

# Procurement Guide

## Folkestone & Hythe District Council

### Contract Standing Orders 2022

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# Introduction

**Contract Standing Orders (CSOs)** are the starting point for good procurement practice. They contain the core obligations for a robust procurement framework. As they form part of the Council's Constitution, they can only be changed by resolution of full Council, unless specific powers to make amendments have been delegated to an officer or other body. They are made under the Council's powers under section 135 of the Local Government Act 1972.

This **Procurement Guide** provides practical guidance on how the CSOs apply to procurement decisions and processes. It explains some of the more technical and legal issues involved in procurement and it provides practical working examples.

You must use this guide when making any purchase of any value. The term 'contract' can apply to a multi-million pound contract or to a much smaller value purchase order.

Procurement can involve complex technical provisions and legal rules. Breach of those technical provisions, the legal rules, the CSOs or this guide can have serious consequences for F&HDC and for you. If you have any queries about the CSOs, this guide or the other documents used in or related to F&HDC's procurement processes, then please contact a Procurement officer.

This guide is a "living" document which will be reviewed a minimum of annually and in line with any changes to the CSOs, F&HDC's procurement strategy and the relevant regulations. If you have comments or suggestions for improvements, please contact the Procurement Specialist or Procurement Senior Specialist.

Please note that for clarity and ease of understanding the words "Procurement" and "Purchasing" can be taken as having the same meaning.

PLEASE ALWAYS ENSURE YOU ARE WORKING TO THE LATEST VERSION OF THE GUIDANCE

# 1. Introduction – Purpose of Contract Standing Orders

## CSO 1.1

Good practise for effective procurement must be embedded in the day to day practices of the council. The key objectives of the council must be taken into account from the initial planning and conceptual stages through the whole procurement process. It is not limited to the stage when you seek a quote or tender.

Failure to consider these key issues can affect both the quotation or tender process, as well as the long term delivery of the works, supplies or services which are being purchased.

Example: You need to think carefully about the quality and specification for the goods you wish to purchase. Failure to include your full requirements into the contract may result in substandard or poor quality goods being provided. F&DHC is unlikely to be able to challenge this, if its own requirements have not been clearly specified in the order, tender and contract documents.

However, if you have clearly specified the quality of the goods required and the goods delivered do not meet that standard, you will be able to seek a correction or remedy from the supplier (like replacing the delivery with goods of the required standard) or potentially cancel the contract.

## CSO 1.2

### "Sustainability"

The Government's sustainable development strategy sets out four key priority areas for action:

- Sustainable consumption and production
- Climate change and energy
- Protecting natural resources
- Creating sustainable communities and a fairer world

Sustainable procurement is a process whereby organisations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits not only to the organisation, but also to society and the economy, whilst minimising damage to the environment.

### "Efficiency"

The council must continuously monitor and improve all its services. This means that F&DHC must purchase the most appropriate best value works, supplies or services and deliver continuous improvement throughout each contract. For contracts which relate to more than just a one off purchase, the Council will need to exercise on-going monitoring and review of the contract to ensure:

- Customer satisfaction,
- Continued high quality delivery,
- Compliance with environmental and equality standards, and
- Opportunities to identify service improvements and cost savings.

## “Whole life costing”

You must ensure that the whole potential cost of the contract is taken into account.

Example: In letting an equipment supply contract, as well as the initial capital spend, you need to calculate the length of the asset’s useful life, the cost of on-going maintenance, replacement of parts and servicing and consumables and disposal costs, so that there is true cost to F&HDC of the purchase being made.

Copier A		Copier B	
Purchase price	£2500	Purchase price	£4500
Toner & paper total	£3000	Toner & paper total	£2000
Monthly service	£4000	Quarterly Service	£1000

## “Cost savings”

Each contract for purchases will set out the agreed price to be paid. F&HDC cannot unilaterally reduce the price, but conditions relating to long term service improvement and efficiencies can be incorporated into the contract documents.

Additionally there may be ways of structuring a procurement exercise to save costs. This might be through a joint procurement exercise with other councils, or by re-examining the way a service is provided and adjusting the specification.

## Contract Monitoring

Effective contract monitoring is essential to achieve continuous improvement, especially during the implementation of long-term contracts, and particularly if the contractor is under a duty to work with F&HDC to seek improvements in delivery and efficiency. It is usually sensible to provide an annual review at a minimum which can then be tied with, for example, payments to reflect good performance and provisions allowing for inflation increases.

If you know that a contractor is not complying with contract requirements, then you (or the officer managing the contract on behalf of F&HDC) need to address the matter promptly. If F&HDC has regularly raised and recorded issues with a contractor, and made formal requests for improvements which are not delivered, then there may be a basis for damages or termination of the contract.

## CSO 1.3

Section 135 of the Local Government Act 1972 obliges councils to make standing orders for contracts for the supply of goods and materials and the execution of works entered into by the council or on behalf of the council. The Act requires that the standing orders must include provisions for securing competition for such contracts and must also regulate the way in which tenders are invited. The Act allows for exemptions from the obligation to tender out below a specified threshold and where exemptions identified in the standing orders apply.

## **2. General Principles – Application & compliance with Contract Standing Orders**

### **CSO 2.1**

The words “works”, “supplies” and “services” are the words used in the regulations to define different types of contracts. Put simply, “works” cover construction, refurbishment and other building related works. “Supplies” are all types of goods - from paperclips to photocopiers and vehicles, and “services” cover the full range of services provided or purchased by the Council in its day to day activities. Some contracts can be hybrid arrangements covering works, supplies or services. If this is the case and you are not sure how to define a particular arrangement, please take advice from a Procurement officer.

### **CSO 2.2**

The CSOs apply to all procurement activity and contracts except where specific exemptions apply. The majority of procurement will be by way of formal contracts. However, contracts can exist even when the word “contract” is not used. So, for example, "agreements", "purchase orders" and equipment or vehicle "leases" are always a type of procurement activity and so are contracts which are subject to the CSOs.

Sometimes a formal agreement may be preceded by a "memorandum of understanding" - this preliminary document does not have to be a binding contract, but legal advice must be sought before entering into this type of arrangement.

The best approach to adopt is to assume that the CSOs will apply to all of the Council’s procurement activities with only very limited exceptions. You must take advice from a Procurement officer or Legal Services if you are uncertain about whether or not the CSOs apply.

### **Concessions**

Concessions are a specific type of contractual arrangement under which, rather than paying the contractor to deliver a work or service, F&HDC grants the contractor the right to exploit an opportunity and receive some or all of its income from third parties. An example is debt collection services, where agencies normally earn their profits from fees charged to the debtor, rather than direct payment from the council.

### **Service Level Agreements and Grants**

The terms “service level agreements” and “grant” are particularly problematic and their usage is inconsistent. Do not assume that a service level agreement or grant is not a contract. The term “service level agreement” can be used to describe a specification or technical requirement type document which sets out the level of service required under a contract. It is also sometimes used to describe what a legally binding contract is, in practice. The same issues apply to arrangements classified as grants. If in doubt, speak to Legal Services.

### **Partnering**

When the Council is entering into a partnering type arrangement, it may need to follow a tendering process resulting in a formal contract. Please take advice in all instances from Legal Services.

Some “partnering” arrangements – particularly those with other public bodies such as the Police – are genuine partnering (as opposed to a legal partnership) involving, for example, the pooling of resources to deliver services. A formal legal “Partnership” has a specific legal meaning. A legal partnership will be caught by statute and other rules. It is possible to create a legal partnership

without intending to do so and this can have significant consequences, as partners usually share both profits and losses arising from the partnership. Great care must be taken when using this term, to ensure that a legal partnership is not implied.

## **CSO 2.3**

### **Employment contracts**

This provision covers the direct employment of individuals working for F&HDC. Contracts involving the purchase of services from individuals – such as consultancy contracts – are not “employment contracts” for the purposes of this exception and are likely to be subject to the CSOs. Similarly, contracts with employment agencies for the provision of temporary staff are also not exempt.

### **Land development**

Take care over development type agreements, which may, for example, involve a combination of a land transfer plus a developer providing a building for the Council. These can be caught by the regulations as they can be classified as “works” contracts because of the building element. This is a complex area of law. You must seek advice from Legal Services.

### **Legal fees**

The Director of Corporate Services is responsible for agreeing fees with and appointing legal counsel (barristers) to work on legal issues and for the appointment of expert witnesses.

### **Voluntary sector grants**

In some limited circumstances, funding arrangements for voluntary sector bodies might be exempt under the CSOs. An example of this exception, is low value funding to a voluntary group in order to ensure the continued provision of a critical local service.

However, some funding arrangements may be more like a contract than a simple funding arrangement. F&HDC must ensure that it obtains appropriate value in respect of all funding and that it is not contravening procurement regulations. Each funding arrangement must be considered for whether it could be delivered better as a result of a competitive process. A Service Level Agreement is unlikely to be an appropriate method for large scale and/or long term funding.

## **3. General Principles – Applying to all Contracts and purchase orders**

### **CSO 3.1**

All purchases must be recorded. This is normally recorded in the Council’s financial system by purchase orders and invoices.

More complex and higher value procurements will need more detailed audit trails evidencing how and why the contractor was selected and recording decisions.

### **CSO 3.2**

Officers should fully consider all aspects of their procurement and act accordingly to ensure a compliant procurement method is used for each transaction. It is for the Responsible Officer to seek the advice of a Procurement officer or Legal Services.

### **CSO 3.3**

It is important to set out as much relevant information as possible when raising a purchase order. A purchase order is a formal agreement with a supplier and needs to give a clear indication of what is being purchased.

If F&HDC does not make it clear that its own terms and conditions, purchase orders or contracts apply, then the contractor's terms and conditions may apply to the purchase. This may not be in the council's best interests.

Example: The Responsible Officer emails a contractor asking them to quote to provide some new software. The software contractor sends its quote back by post. On the back of the quote are the contractor's legal terms and conditions.

The Responsible Officer accepts the quote, over the telephone and confirms the order by e-mail (without stating that a purchase order will be following). A contract has been created in writing. Unless both of the emails from the Responsible Officer make it clear that F&HDC's terms and conditions apply and the contractor has seen those terms and conditions, it is likely that the contractor's terms and conditions will apply to that transaction.

When a purchase order is created in e-Financials a web address for the standard terms and conditions is printed on the bottom of the order. If the order was not automatically sent, you must forward the purchase order to the supplier or, if you forward the order by post, you must also print F&HDC's standard terms and conditions.

### **CSO 3.4**

Standard terms and conditions are used for purchase orders. All contracts other than purchase orders will have contract specific terms and conditions that will be produced by Legal Services on your request. Ensure you involve them in your procurement activity at an early stage so that they are aware of all your requirements and have sufficient time to produce your bespoke documents.

Pre-published standard forms of contract (such as JCT works contracts, NEC contracts, etc) can also be used, but seek advice from Legal Services as to whether any special conditions or amendments should be applied.

Where a Procurement Scheme (like a framework) is being used, the terms and conditions of the scheme have already been agreed with the contractor and these will apply.

The Responsible Officer will confirm that the supplier's terms and conditions are in F&HDC's best interests before entering into a contract on those terms.

### **CSO 3.5**

The clauses listed in CSO 3.5 define the contract and set out the legal requirements and limitations of the contract. This information must be included in all contracts as a minimum.

### **CSO 3.6**

Ensure that the terms used in the contract are relevant to that contract. Make it clear, concise and relevant. Legal services will advise on this.

## CSO 3.7

Good quality specifications and/or technical requirements are critical for letting and monitoring a successful contract. A contract which only includes legal terms but does not clearly describe what standards are required is of little practical value.

Identify these requirements at the start of the Procurement process, so that the standards are clearly described when quotations or tenders are invited.

Specifications and/or technical requirements need to be "proportionate". This means that for a very simple purchase, the specification could be very simple. For more complex purchases, the specification will go into greater detail. For purchases which are technically demanding, you must address detailed technical and standards compliance. These documents need to be prepared jointly with officers having specialist knowledge of the purchase and they need to be involved as early as possible in the procurement process.

Example: F&HDC could require a contractor providing a low value contract for the provision of a play activity at a council run children's event to have higher levels of third party liability insurance than a contractor providing a large piece of static equipment. This is because the consequences and potential for an insurance claim could be higher risks in the children's play service in comparison to the supply of equipment – even if the equipment value is higher.

## CSO 3.8

Even low value contracts may have a significant impact if they go wrong, so it is important to adopt a risk analysis type approach. A template for guidance is set out in the risk matrix included as "Attachment 1" at the end of this Procurement Guide.

Example 1: A low value contract for photography services may look initially like a simple arrangement which does not require detailed contract provisions. However, in some circumstances, that contract may need to include provisions covering the confidentiality of individuals, protection of children and copyright issues, so a fuller form of contract may be appropriate.

Example 2: A contract to set an outdoor event may ostensibly be of low financial value, but the difficulties arising from partnership working, reputation, risks and even adverse weather, could result in major losses for the Council.

# 4. Regulatory Context

## CSO 4.1

When undertaking procurement, you need to take into account a wide range of both legally binding provisions and also internal rules and guidance as detailed.

The statutory provisions applying will vary according to the purchase being made. Key provisions include Section 17 of the Local Government Act 1988 which prohibits the application of non-commercial considerations to the tender process and in particular the selection of contractors, except insofar as is necessary to secure the achievement of best value. In that context, non-commercial considerations include, for example, the contractor's terms and conditions of employment, business activities and interests of contractors in the Government's defence or

foreign policy and the conduct of contractors in industrial disputes. Please ask a Procurement officer or Legal Services if unsure.

The term “procurement regulations” in the context of these CSOs means the Public Contracts Regulations 2015 (“PCR 2015”), the Concessions Contracts Regulations 2016, and the Utilities Contracts Regulations 2016. The regulations will affect you if you are making purchases which exceed the threshold values set out in CSO 7.4. Where a contract is above the relevant threshold apply you MUST seek assistance from a Procurement officer who will work with you to ensure that all legislation is adhered to. Legal Services will also be involved at the appropriate stage. You must consider that an "above threshold" procurement exercise will take the minimum of 6 months to complete or up to 18 months for complex contracts.

## **CSO 4.2**

Regardless of the content of this guide or the CSOs, procurement must comply with legislation. If in doubt, seek advice from a Procurement officer or Legal Services.

# **5. Responsibilities of Heads of Service and Responsible Officers**

## **CSO 5.2**

The Responsible Officer is appointed by the Chief Officer following a scheme of delegation.

### **Decision making**

F&HDC’s decision making processes must be factored into the overall planning. Due to CMT and Cabinet timetabling, this could add several months to the procurement process, so must be taken into account when planning the procurement process.

### **Contract Register**

The contracts register is maintained by the Procurement officers to comply with transparency regulations. It is a live list held on the Kent Business Portal and can be found via links on the intranet and F&HDC's website. It is designed as a central register of all contracts and includes such details as name of the contractor, the contract period, the value, brief description of the contract and RO. It is the responsibility of the Responsible Officer and Chief Officer to ensure that the data that is published is correct.

The contracts register ensures that F&HDC has clear records of contracts awarded. All contracts over £5,000 should be listed on the contracts register, even if it was not necessary to involve a Procurement officer in the purchase.

### **Records**

Proper records of contracts and award procedures must be maintained. This does not necessarily require a very detailed explanation, but it does require records to be maintained in writing and to be easily retrievable should they need to be consulted. This is often referred to when a FOI request is made. The document retention policy states the period that each document has to be kept.

When a formal tender has been issued to the market via the Kent Business Portal, Procurement officers will keep the relevant records. For all other purchases, the Responsible Officer and Chief Officer are responsible for ensuring proper records are kept for purchasing decisions – such as copies of all quotes received and communication with prospective suppliers.

## Value for Money

Value for money is a balance of quality, price and delivery and does not mean that the contract will necessarily be awarded on the basis of the lowest cost. Chief Officer and Responsible Officer should note the requirement for “active” contract monitoring. It is only by active and on-going participation in contract monitoring that the Council can ensure that contracts continue to represent good value and meet the Council’s requirements. This can help drive through efficiency savings and improvements, and ensure that poor contract performance can be addressed promptly.

If an extension to a contract is required, the Responsible Officer will need to demonstrate that the extension will continue to give the Council value for money. In some cases it may mean market testing the appropriate goods or service.

## Performance

Contract provisions should include arrangements for mechanisms to be employed in the event of poor performance.

In addition to contract provisions, it may also be appropriate, to include requirements such as provision of a parent company guarantee or some form of bond. The appropriate levels of "security" documents will depend upon the purchase being made and also the financial standing of the contractor. Advice should be sought from finance when considering additional forms of security, such as bonds or guarantees.

Carry out sufficient analysis and understanding of the market to enable the Council to best select the potential contractors. For certain types of contract, (for example high value and/or long term), it may be appropriate to undertake market research and pre-procurement enquiries to establish who may be best placed to deliver the requirements and which route will best meet F&HDC's needs. Market sounding or pre procurement enquiries must not however, result in favouring a particular supplier in breach of legislation and ethical procurement principles.

## CSO 5.5

Failure to report a breach may also amount to a disciplinary offence. Equally, any failure by a Member to comply with the CSOs and the procurement guide may amount to a breach of the Code of Conduct for Members.

# 6. Scheme of Delegation

## CSO 6.1

Officers who make purchases may only carry out tasks that are properly delegated to them. If you act in good faith and within the powers delegated to you, any consequential liability accrues to the Council as your employer and not to you as an individual. But if you act outside the powers that have been delegated to you, you act as an individual, not as agent for F&HDC and the council is not necessarily bound by your actions. You can then incur personal liability to F&HDC and to the contractor for any loss which they may suffer.

The council’s Scheme of Delegation is in the Constitution on the intranet.

## 7. Financial Thresholds & Procedures

### CSO 7.1

The table identifies different thresholds because it is important to ensure that the process undertaken is proportionate to the value of the purchase. For example, it would be inappropriate to run a more complex tender process for a small scale, low value purchase.

The threshold levels set out in 7.4 are fixed for 2 year periods starting in January.

### CSO 7.2

There will be some circumstances where a competition will not be undertaken for a new contract. These are outlined in CSO 13.

Tender opportunities will be advertised on the Kent Business Portal and any additional websites (such as Contracts Finder or Find a Tender) by a Procurement officer. If a Procurement officer is not already involved with your procurement exercise, please contact one regarding advertising your contract opportunity.

### CSO 7.4

For contracts under £10,000 it can be appropriate to award following receipt of just one quote. For purchases at this level, it is quite likely that a procurement scheme may be more appropriate and deliver better overall value to the Council. A Responsible Officer would still need to be able to demonstrate best value, so unless you are able to do this by obtaining one quote, best practice would dictate obtaining at least one other price for comparison.

For contracts under £100,000 it is acceptable to seek and obtain quotes by email, rather than seeking formal written tenders, but serious consideration should be given to the requirement for a public advertisement. For example, buying Personal Protective Equipment (PPE) against recognised safety standards, could be done by email quotes as this is a more simple purchase. However, a consultancy service might achieve best value through a formal tendering process.

For all orders and contracts under £100,000 you must seek out and invite at least one supplier local to the district, or record why you were unable to identify an appropriate local supplier. After identifying local suppliers, all suppliers and quotations are to be treated equally with no favouritism toward any one supplier.

For a contract in excess of £100,000, written tenders are required in advance, following an advertisement by way of public notice. Written tenders will usually be submitted by contractors in response to an Invitation to Tender (ITT) issued by F&HDC. ITTs must include relevant specifications and briefs of the technical requirements, the contract terms to be used and instructions on how the procurement process will be carried out, including timescales for responses. The Procurement team has a suite of template documents to be used in an ITT to which the Responsible Officer will add the technical requirements.

For 'above threshold' contracts, much more detailed provisions apply and legislated procedures must be followed. You must always involve a Procurement officer and Legal Services in procuring these contracts. Where the contract is a mixed of mix of works, supplies and/or services (a hybrid contract) and the value is above any of the legislated thresholds, great care needs to be taken in calculating the potential value of the contract to establish whether or not a legislated procedure must be used.

## **CSO 7.5**

There are four main types of competitive procedures available for contracts which are above the legislated thresholds. Procurement officers will help you establish which procurement process is the correct one for your project.

### **Open Procedure**

This involves accepting applications and tenders from all interested parties. Full contract and specification documents are issued to all applicants and there is no opportunity to negotiate.

### **Restricted Procedure**

This procedure allows the Council to restrict the number of bidders to whom it issues an invitation to tender (ITT) following completion of a suitability questionnaire (SQ). This type of procedure can only be used for procurements which exceed the threshold for advertising on Central Government's Find a Tender Service (FTS).

The SQ to shortlist bidders uses specified short-listing criteria. It will also contain the outline specification and terms and conditions (this ensures that only bidders who are capable of undertaking the work will submit a SQ). The Council can then issue an ITT to the shortlisted bidders. The ITT will include the full contract specification and technical requirements, as well as the contract terms and conditions. The Council is not permitted to negotiate with the bidders although variations to bids can sometimes be acceptable if it is identified when the advert is placed that a variation may be required.

### **Competitive Dialogue and Competitive Negotiated Procedures**

These procedures are only appropriate in the context of complex projects. In practice, the competitive negotiated procedure will rarely be available to use. A decision to use a competitive dialogue or competitive negotiated procedure can only be taken after consultation with a Procurement officer and Legal Services and following approval from the relevant Chief Officer.

## **8. Financial Thresholds & Processes Applying to Approval & Execution of Contracts**

### **CSO 8.3**

Where a local authority contract is at or above the threshold value of £10,000 but below £100,000, the contract must be signed by an authorised officer on behalf of the Council or the contract can be under seal.

These CSOs require that all contracts at or over the specified threshold value of £100,000 will be under seal, and that the seal must be witnessed by or on behalf of the Head of Administration. For ceremonial purposes, the seal can also be countersigned by a Member of the Council in addition to the signature of the Head of Administration, if that is felt appropriate.

## 9. Calculating the Contract Value

### CSO 9.1

The estimated contract value is the entire contract value. In practice, this means you need to take into account all of the actual, or potential, payments to be made under the contract, during the whole life of the contract.

#### Example

For the purchase of equipment you should take into account the actual and likely costs of everything you require from the supplier.

In the case of an MFD printer, you should consider;

- The initial purchase (including cost of purchase, if it is funded by way of a lease);
- Installation;
- Servicing for the entire contract period;
- Training and other support for the entire contract period; and
- Consumables for the entire contract period.

### CSO 9.2

It is very important to ensure there is no artificial splitting of a contract to avoid either the application of the regulations or these CSOs. Whilst there may be genuine reasons why the Council's requirements may be split into various contracts, under the regulations there are specific provisions which prevent this being done with the intention of avoiding the application of those regulations. In this context, it is also important to understand that if F&HDC requires repeat purchases of same or similar items, services or works, then you may have to take into account all of those potential requirements for all departments in order to establish whether or not the regulations would apply.

Where there is a requirement for repeated purchases, a pre-established procurement scheme could be the best approach. Procurement schemes such as a centrally organised framework arrangement run by a central procurement body should ensure that the regulations have already been satisfied, so there is no on-going obligation to advertise each time a requirement arises. A Procurement officer can advise on the numerous framework agreements that F&HDC can access.

## 10. Principles Underlying Tendering Processes & Tender Evaluation

Pre-planning is critical for all purchasing.

For processes subject to the regulations, there are statutory timescales which must be followed. These are minimum timescales and should be used as a starting point for planning an appropriate timetable.

In considering how much time is required, you should allow for preparation time, the amount of time and resources required to draft the relevant technical and legal documents. You also need to take account of internal procedural requirements such as approvals and despatch processes as well as appropriate timescales to allow contractors to fully prepare their responses.

Procurement principles require F&HDC to provide equal opportunity and equal treatment of all potential contractors through any procurement exercise.

The regulations also require all procurement processes to be run in an open and transparent manner. This means that the documents being used in the process should make it clear to all parties participating, what is happening, when and why. All potential bidders should be given an equal opportunity to clarify the requirements and processes.

## **11. Submission & Opening of Tenders**

All bidders must be treated in the same way; hence the requirements that the tenders are all presented in a similar manner when submitted to F&HDC by the tender return date. Tenders are to remain unopened until the date and time specified for opening so that, for example, there is no potential for an early tender to influence the process.

Late tenders would normally be rejected unless late delivery is a result of actions outside the control of the bidder or other exceptional circumstances exist which F&HDC, in exercising reasonable discretion, deems sufficient to allow acceptance. Where a decision is made to accept a late tender, the time of receipt of that tender and the reasons why the tender has been accepted will be recorded.

What happens if the tender process does not go as planned or if there is technical non-compliance? The ITT document should include provisions stating that tenders can be rejected if they are not compliant with the requirements stated in the ITT, including compliance with submission dates, times and format.

Where a tender is received which is non-compliant then, subject to any limitations in the Scheme of Delegation, the Responsible Officer (or Chief Officer where appropriate) may exercise some discretion regarding whether or not that tender is accepted. An example of this would be a tender being submitted via email rather than via F&HDC's e-tendering system.

Similarly, where there is provision for this in the ITT, if the Responsible Officer is of the view that a genuine mistake, such as a mathematical error has been made in the tender, then the Responsible Officer (or Chief Officer where appropriate) may go back to the affected tenderer to clarify the submission made. If you wish to exercise this type of discretion, the query should be explained to a Procurement officer and issued to the tenderer via F&HDC's e-tendering system. In order to create a proper record of the query and any corrections the tenderer has been permitted to make, the Responsible Officer must not communicate directly with the tenderer through other communication channels.

## **12. Evaluation of Quotes & Tenders**

### **CSO 12.1**

F&HDC is under a general obligation to ensure that it is open and transparent about its procurement procedures. This includes how you select the best tender or quote.

“Evaluation criteria” are the criteria which you will use to assess a quote or tender in order to come to a decision on which quote or tender best meets the requirements and so who should be awarded a contract. It is important that you are clear and open with bidders about what criteria you will use and that both they and you know in advance how F&HDC will assess against those

criteria. Where the contract is above the legislated threshold, you are obliged by law to disclose the tender evaluation criteria in advance.

The criteria and scoring or assessment scheme cannot be changed after the bidders have returned their tenders, so you must be certain that the criteria are robust and the scoring or assessment scheme is appropriate for the particular contract and procurement process.

Notification of the criteria and scoring or assessment scheme can be done in a number of ways – depending upon the type of process which you are using. For simple quotes, the evaluation could just be set out in a list in the letter inviting contractors to quote. For more formal processes, it could be more appropriate to use an ITT document.

## **13. Waivers**

Waiver forms are available on the intranet or from procurement. Waivers must be made in advance of an order being placed and instruction being given to the supplier.

These provisions do not allow a contract to be awarded on the basis that an open tender competition would result in additional administrative or procedural burdens, or that it would cause a short period of delay. The waiver provisions should not be used as an excuse for poor procurement practice or for a lack of advanced planning. Competitive tender procedures are meant to ensure F&HDC uses its resources efficiently, purchases quality goods, services and works, safeguards its reputation from any implication of dishonesty or corruption and is able to demonstrate principles of sustainability, efficiency, whole life costings and cost savings.

It is important to note that if the contract is above the legislated threshold, there are only very limited circumstances in which a contract can be awarded without competition and the permitted circumstances are extremely narrowly interpreted. If you are seeking to exclude an above threshold contract from the requirement to go out to competition, you must seek advice in advance from a Procurement officer and Legal Services.

### **CSO 13.1**

Regulation 14 of the Public Contracts Regulations sets out narrow circumstances where contracts above the legislated threshold can be awarded without a competitive procurement process. The regulations also provide a good steer for the sort of circumstances where it may be acceptable to waive the requirement for competition for contracts below the legislated threshold.

These include the following types of situation:

- Where the council has already gone out to an open and competitive tender, but only non-compliant tenders have been received. It therefore decides to terminate the procurement process and negotiate the contract with those bidders who submitted a tender as part of the previous process.
- Where the council went out to open competition and received no responses at all, in which case it decides to approach a single contractor and negotiate a deal on the basis of the original terms included in the public tender process.
- Where the council already has a contract under which goods have been supplied to it and it then requires additional goods which could not be provided by another supplier and obtaining goods from another supplier would result in genuine incompatibility between the existing goods and those to be purchased or genuine and disproportionate technical difficulties in procuring

the goods from elsewhere. Under the regulations, the additional requirements must also be purchased within 3 years of the original contract.

These examples are not an exhaustive list but do give an indication of the sort of circumstances where the purchase of additional goods, works or services without competition may be permissible.

In exercising discretion as to the award of the contract without the competitive process, the individual making that decision must pay due regard to the requirements of the CSOs and this guide. If the contract is above the legislated threshold, officers must seek advice from a Procurement officer and Legal Services before proceeding.

## **14. Extension / variations to Existing Contracts**

A contract may only be extended beyond the original term in genuinely exceptional circumstances. Any extension must be for a limited and specified period. Where the contract is above the legislated threshold, the contract period may only be extended in limited circumstances and you must seek advice from Legal Services.

Clarity and certainty are key factors in establishing whether or not an extension is permissible. A well prepared contract will set out in advance the basis on which that contract may be extended.

For contracts below the legislated threshold the basic principle is that any period of extension should be limited, for a specified period and the effect of the extension should not create a disproportionate expansion in the coverage either in terms of value, time period or subject matter of the contract. This is because it may well be regarded as anti-competitive to agree an extension of the contract which effectively awards a valuable opportunity to the existing supplier without exposing that opportunity to competition and providing other providers with the opportunity to deliver those additional requirements.

Any extension of the subject matter of a contract can generally only be permitted in accordance with the provisions of the contract or in very exceptional circumstances covered by the regulations. For longer term or major contracts, there are often provisions that allow for the evolution of the contract to meet changing needs, for example, by way of continuous efficiency and improvements clauses. Most of these contracts also incorporate mechanisms to allow for a certain degree of variation or change to reflect the practical issues associated with implementation and on-going service delivery.

Particular caution should be exercised in terms of the practical effect of an extension on the contract value. In no circumstances should an extension be made to a contract that has the effect of increasing the contract to a value over the legislated threshold.

## **15. The use of Letters of Intent**

This CSO is primarily aimed at addressing circumstances where it may not be possible to issue a purchase order or full contract documentation. Orders or contracts should always be issued in advance of any goods or supplies being received or work being undertaken. This CSO would only be used in genuinely exceptional circumstances.

## **16. Assignment of existing contracts**

In all cases you must seek advice from Legal Services if you wish to assign an existing contract. Under no circumstances should you try to do this without legal advice.

## **17. Procurement Schemes**

There is an increasing number of procurement schemes which F&HDC may choose to participate in which assist in terms of procurement efficiencies and value for money. The Responsible Officer must check that F&HDC is legally entitled to use a particular scheme before proceeding and should ensure that it really meets the council's requirements.

The term "Procurement Scheme" is used to describe a range of different procurement practices and the list is not intended to be exhaustive.

A main driver behind many of Procurement Schemes is to simplify procurement and maximise economies of scale. The CSOs less likely to apply are those that relate to the tendering procedures, as many of these procedures will often be undertaken as part of the Procurement Scheme process. Each Procurement Scheme should be accompanied by instructions or guidance on how it is to be used.

### **CSO 17.5**

Some Procurement Schemes allow contracts to be awarded without a competitive procurement process ("direct awards"). In the instance an individual chooses to award directly via a Procurement Scheme, there must be a record of the reasoning behind the decision. The form is available on the intranet or from a Procurement officer. The Procurement Senior Specialist will authorise the award after confirming that the Procurement Scheme does allow direct awards and the requirements given in the Procurement Scheme for doing so have been properly met.

## **18. Review & Changes to these Contract Standing Orders**

The CSOs themselves can only be updated in accordance with the provisions set out in the Council's Constitution.

The guide can be updated and amended more easily than the CSO themselves. If you have comments, suggestions or proposals for amendments or improvements to this guide then please contact the Procurement Senior Specialist.

The legislated thresholds are set every two years. There is no discretion available in terms of the threshold at which the regulations will apply. Therefore the amendment of CSO 7 to reflect the new legislated thresholds will be carried out under a scheme of delegation.

## **Appendix 1 – Risk Assessment example**

One form of risk assessment is the 4x4 matrix. The colours red, amber, yellow and green reflect differing levels of overall risk with green and yellow being acceptable, amber being of cause for

caution and concern and red being of grave concern with a report required to Governance and Audit committee.

The tables set out the suggested criteria for assessing the probability and impact to produce an overall score.

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

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

## Risk Matrix

Probability	Very likely (4)	Medium-Low (4)	Medium-High (8)	High (12)	High (16)
	Likely (3)	Medium-Low (3)	Medium-High (6)	Medium-High (9)	High (12)
	Unlikely (2)	Low (2)	Medium-Low (4)	Medium-High (6)	Medium-High (8)
	Remote (1)	Low (1)	Low (2)	Medium -Low (3)	Medium-Low (4)
	Minor (1)	Significant (2)	Serious (3)	Major (4)	
					Impact

## Risk Matrix - Probability

Rating	Score	Indicative Guidelines – provided as examples	
		Threat	Opportunity
Very likely	4	<p>More than a 75% chance of occurrence.</p> <p>Regular occurrence.</p> <p>Circumstances frequently encountered.</p>	<p>Favourable outcome is likely to be achieved in one year.</p> <p>Better than 75% chance of occurrence.</p>
Likely	3	<p>41% - 75% chance of occurrence.</p> <p>Likely to happen at some point in the next 3 years.</p> <p>Circumstances occasionally encountered.</p>	<p>Reasonable prospects of favourable results in one year.</p> <p>41% - 75% chance of occurrence.</p>
Unlikely	2	<p>10% - 40% chance of occurrence.</p> <p>Only likely to happen once every 3 or more years.</p> <p>Circumstances rarely encountered.</p>	<p>Some chance of favourable outcome in medium term.</p> <p>10% - 40% chance of occurrence.</p>
Remote	1	<p>Less than a 10% chance of occurrence.</p> <p>Has never happened before.</p> <p>Circumstance never encountered.</p>	<p>Less than a 10% chance of occurrence.</p>

## Risk Matrix – Impact

Rating	Score	Indicative Guidelines – provided as examples	
		Threat	Opportunity
Major	4	<p>Major loss of service for more than 5 days. One or more fatalities. Major financial variation of more than £200k. Major national news item. Major impact on time / costs / resources. Affect the whole Council.</p>	<p>Major improvement to services, generally or across a broad range. Major improvement to health, welfare and safety. Positive national press, national award or recognition, elevated status by national government. Producing more than £50,000</p>
Serious	3	<p>Loss of service for 3 to 5 days. Major injury to an individual / several people. Financial variation between £100k and £200k. Major local news / professional press item. Serious impact on time / costs / resources. Affect many service areas of the Council.</p>	<p>Major improvement to critical service area. Serious improvement to health, welfare and safety. Recognition of successful initiative. Sustained positive recognition and support from local press. Producing up to £50,000.</p>
Significant	2	<p>Loss of service for 2 to 3 days. Severe injury to an individual / several people. Financial variation of £50k to £100k. Local news / minor professional press items. Controllable impact on time / costs / resources. Affect 1 or few service areas of the Council.</p>	<p>Significant improvement to service area. Significant improvement to health, welfare and safety. Recognition of successful initiative. Positive recognition and support from local press.</p>
Minor	1	<p>Brief disruption to service for less than 1 day. Minor injury to an individual. Financial variation of less than £50k. Minimal news / press impact. Minimal impact on time / costs / resources. Affect Project Team only.</p>	<p>Improvement to a process within a service area.</p>