost effectiveness, life cycle costs, quality, technical merit, capacity/availability to perform the contract, approach to continuous improvement etc.

3.7.3 All criteria must relate to the subject matter of the contract, be objectively quantifiable and align with the Council's corporate objectives.

3.7.4 These criteria should be assessed through either:

(a) Essential criteria – assessed on a compliant or pass basis/non-compliant or fail basis; or

(b) Technical criteria – assessed on a scored basis in accordance with a pre-set scoring matrix.

3.7.5 The procurement documentation must clearly set out the evaluation criteria and how the evaluation criteria will be applied. The procurement documentation must also set out the overall weightings to be attached to each of the criterion.

3.7.6 The evaluation of bids must be undertaken in accordance with the evaluation criteria detailed in the procurement documents provided to bidding organisations.

3.8 Post-Tender Negotiations

- 3.8.1 Post-tender negotiations will only be undertaken in circumstances agreed by the Director of Legal and Democratic Services and Chief Financial Officer. It is essential that such negotiations are conducted professionally and with demonstrable probity.
- 3.8.2 Post-tender negotiations take place after the formal receipt of tenders and before the formal award of Contracts. The purpose is to secure some improvement in price, delivery or quality.

3.9 Selecting the Successful Contractor

- 3.9.1 The successful contractor must be the contractor that has submitted the tender that has been objectively judged to be the best when evaluated against the criteria as required under Standing Order 3.7 or that has submitted the lowest quotation.

3.10 Financial Vetting of Contractors

- 3.10.1 The financial vetting of contractors is an integral part of the procurement process and is designed to ensure that the contractor is financially able to perform the requirements imposed by the Contract. In the context of this process, financial vetting should form part of the selection criteria and be proportional to the financial and business risk of the Council alongside other qualitative and quantitative factors that can be grounds for selecting or rejecting a preferred supplier.
- 3.10.2 The financial vetting procedure is the responsibility of the Chief Financial Officer, and is distinct from the technical vetting of contractors which is the responsibility of appropriate technical and professional Officers.

3.10.3 Subject to 3.10.4, the financial vetting of contractors must be undertaken where the contract value exceeds the Supplies and Services OJEU Threshold. For the avoidance of doubt, the Supplies and Services OJEU Threshold applies to works contracts for the purposes of financial vetting.

3.10.4 It may also be considered necessary to carry out financial vetting:

- (a) if the Contract is considered to be high risk;
- (b) where there are contract variations, changes in financial status or market conditions etc. during the period of the Contract; or
- (c) where the Chief Financial Officer or the Director of Legal and Democratic Services states that it is a requirement.

The Chief Financial Officer will provide specific guidance on when financial vetting should be undertaken.

3.11 Award of Contract

3.11.1 The Council must notify the successful and unsuccessful bidders, in writing, of the outcome of a procurement process in accordance with the Public Contracts Regulations 2015.

3.11.2 Where the procurement is above the applicable OJEU threshold, the Council must observe a Standstill Period pursuant to the Public Contracts Regulations 2015.

3.11.3 A Contract must not be awarded before the expiry of the Standstill Period.

3.11.4 Authority to award Contracts must be obtained prior to the award of a Contract and such authority must be in accordance with Appendix A of these Standing Orders and the Council's Scheme of Delegation.

3.12 Debriefing Organisations

3.12.1 Should you receive a debriefing request from a tenderer, please contact Corporate Procurement or Legal Services for advice.

4. CONTRACTS

4.1 Form of Contracts

4.1.1 Pursuant to The Local Authorities (Executive Arrangements) (Modification of Enactments and Further Provisions) (England) Order 2001 the Council specifies that the following Contracts must be in writing:

4.1.1.1 any Contract above £1,000 awarded after a competitive process as determined in accordance with Standing Order 3 above (for the avoidance of doubt, competitive process does not include seeking quotations);

4.1.1.2 those Contracts that do not fall within 4.1.1.1 with a contract value greater than £50,000;

4.1.1.3 Any Contract specified by the Director of Legal and Democratic Services or the Chief Financial Officer.

4.1.2 It is recommended that all other Contracts are in writing and, where they are not in writing, they must be evidenced in writing.

4.1.3 For the purposes of these Standing Orders, a Contract is in writing if all the terms agreed between the parties are set out in a document which is signed or sealed in accordance with these Standing Orders.

4.1.4 For the purposes of these Standing Orders, a Contract is evidenced in writing if all the terms agreed between the parties are set out in a number of documents that can be produced to prove the terms of the agreement.

4.1.5 Without prejudice to 4.1.1 above, the decision as to whether a Contract is evidenced in writing rather than in writing shall be the responsibility of the Executive Director of each Directorate.

4.2 Content of Contracts

4.2.1 Every Contract shall:

(a) be in a form approved by the Director of Legal and Democratic Services;

(b) specify the subject matter, price, contract period and such other terms as are agreed;

(c) require compliance with any appropriate British Standard Specification or Code of Practice or other equal and approved European standard;

(d) indemnify the Council against any claim which may be made in respect of personal injury to any person in circumstances where it is not due to the negligence of the Council;

(e) indemnify the Council against any claim for damage to property due to the negligence of the contractor and include provision to ensure that the contractor has appropriate insurance in place to protect against such claims and that the contractor shall produce evidence of such insurance to the satisfaction of the Council when requested;

- (f) contain a clause permitting cancellation in circumstances of corruption, such clause having the same effect as that set out in Appendix B to these Standing Orders;
- (g) contain a clause prohibiting a contractor from endorsing its products by reference in any way to the Council, such clause having the same effect as that set out in Appendix C to these Standing Orders;
- (h) contain a clause with acceptable levels of security in place with the effect of protecting the Council's data, including personal and special category data as defined by the Data Protection Act 2018, a model clause for which is available from Legal Services. These requirements are in line with the Council's information security management system, current data protection legislation and information security best practice.

4.3 Contract Execution – Deed or Signature

- 4.3.1 All Contracts in writing must be signed or sealed and dated (i.e. fully executed) before and not during or after the performance of the Contract and such signing, sealing and dating must be in accordance with these Standing Orders and the Council's Scheme of Delegation.
- 4.3.2 Pursuant to 4.1.1 above, all Contracts in writing must be signed unless the Director of Legal and Democratic Services requires that they should be by deed or by law are required to be by deed.
- 4.3.3 The Council seal shall only be applied in the presence of the Director of Legal and Democratic Services or some other person authorised by the Director of Legal and Democratic Services who

shall also attest the sealing and record particulars of the sealing in a book kept for the purpose.

4.3.4 Any Contract that falls within Standing Order 4.1.1 must be signed by two Senior Officers on behalf of the Council as follows:

(a) where Legal Services has been involved in the preparation and/or drafting of the contractual requirements, one of the signatures must be from a Senior Officer within Legal Services;

(b) where Legal Services has not been involved in the preparation and/or drafting of the contractual requirements, two signatures from Senior Officers within the Directorate responsible for the Contract;

(c) where specifically directed by the Director of Legal and Democratic Services, in accordance with those directions. This is a legal requirement of The Local Authorities (Executive Arrangements) (Modification of Enactments and Further Provisions) (England) Order 2001.

4.3.5 Any other Contract that does not fall within Standing Order 4.1.1 shall be signed by the relevant Officer in accordance with the Council's Scheme of Delegation.

4.3.6 A Contract shall only be signed or sealed and dated where the appropriate required authorities are in place.

4.4 Council Terms & Conditions and Award Letter

4.4.1 The Council's corporate Terms & Conditions for Goods & Services should be used as contractual terms for the purchase of

goods and services where the value of the purchase is below the Supplies and Services OJEU Threshold.

4.4.2 The Council's corporate Terms & Conditions for Works should be used as contractual terms for the purchase of works that are below £50,000.

4.4.3 The Terms & Conditions for Goods and Services and the Terms & Conditions for Works must not be used for Contracts with a value higher than those set out in 4.4.1 or 4.4.2 above unless the consent of the Director of Legal and Democratic Services has been obtained.

4.4.4 Where the Council's Terms & Conditions for Goods & Services or the Council's Terms & Conditions for Works are used, the appropriate Award Letter must be completed and signed by all contracting parties unless the purchase has been made using the Council's Order Form, in which case the Order Form must be processed in accordance with the Council's processing procedure.

4.4.5 A supplier's terms and conditions may only be used in exceptional circumstances and justification for using such terms and conditions must be evidenced in writing and approved by the relevant Executive Director.

4.5 Approved Lists

4.5.1 Approved lists must not be used where they are prohibited under the Public Contracts Regulations 2015.

4.6 Framework Agreements

- 4.6.1 Framework agreements are agreements between the Council and one or more suppliers for the provision of goods, services or works.
- 4.6.2 The term of a framework agreement must not exceed four years, except where:
- (a) a longer period is permitted under the light touch regime pursuant to Part 2, Chapter 3 of the Public Contracts Regulations 2015; or
 - (b) where exceptional circumstances justify a longer duration, as provided for in regulation 33(3) of the Public Contracts Regulations 2015.
- 4.6.3 Where a Derbyshire County Council framework agreement is used, the framework agreement must be approved at Executive Director level where the procurement is already approved in the Departmental Service Plan and, where it is not already approved in the Departmental Service Plan, it must be approved by Cabinet Member or Cabinet, depending on value.
- 4.6.4 Any call-off under a Derbyshire County Council framework agreement must be undertaken in accordance with the terms of the framework agreement and the award of the call-off contract must be approved at Executive Director level.
- 4.6.5 The use of national, regional, sub-regional, consortium or other non-Derbyshire County Council framework agreements shall only be permitted after the submission and approval of a Business Case to the Chief Financial Officer and the Director of Legal and Democratic Services. The Business Case must clearly identify the benefits to be gained, the legality of the framework agreement, the terms associated with any purchases made and the

justification for not making the work available under a new tender. The two Business Case templates are available on Procurement Connection.

- 4.6.6 Where the contract value is below £50,000 or it is already approved in the Departmental Service Plan, approval to award a non-Derbyshire County Council framework agreement must be obtained from the relevant Strategic Director. Where procurements are not approved in the Departmental Services Plan, Cabinet Member or Cabinet approval (as appropriate) must be obtained in order to award the framework agreement. Approval to award a call-off must be obtained from the relevant Executive Director.

4.7 Corporate Contracts

- 4.7.1 Where Council approved corporate Contracts are already in place, which have been procured in such a way that the requirements to be purchased were identified at both the advertising and specification stages, the corporate Contracts should be used and no further competitive process is required. The Chief Financial Officer will contract for all identified corporate and generic needs or will endorse Departmental or sub-Departmental level Contracts where they can be utilised by other Departments and sections.

4.8 External Body Grant Funding

- 4.8.1 Where grant money is received by the Council to fund the provision of works, goods or services under a Contract, then these Standing Orders shall apply in full. However, where the Council administers grant money on the funding body's behalf, these

Standing Orders may not apply and advice should be sought from Legal Services as to their applicability.

4.8.2 Where the funding body has attached grant conditions to the grant, care must be taken to ensure that any relevant grant requirements are appropriately captured in any Contracts between the Council and the eventual grant recipient.

4.8.3 Where grant conditions are attached that make compliance with these Standing Orders unachievable, the Director of Legal Services shall advise accordingly.

4.8.4 For advice about whether these Standing Orders apply to a grant, please contact Legal Services.

4.9 Contract Management

4.9.1 All Contracts must be contract managed to ensure that the Contract is carried out in accordance with its terms and conditions.

4.9.2 It is the responsibility of each Executive Director to ensure that appropriate contract management arrangements are put in place that are proportionate to any given Contract.

4.9.3 All Departments shall hold a register of all Contracts, in a standard format issued by the Chief Financial Officer, which they shall update monthly, in line with the Local Government Transparency Code. All Contracts above £5,000 shall be reported to the Chief Financial Officer on a monthly basis.

4.9.4 Where possible, Contracts shall be identified on the Council's financial system to allow electronic ordering and to assist Officers in identifying approved Contracts.

APPENDIX A – Procurement and Award Procedure - Protocols

	Spend Type	Process Required	Advertising Required	Contracting Requirements	Award of Contract	Publication of Award	Inclusion on SAP
Protocol 1	All contracts above OJEU, excluding non-DCC Frameworks	Tender through the Council's approved eTendering system	OJEU, Contracts Finder and Source Derbyshire website	Contract approved by Director of Legal and Democratic Services	Procurements approved in the Departmental Service Plan: Executive Director Procurements not approved in the Departmental Service Plan: OJEU to £500,000 Cabinet Member Above £500,000 Cabinet	OJEU, Contracts Finder, Source Derbyshire website and Departmental Contract Register	MD4, published catalogue and contract detail
Protocol 2 A & B	(A) Permission to use a non-DCC Framework	i) As set out in the Framework documents and ii) Submission of Business Case to Chief Financial Officer and Director of Legal and Democratic	None	Approval of Framework documents by Director of Legal and Democratic Services	Procurements approved in the Departmental Service Plan or below £50,000: Executive Director Procurements not approved in the Departmental Service Plan: Above £50,000 to £500,000	None	None

	Spend Type	Process Required	Advertising Required	Contracting Requirements	Award of Contract	Publication of Award	Inclusion on SAP
		Services for approval			Cabinet Member Above £500,000 Cabinet		
	(B) Call-off from a non-DCC Framework (established under Protocol 2 (A))	Call-off as set out in the Framework documents	None	Approval of call-off terms by Director of Legal and Democratic Services	Executive Director	£25,000 and above on OJEU (if above the OJEU threshold), Contracts Finder, Source Derbyshire website and Departmental Contract Register	MD4, published catalogue and contract detail
Protocol 3	Call-off from a DCC Framework (established under Protocol 1 or 4)	Call-off as set out in the Framework documents	None	Approval of call-off terms by Director of Legal and Democratic Services	Executive Director	£25,000 and above on OJEU (if above the OJEU threshold), Contracts Finder, Source Derbyshire website and Departmental Contract Register	MD4, published catalogue and contract detail

	Spend Type	Process Required	Advertising Required	Contracting Requirements	Award of Contract	Publication of Award	Inclusion on SAP
Protocol 4	NOT IN USE						
Protocol 5	£50,000 to OJEU threshold	Tender through the Council's approved eTendering system	Source Derbyshire website and for above £25,000 on Contracts Finder	The Council's Terms and Conditions or other form of contract as appropriate	Procurements approved in the Departmental Service Plan: Executive Director Procurements not approved in the Departmental Service Plan: Cabinet Member	£25,000 and above on Contracts Finder, Source Derbyshire website and Departmental Contract Register	MD4, published catalogue and contract detail
Protocol 6	NOT IN USE						
Protocol 7 A & B	(A) Quotation up to £1,000	Minimum of 1 quotation	None	The Council's Terms and Conditions or other form of contract as appropriate	Executive Director	None	Council debit card or MD4
	(B) Quotation above £1,000 to £50,000	Minimum of 3 written quotations	None	The Council's Terms and Conditions or other form of contract as appropriate	Executive Director	£25,000 and above on Contracts Finder and Source Derbyshire website	MD4
Protocol 8	Sole Supplier	Submission of Business Case to Chief	None	Contract approved by Director of	Up to OJEU threshold:	£25,000 and above on OJEU (if	MD4, published catalogue

	Spend Type	Process Required	Advertising Required	Contracting Requirements	Award of Contract	Publication of Award	Inclusion on SAP
		Financial Officer and Director of Legal and Democratic Services for approval		Legal and Democratic Services	Executive Director Above OJEU threshold to £500,000: Cabinet Member Above £500,000: Cabinet	above the OJEU threshold), Contracts Finder, Source Derbyshire website and Departmental Contract Register	and contract detail
Protocol 9	Material Changes to Contracts	Submission of Business Case to Chief Financial Officer and Director of Legal and Democratic Services for approval	None	Contract approved by Director of Legal and Democratic Services	Up to OJEU threshold: Executive Director Above OJEU threshold to £500,000: Cabinet Member Above £500,000: Cabinet	£25,000 and above on OJEU (if above the OJEU threshold), Contracts Finder, Source Derbyshire website and Departmental Contract Register	Update of catalogue and contract data
Protocol 10	Extensions of Contract beyond originally awarded period or indicated spend	Submission of Business Case to Chief Financial Officer and Director of Legal and Democratic	None	Contract approved by Director of Legal and Democratic Services	Up to OJEU threshold: Executive Director Above OJEU threshold to £500,000: Cabinet Member	£25,000 and above on OJEU (if above the OJEU threshold), Contracts Finder,	Update of contract data

	Spend Type	Process Required	Advertising Required	Contracting Requirements	Award of Contract	Publication of Award	Inclusion on SAP
		Services for approval			Above £500,000: Cabinet	Source Derbyshire website and Departmental Contract Register	

APPENDIX B – Bribery, Corruption and Fraud Clause

1. The Council may terminate this contract by written notice with immediate effect and recover from the contractor all losses resulting from such termination, if the contractor, or any of its employees, agents or subcontractors (in all cases whether or not acting with the contractor's knowledge):
 - (a) directly or indirectly offers, promises or gives any person working for or engaged by the Council a financial or other advantage to:
 - I. induce that person to perform improperly a relevant function or activity;
 - II. reward that person for improper performance of a relevant function or activity;
 - (b) directly or indirectly requests, agrees to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this contract;
 - (c) commits any offence:
 - I. under Section 117(2) of the Local Government Act 1972;
 - II. under the Bribery Act 2010;
 - III. under the Fraud Act 2006 and legislation creating offences concerning fraudulent acts;
 - IV. at common law concerning fraudulent acts relating to this contract or any other contract with the Council; or
 - V. defrauds, attempts to defraud or conspires to defraud the Council.

APPENDIX C – Endorsement Clause

1. The award of this Contract shall not entitle the contractor to endorse its products by reference in any way to the Council nor shall the contractor exhibit or display for advertisement or otherwise any goods, equipment or vehicles to be supplied under the Contract to the Council and which can be identified with the Council (whether the property in such goods, equipment or vehicles shall have passed to the Council or not) without the written consent of the Council

