

STANDING ORDERS
CONTRACTS AND
PROCUREMENT

FOR THE

**PARISH COUNCIL
OF**

HORDEN

JULY 2017

Contents

1. Introduction and Status of the Standing Orders
2. Contracts and Procurement Responsibilities
3. Definition of Contracts and Procurement
4. Public Contracts Regulations 2015
5. Financial Thresholds for Procurement
6. Exemptions to the Application of the Standing Orders
7. Flow Chart Summary of the Standing Orders
8. Procedure to be followed prior to Procurement
9. Procurement up to and including the value of £4,000
10. Written Quotations (£4,001 up to and including £49,999)
11. Public Notice on Contracts Finder (£50,000 up to £172,514)
12. EC Procedure (Over £172,514)
13. Invitation to Tender and Instructions for Tenderers
14. Submission, Receipt and Opening of Tenders
15. Award Criteria and Evaluation of Tenders and Contracts
16. Post Tender Negotiation
17. Acceptance and Award of Contract
18. Withdrawal of Tender
19. Nominated Sub-Contractors or Suppliers
20. Content of Contracts and Contract Documents
21. Declarations of Interest
22. British and European Standard Specification
23. Engagement of Consultants
24. European Community

1.0 Introduction and Status of the Standing Orders

- 1.1 The Standing Orders for Contracts and Procurement provide the framework rules for the procurement of all works, goods, materials and services by the Council, and also set out the Council's tendering and contract rules and procedures.
- 1.2 The Standing Orders are intended to help the Council to achieve value for money in the use of public resources, comply with legal requirements including the Public Contracts Regulations 2015, promote good purchasing practice, demonstrate public accountability and help to deter fraud and corruption in the undertaking of all procurement.
- 1.3 The Clerk is responsible for undertaking an annual review of the Standing Orders and submitting any revisions to the Council at the Annual General Meeting. The Standing Orders may only be amended or varied by resolution of the Council.
- 1.4 The Clerk is also responsible for issuing financial procedures, advice, and training to underpin these Standing Orders.
- 1.5 The requirements of these Standing Orders apply to every Member and officer responsible for undertaking procurement activity on behalf of the Council.
- 1.6 Service managers, under the direction of the Clerk and Deputy Clerk, are responsible for ensuring that all staff in their service areas with responsibility for raising purchase orders are made aware of the existence and content of these Standing Orders and that they comply with their requirements whenever the Council engages in any procurement activity.
- 1.7 Service managers must ensure that they are able to demonstrate the achievement of value for money in the use of public resources by having regard to a combination of economy, efficiency and effectiveness in undertaking all procurement activity.
- 1.8 All officers with responsibility for drawing up contracts on behalf of the Council or a Committee, to which the power of making contracts has been delegated, must ensure that they comply with the requirements of the Standing Orders and the Public Contracts Regulations 2015.
- 1.9 In order to ensure that the Standing Orders are flexible to the Council's operational requirements, a list of exemptions from the main provisions of these Standing Orders is available in Standing Order 6. Application for exemptions from the Standing Orders must be formally requested, and approved by the Finance and General Purposes Committee.
- 1.10 These Standing Orders will not apply in those circumstances where works, goods, materials or services are to be purchased under agency arrangements with another local authority or public sector body. In such cases, the

procurement of the works, goods, materials or services will be made in accordance with that organisations own Standing Order rules for procurement.

- 1.11 No other exception can be made from the provisions of these Standing Orders, unless in an emergency or other exceptional circumstances with the approval of the Clerk. All such exceptions must subsequently be reported to and approved by the Council and the report must specify the emergency or exceptional circumstances by which the exception has been justified.
- 1.12 Any known breach of or non-compliance with these Standing Orders must be reported to the Council's Internal Auditor. The Internal Auditor, will decide whether the breach or non-compliance represents a significant risk of harm to the Council's interests, and will report to Council accordingly.

2.0 Procurement Responsibilities

Authorised Officers of the Council

- 2.1 All officers with responsibility for raising and certifying purchase orders and drawing up contracts on behalf of the Council must comply with the provisions of these Standing Orders.
- 2.2 Officers authorised to raise and certify purchase orders and therefore undertake procurement activity and are set out in the Council's Approved List of Authorised Signatories. This list is attached to the Standing Orders as Appendix 1.
- 2.3 It is accepted that in very rare cases, responsibility for raising purchase orders may be delegated to an officer not included on the approved list. However responsible officers must ensure that they take responsibility for the procurement, that the provisions of these Standing Orders are applied, and that the purchase order is subsequently certified by a responsible officer.
- 2.4 Only a service manager of the Council may authorise invoices for payment. Service managers are currently as follows:-
 - Clerk
 - Deputy Clerk
 - SWC Manager
 - Parks and Cemetery Manager
- 2.5 Service managers must also ensure that the appropriate procurement records are kept in line with these Standing Orders and that any contracting and tendering procedures are undertaken in accordance with the specific procedures set out in Standing Orders 10 to 20.
- 2.6 The Clerk and Deputy Clerk are available to provide advice and training to officers around undertaking procurement activity and to assist with interpretation and application of these Standing Orders.

Clerk, Deputy Clerk and Internal Auditor

- 2.7 The Clerk and Deputy Clerk are responsible for ensuring compliance with these Standing Orders and for approving the use of any exemptions from requirements of the Standing Orders.
- 2.8 The Internal Auditor is responsible for monitoring the application of the Standing Orders in procurement activity, undertaking an annual audit of purchase ordering, tendering and contracts, and investigating any breaches or non-compliance with the Standing Orders that represents a significant risk of harm to the Council's interests.
- 2.9 The Clerk is responsible for the annual review and update of the Standing Orders and reporting this to the Annual Meeting of the Council each year.
- 2.10 The Clerk is responsible for ensuring that a file record for each individual tender and contract is maintained, and that all original contract documents are securely held on Council premises.
- 2.11 The Clerk is also responsible for providing officers with relevant legal advice, in relation to procurement and contracts, where appropriate, and for reporting to the Council, following advice from the Internal Auditor, any breach or non-compliance with the Standing Orders representing a significant risk of harm to the Council's interests.

The Council

- 2.12 The Council is responsible for the consideration and approval of the Standing Orders, the consideration and approval of any material exemptions from the Standing Orders, and the consideration of any breaches or non compliance with the Standing Orders.

3.0 Definition of Contracts and Procurement Activity

- 3.1 For the purposes of these Standing Orders, contracts and procurement activity is defined as being:-

“A commitment to future expenditure arising from any arrangement or agreement made by or on behalf of the Council for the carrying out of work, the supply of goods and materials or the delivery of services.”

This definition therefore encompasses the arrangements for all areas of procurement relating to both the Council's Revenue and the Capital Budgets and includes the following:-

- The supply of goods, materials, vehicles, plant, machinery or equipment;
- The hire, lease or rental of vehicles, plant, machinery or equipment;
- The execution of works to land or buildings;

- The delivery of services including training of staff, servicing of vehicles and machinery, consultancy, cash collection, sub-contract work and stock taking services.

4.0 **Public Contracts Regulations 2015**

4.1 The Public Contracts Regulations 2015 implement the new Public Sector Procurement Directive (2014/24/EU) which provides modernised rules for the procurement of goods, services and works, above certain thresholds, by public authorities.

4.2 Many of the requirements of the regulations only apply in relation to procurement over the value of £172,514 for the supply of goods and services, £4,322,012 for public works contracts, and are therefore very unlikely to apply to the Council.

4.3 However, the major change under the Public Contracts Regulations 2015, affecting the town and parish council sector, is that local councils undertaking procurement over the value of £25,000 are now required to register the contract under the Government 'Contract Finder' website and comply with other 'light touch' rules as set out in the Regulations.

4.4 However, where a local authority has existing standing orders in place that have a higher value for advertising procurement opportunities, the higher value applies rather than £25,000.

4.5 For the purposes of implementing the requirements of the Public Contracts Regulations, the Council will publish contract opportunities on the Contracts Finder portal where the contract value is estimated to be over £50,000.

4.6 Procurement under the value of £50,000 may be undertaken within the requirements of the Council's own Standing Orders and Financial Regulations.

4.7 However, in future, where the estimated value of a Council contract exceeds £50,000 (net of VAT), the Council will need to comply with Articles 109 to 114 of the 2015 Regulations relating to Chapter 8 "Below Threshold Amounts" and Chapter 9 "Miscellaneous Provisions".

4.8 A summary of the requirements of the Public Contracts Regulations is set out below:-

- Any contract opportunity with an estimated value of £25,000 or above must be advertised on the "Contract Finder" website whether or not it has been advertised elsewhere;
- The information to be published must include the time by which interested parties must respond, how and to whom to respond, and any other requirements to enable participation in the procurement;

- Where a council publishes information on Contracts Finder it must by means of its website, offer unrestricted and full direct access, free of charge, to any relevant contract documents;
- Councils must not include a pre-qualification stage in a procurement exercise whereby the council assesses the suitability of candidates with a view to reducing the number of candidates who will proceed to a later stage of the process.
- Councils may ask candidates to answer 'suitability assessment questions' relevant and proportionate to the subject of the procurement, such as whether candidates meet minimum standards of suitability, capability, legal status or financial standing;
- When a contract is awarded, the council must publish on the Contracts Finder website the name of the contractor, the date on which the contract was entered into, the value of the contract, and whether the contractor is a SME (small or medium sized enterprise);
- Councils must ensure that all contracts contain suitable provisions stating that valid, undisputed invoices will be paid within 30 days, and that contractors include similar provisions in their contracts;
- Council must publish on their websites each financial year, statistics showing the proportion of invoices paid within 30 days in the preceding financial year; and
- In complying with any of the above requirements, the Council must have regard to any guidance issued by the Minister for the Cabinet Office.

5.0 Table of Financial Thresholds for Procurement

5.1 The following table shows the financial thresholds that will apply to the procurement of all works, goods, materials and services and the associated procurement and tendering procedures:-

Procurement Amount	Procurement and Tendering Procedure
<p>Up to and including £4,000</p>	<p>No written quotations or tenders will be required.</p> <p>However, the principles of value for money i.e. having regard to the achievement of economy, efficiency and effectiveness in the use of public money must be observed and, where possible, evidenced at all times.</p> <p>Please refer to Standing Order 9.</p>
<p>£4,001 up to and including £49,999</p>	<p>No formal tender procedure is required but a least three written quotations must be sought.</p> <p>This will help to demonstrate and provide evidence of the achievement of value for money.</p> <p>Please refer to Standing Order 10.</p>
<p>£50,000 up to and including £172,514 (Public Contracts Regulations Threshold)</p>	<p>The procurement opportunity must be registered on the Government's Contracts Finder website in accordance with the requirements of the Public Contracts Regulations 2015.</p> <p>Please refer to Standing Order 11.</p>
<p>Over £172,514 (EC Threshold)</p>	<p>EC Procedure is mandatory over the EC Threshold.</p> <p>OJEU notice is required and at least three tenders must be sought, ensuring that the tender process complies with current EC Directives. Professional advice should be sought.</p> <p>Please refer to Standing Order 12.</p>

5.2 However, it is important to note that there are a number of exemptions to the requirement to apply the rules summarised above for procurement below the Public Contracts Regulations threshold of £50,000, and these exemptions are set out in detail in the following section of these Standing Orders.

6.0 Exemptions to the Application of the Standing Orders

- 6.1 The Council has the power to waive the requirement of these Standing Orders in specific instances. In such instances, an exemption must be applied for under this Standing Order.
- 6.2 However, it is important to note that exemptions cannot be applied where the proposed procurement is likely to be above the Public Contracts Regulations threshold of £50,000.
- 6.3 An exemption granted under this Standing Order allows a contract for the procurement of goods, materials, works or services to be placed via direct negotiation with one or more suppliers, rather than in full accordance with the requirements of these Standing Orders.
- 6.4 However, in applying for an Exemption from the Standing Orders, the Council must still ensure that the principles of value for money i.e. having regard to the achievement of economy, efficiency and effectiveness in the use of public money have been observed at all times and evidence this as far as possible.
- 6.5 All applications for exemptions, and the reasons for them, must be recorded using the appropriate form, signed by the Clerk and the Chairman and include the minute reference where the decision was made. The Standing Order Exemption Application Form is attached in Appendix 2.
- 6.6 Exemptions in respect of capital and revenue expenditure must be approved by the Finance and General Purposes Committee.
- 6.7 The following exemptions may be applied for, subject to the relevant approval requirements as set out above:-
- a) The goods, materials, works or services to be purchased are **sold at a fixed price**;
 - b) The goods or materials are **patented or** the goods, materials , works or services are **of a proprietary or specialised nature** and for which it is not therefore possible to obtain competitive prices;
 - c) The goods or materials are only obtainable from a **limited number of suppliers** or the services or works can only be carried out by a limited number of contractors. However, in such cases a reasonable number of those suppliers or contractors must be invited to submit tenders;
 - d) The price of the goods or materials to be purchased are **controlled by trade organisations** or for other reasons there is **no genuine competition** for the goods, materials, services or works;

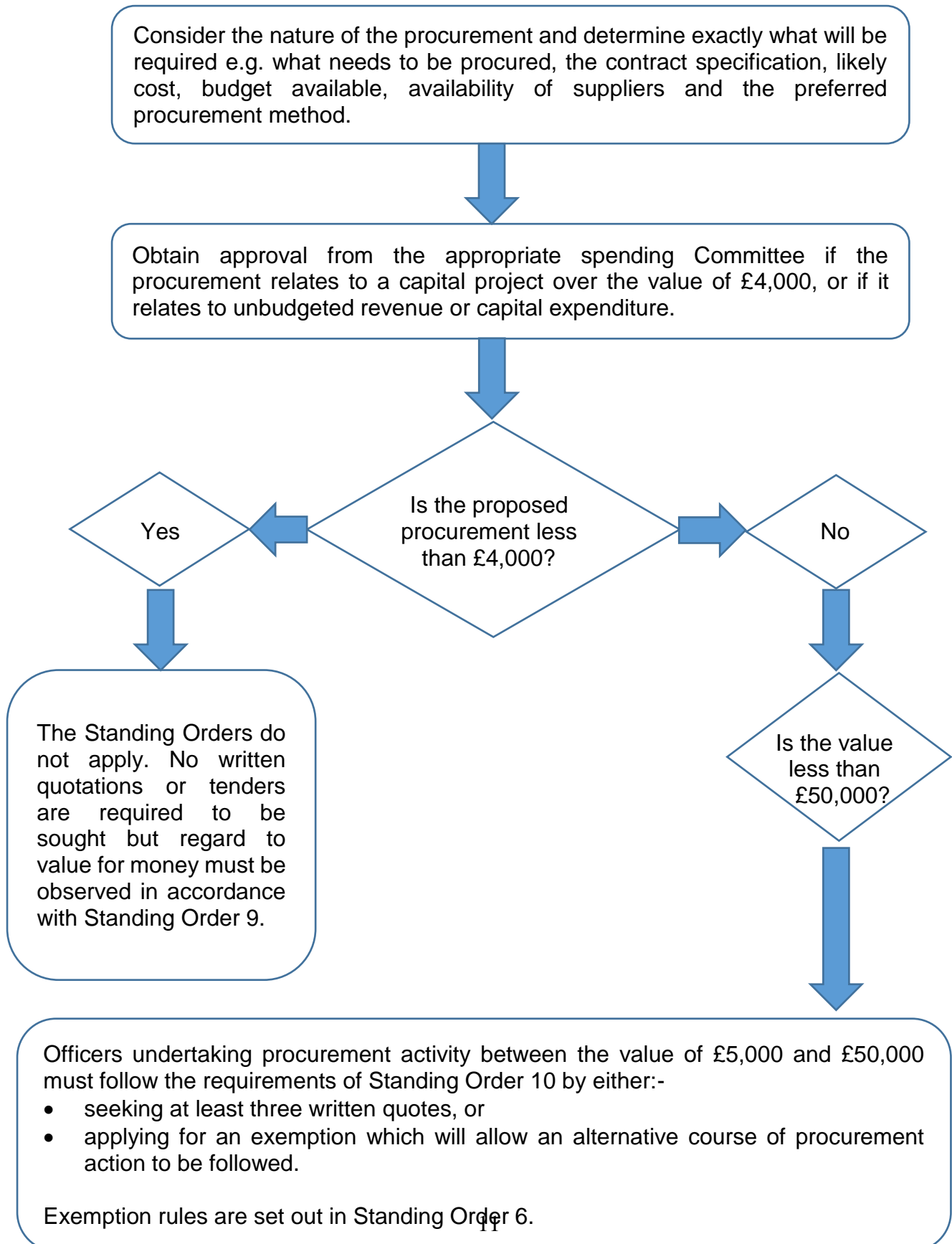
- e) Any contract or sub contract that is substantially for the undertaking of specialist services or works in which the exercise of **professional knowledge** is of primary importance;
- f) The work to be executed or the goods or materials to be supplied relates to **emergency repairs** to or parts for buildings, vehicles, machinery, equipment or plant;
- g) The work to be executed, services required or the goods or materials to be purchased are required as a **matter of urgency**;
- h) Officers and the Council are of the opinion that in any particular case **more favourable terms** are likely to be obtained **by negotiating a price** with a supplier or contractor for the goods, materials, services or works;
- i) The purchase is to be made by **auction**;
- j) The purchase of the goods, materials, services or works is to be made using **standing arrangements with another local authority or public sector body**;
- k) The purchase of the goods, materials, services or works is to be made using a **public service purchasing consortium**;
- l) Where the procurement relates to an **extension of an existing contract and where a change of supplier would cause:-**
 - **disproportionate technical difficulties**;
 - **diseconomies**; or
 - **significant disruption to the delivery of Council services.**

6.8 Where an exemption is necessary because of an unforeseeable emergency involving immediate risk to persons, property, other assets or serious disruption to Council services, the Clerk may authorise the exemption, and the exemption may be applied prior to approval by the Council.

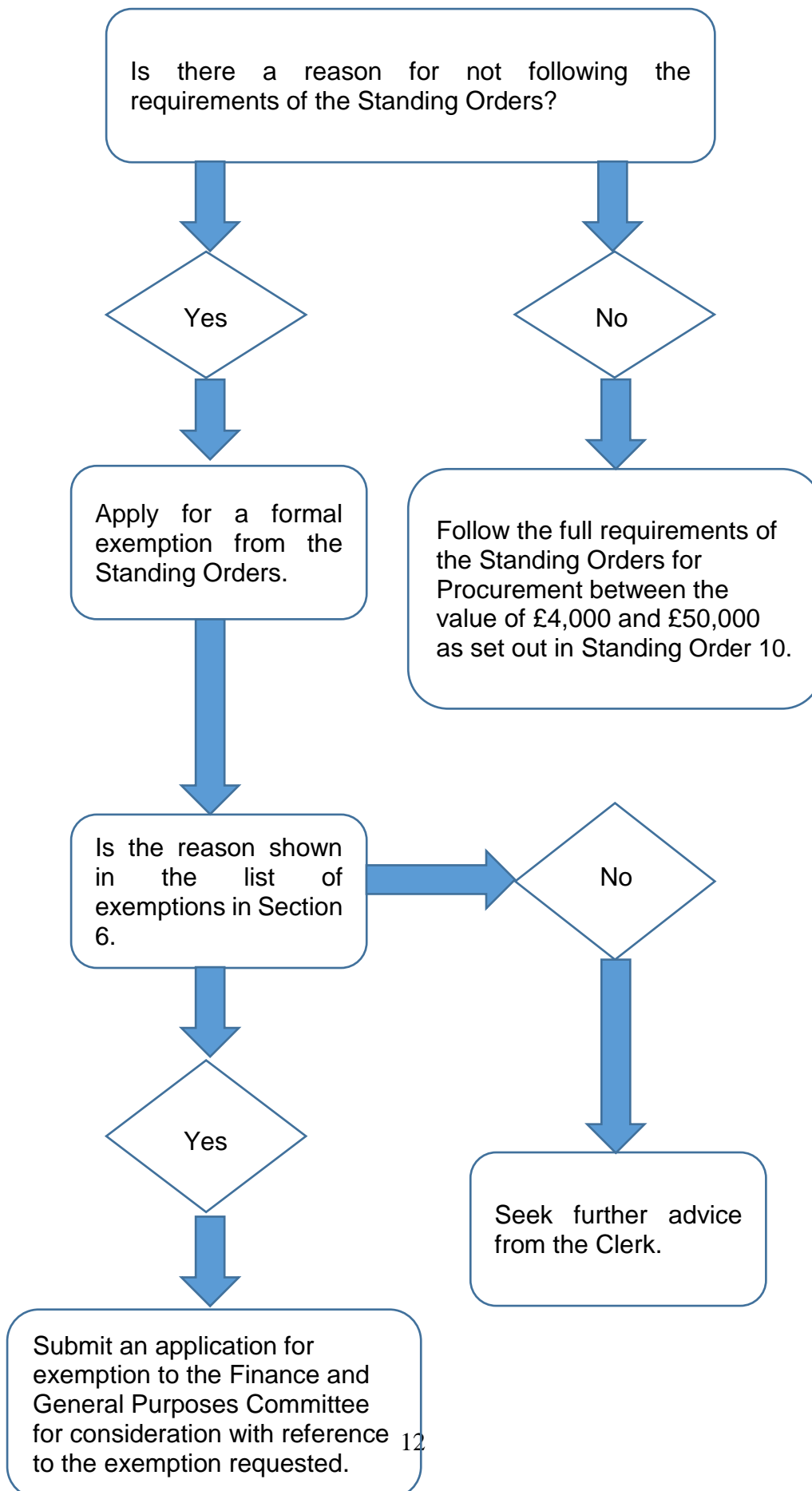
6.9 However, the Clerk must prepare a report for the next meeting of the appropriate Committee setting out details of the action taken and seeking retrospective approval.

7.0 Flow Chart for the Application of Standing Orders for the Undertaking of Procurement

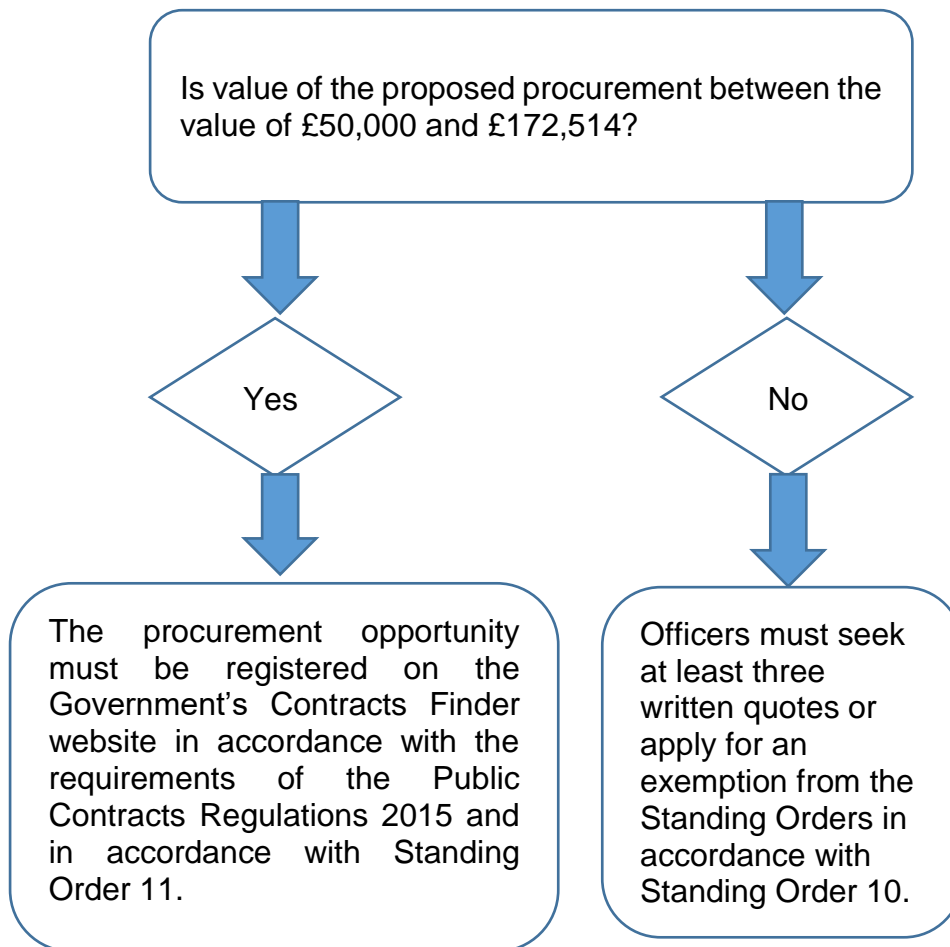
7.1 Procedure to follow prior to undertaking Procurement



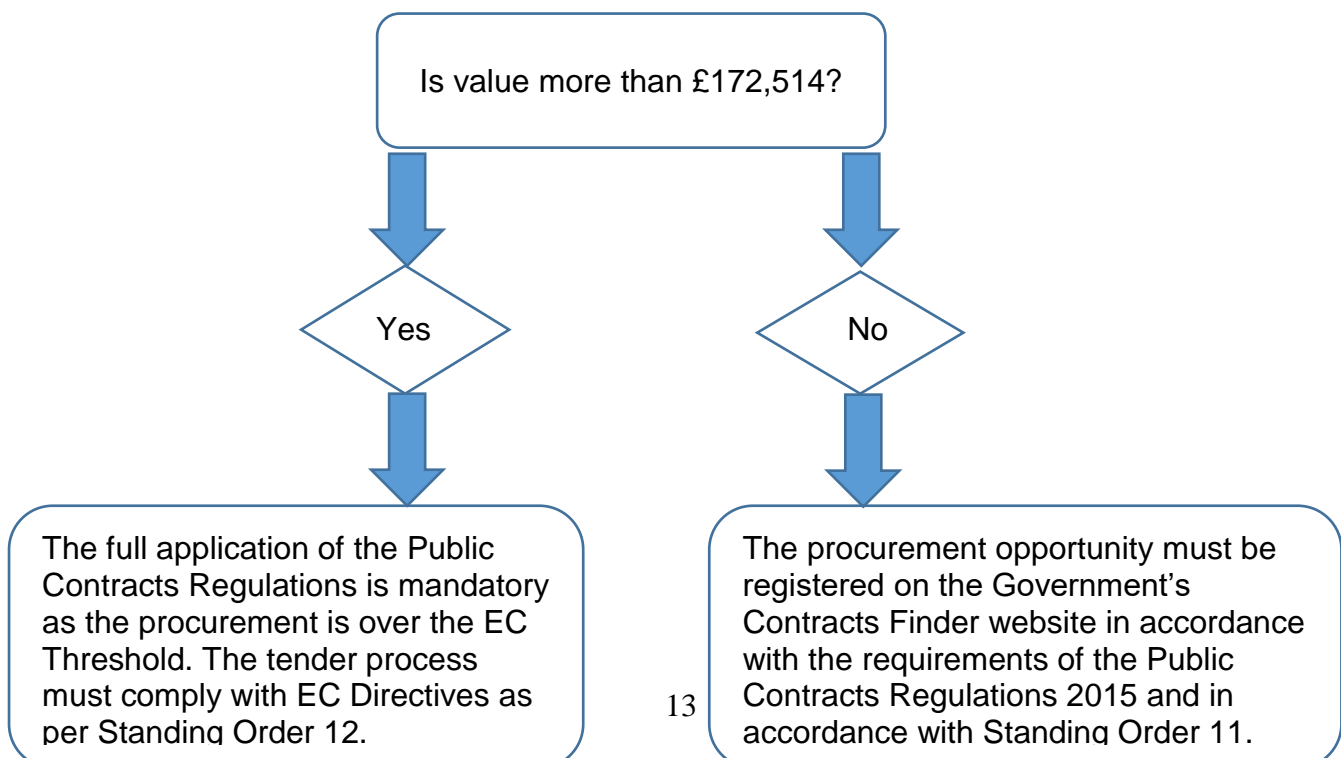
7.2 Application for Exemptions from the Requirements of the Standing Orders for Procurement between the value of £4,000 and £50,000



7.3 Procedure to follow for all Procurement over the value of £50,000 and up to a value of £172,514



7.4 Procedure for Procurement over the value of £172,514



8.0 Procedure Prior to Procurement

- 8.1 Before commencing the procurement process, the responsible officer should ensure that they have:-
- Considered the objectives of the procurement and how this contributes towards the Council's strategic aims and targets;
 - Considered the need to achieve value for money;
 - Verified the lawful nature of the proposed procurement, particularly when the procurement activity relates to a new service or initiative or an irregular payment;
 - Appraised the need for the expenditure and its priority;
 - Ensured that sufficient Revenue or Capital Programme Budget provision exists;
 - Informed the Clerk if the expenditure is unexpected, unbudgeted, or is likely to be material;
 - Assessed the risks associated with incurring the expenditure (undertaking a formal risk assessment if necessary);
 - Referred to the Standing Orders in order to determine the required procurement action;
 - Considered which procurement method is most likely to achieve the purchasing objectives and achieve value for money e.g. negotiating with existing suppliers, testing the market, utilising professional advice e.g. County Council staff, surveyors, architects, etc.
- 8.2 In all cases where the procurement is over £4,000 and relates to a capital programme project, approval must be sought from the Finance and General Purposes Committee before proceeding.
- 8.3 All regular expenditure relating to the Revenue Budget and any Capital Programme Budget expenditure that is less than £4,000 is not required to be reported to Committee but the procurement process must follow the requirements of the Standing Orders.
- 8.4 However, if the procurement involves unbudgeted revenue or capital expenditure, approval must always be sought from the Finance and General Purposes Committee before proceeding.
- 8.5 Responsible officers may consult with potential suppliers prior to the issue of any invitation to quote or tender, but only in general terms about the nature, level and standard of the supply and other general matters, provided that this does not prejudice any potential candidate.
- 8.6 Where seeking more than one quote, responsible officers should avoid seeking technical advice from suppliers, as this may prejudice the equal treatment of all potential candidates.

9.0 **Procurement up to and including £4,000**

- 9.1 Where the total value of the procurement is less than £4,000, these Standing Orders do not include a formal requirement to seek three written quotations or tenders, although there is nothing to stop responsible officers from seeking three quotes if they wish to do so.
- 9.2 What is important is that responsible officers are satisfied that value for money i.e. economy, efficiency and effectiveness in the use of public money, has been achieved.
- 9.3 This could be demonstrated by informally seeking prices from a number of alternative suppliers e.g. via an internet search, using suppliers that have provided a good service and value for money to the Council in the past, or negotiating a better deal with existing suppliers.
- 9.4 In terms of the keeping of records for procurement under the value of £4,000, all supplementary evidence relating to the purchase should be retained, including copy purchase orders, price lists, web page prints, emails, delivery notes and invoices.

10.0 **Written Quotations (Procurement over £4,001 up to and including £49,999)**

- 10.1 Where the procurement of the goods, materials, services or works is in excess of £4,000 but below £49,999, at least three written quotations are required to be obtained, unless an exemption has been applied for and approved under the requirements of Standing Order 6.
- 10.2 The responsible officer will be required to set out, in writing, the particulars of the procurement or a specification for the contract into which the Council wishes to enter, and to seek, via invitations to quote, at least three written quotations from relevant persons, suppliers or contractors able to provide the required goods, materials or services, or undertake the required works.
- 10.3 The Council does not have a select list of tenderers and the choice of suppliers should be based on the professional knowledge of the responsible officer undertaking the procurement.
- 10.4 Every effort should be taken to obtain at least three written quotations, and consideration should be given to seeking more quotes if more than three relevant suppliers are available.
- 10.5 If less than three quotes are actually received following the invitation to quote, this Standing Order permits only those quotations actually received to be considered. Further quotes do not need to be sought.
- 10.6 Upon receipt of written quotations, the responsible officer will then be required to evaluate the quotes received against the requirements of the procurement or the contract specification and recommend the preferred contractor, including

the reasons if the lowest price is not accepted or if less than three quotes were received.

- 10.7 All procurement relating to capital projects over £4,000 must be reported to the appropriate spending Committee. These reports must include the full background to the project, any exemption applied for from the Standing Orders, details of the quotes sought and received, and the recommended contractor, including the reason if the lowest price has not been accepted.
- 10.8 There are a number of items of expenditure relating to the Revenue Budget which are over the value of £4,000. These include loan repayments, I.T. contracts, audit fees, insurance contract, CCTV running costs, bedding plants, insurance premiums etc.
- 10.9 However, as these are all regular payments already well-established within the Revenue Budget, these Standing Orders do not require revenue expenditure to be reported to Committee.
- 10.10 However a record of the decision to incur any revenue expenditure over the value of £4,000 must be published on the Council website in order to comply with the Openness of Local Government Bodies Regulations 2014. The Financial Regulations provide further information on the requirements of these regulations.
- 10.11 Additionally, if the procurement involves unbudgeted revenue or capital expenditure or a request to use the contingency sum, approval must be sought from the Finance and General Purposes Committee before proceeding.
- 10.12 The following supporting records must be kept for all procurement activity between the value of £4,001 and £49,999:-
 - Copies of the invitations to quote;
 - Copies of any contract specification;
 - Copies of all quotations received;
 - Reports to Committee or Council;
 - Purchase orders, emails, delivery notes and invoices;
 - Copies of any contract where relevant;
 - Standing Order Exemption Form, if an exemption is applied;
 - A record of the reasons if the lowest price was not accepted;
 - Copies of correspondence with the successful contractor;

11.0 Public Notice of Contract on Contracts Finder (Procurement over £50,000 up to and including £172,514)

- 11.1 This Standing Order shall have effect where the Council is undertaking a procurement exercise for the supply of goods, materials, services or works that is over the Public Contracts Regulations threshold of £50,000, but below the EC threshold of £172,514.
- 11.2 This Standing Order will only apply on the occasions that the Council itself manages the procurement exercise and not in cases where the contract is to be managed by another local authority.
- 11.3 In such cases where the Council is undertaking a procurement exercise, quotes or tenders will be sought via the Government's Contracts Finder website, in accordance with the requirements of the Public Contracts Regulations as set out in Standing Order 4, whether or not it has been advertised elsewhere.
- 11.4 The public notice must set out the nature and purpose of the contract into which the Council wishes to enter, and must include the time by which interested parties must respond, how and to whom to respond, and any other requirements to enable participation in the procurement.
- 11.5 The Council must also, by means of its website, offer unrestricted and full direct access, free of charge, to any relevant contract documents.
- 11.6 The Council must not include a pre-qualification stage in a procurement exercise whereby the council assesses the suitability of candidates with a view to reducing the number of candidates who will proceed to a later stage of the process.
- 11.7 The Council may ask candidates to answer 'suitability assessment questions' relevant and proportionate to the subject of the procurement, such as whether candidates meet minimum standards of suitability, capability, legal status or financial standing.
- 11.8 Detailed tendering procedures including instructions for tenderers, standard conditions of tender, submission, receipt and opening of tenders, shortlisting, evaluation and award of contract and the withdrawal of tenders are set out in Standing Orders 13 to 18.
- 11.9 The Council need only consider those expressions of interest or tenders received and if fewer than three organisations have responded to the public notice, the Council does not need to seek further tenders.
- 11.10 When a contract is awarded, the Council must publish on the Contracts Finder website the name of the contractor, the date on which the contract was entered into, the value of the contract, and whether the contractor is a SME (small or medium sized enterprise);

11.11 The following supporting records for all procurement between the value of £50,000 and £172,514 would be expected to be retained:-

- A copy of the electronic notice published on the Contracts Finder website;
- Cuttings or copies of any newspaper or magazine advertisement(s);
- The tender document including contract specification if relevant;
- Completed tender documents received from candidates;
- The contract document, if relevant (see Standing Order 20);
- A record of the reasons if the lowest price was not accepted;
- Copies of all written correspondence with candidates during the tender process;
- Post tender correspondence with the successful contractor;
- Post contract evaluation and monitoring records.

Important Note Regarding Standing Orders 12 to 19

Given the small size of the Council and the lack of specialist in-house expertise in relation to professional knowledge e.g. surveyors, architects, it is unlikely that the Council would undertake a significant project involving a formal tender process without utilising the services of another local authority or public sector body. It is therefore very unlikely that the tendering rules set out in the following Standing Orders 12 to 19 would ever need to be used by the Council.

In cases where procurement is managed by another local authority on behalf of the Council, attention is drawn to Standing Order 1.10 which states that:-

“These Standing Orders shall not apply in the case where works, goods, materials or services are to be purchased in connection with the carrying out of works under agency arrangements with another local authority or public sector body. In such cases, the procurement the works, goods, materials or services will be made in accordance with that organisations own Standing Order rules”.

However, some of the information contained in the following Standing Orders will be relevant to some of the smaller revenue budget based contracts that may be awarded by the Council from time to time.

12.0 EC Procedure (Over £172,514)

12.1 This Standing Order shall have effect on the very rare occasions where a tender for specified categories of work or for the supply of specified categories of goods, materials or services, is at a value over the current EC Threshold of £172,514, and where such a contract is not to be managed by another local authority.

12.2 In such instances the contract would be subject to the full requirements of the Public Contracts Regulations and EC Procedure whereby notice in the Official Journal of the European Union (OJEU) is required and at least three tenders sought, thereby ensuring that the tender process complies with EC Directives.

13.0 Invitation to Tender and Instructions for Tenderers

13.1 The invitation to tender must state that no tender will be considered unless it is received by the date and time stipulated. No tender delivered in contravention of this rule will be considered.

13.2 All invitations to tender will include the following information:-

- A specification of the goods, materials, services or works that are required, describing the Council's requirements, including any British or European Standards that apply, in sufficient enough detail to enable the submission of consistent and competitive tenders;
- A requirement for the candidate to declare that the tender content, price or any other particulars concerning the tender have not been disclosed to any other party;
- A requirement for the candidate to complete fully and sign all tender documents;
- Notification that tenders are submitted to the Council on the basis that they are compiled at the candidates expense;
- A description of the award procedure and a definition of the award criteria (see Standing Order 15 for further details);
- A stipulation that any tenders submitted by email, fax or any other electronic means will not be considered;
- The method by which any arithmetical errors discovered in submitted tenders will be dealt with, in particular whether the overall price prevails over the individual rates in the tender;
- A statement that the Council is not bound to accept the lowest tender or any tender received;
- A statement that unless otherwise agreed by the Council, tenders for a part or parts of the works, services, goods or materials will be rejected.

13.3 All candidates invited to tender must be issued with the same information, at the same time, and subject to the same conditions. Any supplementary information must also be given on the same basis.

13.4 All invitations to tender must specify the terms and conditions of the contract that will apply. The content of contract documents is covered in more detail in Standing Order 20.

13.5 Candidates invited to respond must be given an adequate period of time in which to prepare and submit a proper tender, consistent with urgency of the contract requirement. This will normally be four weeks.

13.6 If so decided for any particular contract, the tender conditions should state that the Council may, in its absolute discretion, extend for all candidates the time and date for return.

14.0 Submission, Receipt and Opening of Tenders

- 14.1 Written tenders relating to formal contracts, and where an exemption to the Standing Orders does not apply, shall be received in an official envelope supplied by the Clerk for that purpose.
- 14.2 Such envelopes shall not bear any name or mark indicating the sender, and shall remain sealed in the custody of the Clerk until the time appointed for their opening.
- 14.3 On receipt by the Council, the envelope shall be initialled by the receiving officer and stamped with the date and time of receipt and shall be secured in the parish offices safe.
- 14.4 The Council shall be under no duty to consider any tender which is received after the time notified to candidates for return of tender or which otherwise does not comply with these instructions.
- 14.5 Tenders shall be opened at the appointed time and date by an authorised officer (either the Clerk or Deputy Clerk) in the presence of three Members of the Council. All tenders will be opened at the same time and each tender will be signed and dated by both the authorised officer and Members.
- 14.6 The Clerk will maintain a record on the appropriate contract file of all tenders received, including those opened and those tenders that have been returned as not complying with these instructions.

15.0 Award Criteria and Evaluation of Tenders and Contracts

- 15.1 Shortlisting and evaluation of tenders must have regard to the standards set out in the tender or contract specification and the award criteria for the tender or contract.
- 15.2 The responsible officer must ascertain if any British or European standards apply to the subject matter of the contract. These standards should have been clearly set out in the invitation to tender and contract specification as set out in Standing Order 13, and are necessary in order to properly describe the required quality of the contract.
- 15.3 The responsible officer must also define the award criteria appropriate to the evaluation of the tenders and shortlist of candidates. Award criteria must be designed in order to ensure an outcome that achieves value for money for the Council, and demonstrates economy, efficiency and effectiveness in the use of public resources.
- 15.4 The basic award criteria where price is the only consideration to be taken into account, would be as follows:-

- Lowest price to be accepted where payment is to be made by the Council;
 - Highest price to be accepted where payment is to be received by the Council;
- 15.5 However, in most cases there will be a number of considerations other than price that need to be taken into account and in these cases it should be stated that the 'most economically advantageous' tender will be accepted.
- 15.6 If the 'most economically advantageous' criteria is to be adopted, the award criteria must be further defined by reference to the various non- financial sub criteria.
- 15.7 Sub criteria may refer to a number of relevant considerations and these may include:-
- Quality of goods or service quality;
 - Future running costs;
 - Technical requirements;
 - Previous experience with the supplier or contractor;
 - Delivery date;
 - Environmental considerations;
 - Functional characteristics e.g. security and control features;
 - Safety considerations;
 - After sales service;
 - Technical support e.g. IT software support contract;
 - Any other relevant matters
- 15.8 Award criteria cannot include:-
- non-commercial considerations;
 - matter's which are deemed to be anti-competitive within the definitions in the Local Government Act 1988.
- 15.9 All tenders must be checked for arithmetic accuracy. If arithmetic errors are found, they should be notified to the tenderer, who should then be requested to reconfirm the figures or withdraw the tender.
- 15.10 Where the Council seeks clarification of a tender, this must either be requested in writing or by way of a meeting during which recorded minutes must be taken.
- 16.0 Post Tender Negotiation**
- 16.1 Post tender negotiation is defined as negotiations with any tenderer after the submission of a tender, but before the award of the contract, with a view to obtaining an adjustment in price, delivery or content.

- 16.2 However, if post tender negotiation results in a fundamental change to the contract specification, the contract must be re-tendered.
- 16.3 Post tender negotiation must not be conducted where EC Procedure applies, as this may distort competition with regard to price.
- 16.4 Post tender negotiation must be carried out by the appropriate responsible officer and one other senior officer of the Council, preferably the Clerk.
- 16.5 Post tender negotiations should only be undertaken with the tenderer that who has previously been identified as submitting the lowest or most economically advantageous tender.
- 16.6 Tendered rates and prices can only be adjusted in respect of a corresponding adjustment in the scope or quantity included in the tender documents and contract specification.
- 16.7 The responsible officer must ensure that all post tender negotiations are properly recorded by way of minutes of any meetings held and that agreement to any amendments is made in writing between the tenderer and the Council.

17.0 Acceptance and Award of Tenders

- 17.1 All contracts must be evaluated and awarded in accordance with the contract specification and the award criteria as detailed in Standing Order 15.
- 17.2 The responsible officer, in consultation with the Clerk, will be responsible for evaluating the tenders received and recommending the acceptance of the lowest or most economically advantageous tender.
- 17.3 Full details of the procurement, including the tender process followed, contract specification, tenders received, and the recommended award of the tender should be reported to the Finance and General Purposes Committee of the Council. Where the lowest priced tender is not recommended, full details must be given of the award criteria and the non-financial considerations that have been taken into account.
- 17.4 The Finance and General Purposes Committee will then consider the tender in respect of the matter.
- 17.5 If the lowest tender exceeds the agreed budget set aside for that matter, then a written report by the responsible officer or the Clerk must also be made to the Finance and General Purposes Committee requesting approval for the additional budget.
- 17.6 Unless otherwise decided by the Council, acceptance of any tender will not give rise to a contract until a purchase order or formal contract document is completed and signed. Where the invitation to tender stipulates a form of contract or specific contract terms, the form of contract or terms submitted by

the tenderer shall not be deemed to be accepted by virtue of the tender being received.

- 17.7 Following acceptance of a tender by the Council, the responsible officer should write to all tenderers who submitted a bid, with the reasons that they were unsuccessful including details of the award criteria and the prices or ranges of prices submitted, but without relating these to tenderer's names.

18.0 Withdrawal of Tender

- 18.1 In the event of any person or organisation withdrawing a tender or declining to sign a form of contract on being called upon to do so after the tender has been accepted by the Council, no further tender from such person or organisation, will in the absence of a satisfactory explanation, be considered by the Council.

19.0 Nominated Sub-Contractors or Suppliers

- 19.1 This Standing Order will have effect where the Council approves a contract for the execution of work with a main contractor and also proposes to nominate to the main contractor one or more sub-contractors or suppliers for the execution of the work or the supply of goods, materials or services within the main contract.

- 19.2 Where a sub-contractor or supplier is to be nominated to the main contractor, tenders for the nomination will be made in accordance with the normal provisions of these Standing Orders, and based on the financial thresholds detailed in Standing Order 5.

- 19.3 The terms of the invitation shall require an undertaking by the sub- contractor that if selected that they will be willing to enter into a contract with the main contractor on terms which indemnify the main contractor against their own obligations under the main contract in relation to the work or goods including in the sub-contract.

- 19.4 The tenders shall be opened, evaluated and awarded in accordance with Standing Orders 14, 15, 16 and 17 and reported to the appropriate Committee of the Council.

20.0 Content of Contract and Contract Conditions

- 20.1 Procurement of goods, materials, services or works, for which only written quotations are required, will be made by the issue of an official purchase order, duly certified by the appropriate responsible officer.

- 20.2 However, in specific cases, for example where the services or works to be procured are of a specialised or technical nature, a written contract may also be required, signed by the Clerk and the Chairman of the Council and the Chairman of the Finance and General Purposes Committee, and an authorised representative of the contractor, prior to the issue of an official purchase order.

- 20.3 Written contracts must, as a minimum, clearly state the following:-
- Signed and sealed Form of Agreement between the Council and the Contractor;
 - Definitions of the terminology used within the Contract;
 - Contract period if applicable;
 - Full description of the services or works to be provided;
 - The time and dates for the delivery of goods, materials or services to be supplied or the performance of works to be delivered;
 - Any penalties for not meeting the terms of the contract
 - Staffing requirements and rules;
 - Contract monitoring, inspection and audit arrangements;
 - Use of Council premises and equipment;
 - Confidentiality rules;
 - Security arrangements;
 - Contract price and payment terms;
 - A statement that the contract is subject to the appropriate laws for the prevention of corruption;
 - Contract default rules;
 - Contract termination rules;
 - Arbitration rules;
 - Assignment of benefit, transfer and sub-letting rules;
 - Income Tax rules;
 - Indemnity to the Council;
 - Insurance requirements;
 - Health and Safety Act requirements;
 - Data Protection Act requirements;
 - Equalities legislation requirements;
 - Right of access to relevant documentation and records of the contractor for monitoring and audit purposes
- 20.4 All contracts must be concluded formally in writing before the supply, service or works begins, except in exceptional circumstances, with the consent of the Clerk. An award letter is not sufficient for these purposes.
- 20.5 All contracts for the execution for services or works must include a condition that the contractor will be responsible for ensuring that all persons employed by them, and by any sub-contractor, are in the contractor's or sub-contractor's direct employment.
- 20.6 It is expressly agreed that the contractor and sub-contractor will not use 'lump labour'. The expression 'lump labour' means the practice of individual work people or groups of work people contracting as independent labour only sub contracts, and not being in the direct employment of the contractor or sub-contractor.
- 20.7 The following clauses regarding the prevention of corruption must be included in every written contract:-

The Council may terminate a contract immediately and recover all of its losses if the contractor, its employees or anyone acting on the contractor's behalf: -

- *Offer, give or agree to give any inducement, reward or consideration of any kind (other than the tender itself) to any person in relation to the listing or selection of any tenderer or the award of any contract with the Council, whether or not the contractor has knowledge of those acts;*
- *Commit any offence under the Prevention of Corruption Acts 1889 to 1916 (or equivalent law);*
- *Give any fee or reward, the receipt of which is an offence under Section 117 of the Local Government Act 1972 (or equivalent law);*
- *Is shown to have knowingly or recklessly given materially false information to the Council within a tender.*

20.8 If the Council terminates the contract under Standing Order 19.8 it shall be entitled to recover from the contractor the amount of any loss caused to the Council. The Council shall not be liable to the contractor for any loss (including loss of profit) caused to the contractor by the termination.

20.9 The contractor will indemnify the Council against all liability, loss, damage, death or personal injury arising out of the performance of the contract. The contractor will have both employers' and public liability insurance to the minimum value that the Council requires and will provide evidence of current insurance cover to the Council.

20.10 The contractor shall pay to the Council liquidated and ascertained damages if the contractor fails or delays in performance. The amount of damage for each period or instance of failure or delay will be set out in the contract and shall be a genuine estimate of the Council's loss. This clause may be omitted where the Clerk considers it impractical or unreasonable to apply.

20.11 The contractor shall ensure that all sub-contractors employed to undertake the contract are contractually bound to comply with the requirements of this Standing Order and that all such sub-contractors also comply with these requirements.

21.0 **Declarations of Interest**

21.1 If it comes to the knowledge of a Member or a senior officer of the Council, that a contract in which he or she has a pecuniary interest has been or is proposed to be entered into by the Council, he or she must give immediate written notice to the Clerk, who will report such declarations to the Council.

21.2 Those Members or officers would then be excluded from taking part in any discussions or considerations relating to the contract or voting thereon at the Committee meeting at which the procurement is to be discussed.

21.3 The Clerk will maintain a register of all declarations of interest notified by Members or Officers

22.0 British and European Standard Specification

22.1 Where an appropriate British Standard Specification or Standard Code of Practice issued by the British Standards Institution, or any relevant European Standards issued by the European Community is current at the date of the tender, the contract shall require that all goods and materials used or supplied and all workmanship shall be in accordance with those standards.

23.0 Engagement of Consultants

23.1 The engagement of consultants must be procured in line with the overall requirements of the Standing Orders.

23.2 In considering the need to engage consultants, responsible officers must have a clear understanding of:-

- (1) The precise nature of the work involved and the reasons why it cannot be undertaken by existing staff;
- (2) Whether sufficient budget provision exists to employ the consultant(s);
- (3) The procurement action required in accordance with these Standing Orders;
- (4) The fees or fee scale payable, and when payable, including details of any instalments;
- (5) The basis on which the fee or fee scale is calculated;
- (6) What, if any, additional payments or expenses are payable and on what basis;
- (7) What provision there is if the work is aborted part way through or if an extension or addition to the work is required;
- (8) Provision for consultants to give the Council ownership of or copyright in any documentary work on completion of the contract.

23.3 The engagement of consultants will be subject to the completion of a formal written letter, contract of appointment or brief.

23.4 Where the value of the consultancy is more than £5,000 per year, approval should be sought from the Finance and General Purposes Committee prior to engaging the consultant in line with the main rules of the Standing Orders unless an Exemption to the Standing Orders has been applied for and approved.

23.5 Where an architect, engineer, surveyor or other consultant is responsible for the supervision of a contract he/she shall comply with the Council's Standing Orders and Financial Regulations as though he/she were an officer of the Council and shall produce to the Clerk all records kept in relation to the contract.

24.0 **European Community (E.C.)**

- 24.1 In the event of any provision of these Standing Orders being inconsistent with the provisions of any directive or rule issued by the E.C. which has legal effect in the United Kingdom, these Standing Orders shall be varied so far as they are inconsistent with such directive or rule and the E.C. requirements will be applied accordingly.

These Standing Orders for Contracts and Procurement were approved by Horden Parish council at their meeting on: 4th July 2017

Minute Reference: HPC 17/18/064

Appendix 1 – Horden Parish Council Authorised Officer Signatory List

The following officers are authorised officers in accordance with the Council's Financial Regulations and Standing Orders for Procurement:-

Name	Position	Signature
Mr. Paul Davison	Clerk to the Council	
Miss Gemma Rowe	Deputy Clerk	
Mr. Alan Atchinson	SWC Manager	
Mr. Colin Muir	Parks and Cemetery Manager	

Date Approved: _____

**Appendix 2 - Contracts and Procurement
Standing Orders Exemption Application Form**

Description of Procurement / Contract Activity	Responsible Officer	Procurement Amount (£)
<p><i>Please provide a brief description of the procurement activity or the contract to be entered into,</i></p>		
<p>Description of the goods, services, materials or works to be procured;</p> <p><i>Please provide a detailed description of the goods, services, materials or works to be procured.</i></p>		
<p>Name of Contractor / Supplier;</p> <p><i>Please provide details of the preferred contractor or supplier.</i></p>		
<p>Exemption Claimed;</p> <p><i>Please refer to Standing Order 6.7 and select an exemption from the list.</i></p>		
<p>Reason for application for Exemption;</p> <p><i>Please provide details for the reasons for application for an Exemption from the Standing Orders.</i></p>		
<p>Date reported to the Finance and General Purposes Committee;</p> <p><i>Please insert the date of the meeting for the F&GP Committee to which application for the Exemption is to be considered.</i></p>		
<p>Officer:.....Councillor:..... Position:.....Position:..... Signature:.....Signature:..... Date:.....Date:.....</p> <p>Minute Reference:.....</p>		