

**Proposed Procurement & Contract Standing Orders**Standing Order 1

## Compliance

- 1.1 Every contract awarded by or on behalf of the Council in respect of:-
  - a) Goods;
  - b) Works; or
  - c) Services

Of any category or commodity, shall be procured and awarded, in accordance with:

  - a) These Standing Orders
  - b) The Public Contracts Regulations 2006 (amended 2009)
  - c) EU directives and regulations or other applicable statutory regulation being in force in the United Kingdom
  - d) The Council's Financial Regulations and Standing Orders,
  - e) Corporate Procurement Strategy and any Procurement Standard Operating Procedures issued under paragraph 1.2.
- 1.2 The Chief Executive, in consultation with the Leader of the Council, the Cabinet Member for Central Services, Culture & Heritage and the Chief Finance Officer, may issue, from time to time, Procurement Standard Operating Procedures setting out, in further detail, procedures to be followed when awarding contracts under these Contract Standing Orders, together with guidance on relevant best practice for procurement.
- 1.3 Compliance with the procedures set out in the Procurement Standard Operating Procedures is mandatory under these Standing Orders, together with the application of best practice. Application of the Procurement Standard Operating Procedures is to be consistent across all Council Departments, including all areas where the procurement function is delegated. It is the responsibility of the Approved Officer to ensure compliance with the procedures is maintained where procurement is delegated to an external supplier or organization.
- 1.4 These Standing Orders shall be read together with the Procurement Standard Operating Procedures. The Procedures and Standing Orders carry equal weight, and therefore a breach of the Procedures will have the same effect as a breach of these Standing Orders.
- 1.5 Corporate Directors, Deputy Directors and Heads of Service shall ensure that all officers who procure goods, works or services comply with these Standing Orders and the Procurement Standard Operating Procedures. Only officers who are deemed to be qualified and competent by the Head of Procurement, in conjunction with the appropriate Corporate Director, may procure goods, works or services. These officers are to be identified within each Department's individual Scheme of Delegations, and known as "Approved Officers". The Head of Procurement and each Corporate Director shall maintain a register of Approved Officers.
- 1.6 An Approved Officer shall be designated for all contracts, irrespective of value, and be competent in managing the supply of goods, works or services as appropriate.

For the avoidance of doubt, this does not mean sourcing and placement of contracts.

- 1.7 The Head of Procurement shall be responsible for maintaining a register of all contracts where the total contract value is £50,000 or greater.
- 1.8 No contract shall be procured unless written approval is obtained in accordance with the Scheme of Delegations. Such written approval will confirm there is adequate provision within the appropriate capital or revenue budgets or other financial provision, i.e. grant funding.
- 1.9 Pursuant to paragraph 1.8, before obtaining written approval, Approved Officers shall consult the Register of Contracts to ascertain if the Council has a contract for the goods, works or services required. If such a contract is in existence, the Approved Officer shall use the appropriate contract in force, and not procure another.
- 1.10 It shall be the duty of every Officer of the Council placing contracts or committing expenditure to obtain and demonstrate value for money, and that the goods, works and services are fit for the intended purpose.

## **Standing Order 2**

### **Ethics & Probity**

- 2.1 Officers shall preserve the highest standards of honesty, integrity, impartiality and objectivity. This includes compliance with the Employees' Code of Conduct.
- 2.2 Pursuant to paragraph 2.1, breaches of compliance will be referred to the Chief Finance Officer and the Head of Procurement in the first instance, who in conjunction with the Head of Audit and Enforcement, will authorise any investigation. The outcome of any investigation may be referred to the Head of Human Resources to determine if disciplinary action should be taken, in accordance with the Employee's Code of Conduct.
- 2.3 In accordance with Section 117 of the Local Government Act 1972, The Borough Solicitor shall maintain a record of any officer who has a pecuniary interest in a contract with the Council, and notify in writing their Head of Service where, in the course of their work, have a personal financial or non-financial interest.
- 2.4 Any officer procuring goods, works or services must declare gifts and hospitality received or offered, in accordance with the Employees' Code of Conduct.

## **Standing Order 3**

### **Member authority, Planning Ahead and the Decision-Making Process**

#### **3.1 Member authority**

Hillingdon's decision-making process requires for the majority of contract decisions to be determined by the Cabinet or a Cabinet Member(s) to provide for important Member oversight and accountability when using public monies. It is the prerogative of the Cabinet or Cabinet Member to decide to accept or not accept any tender recommended by Officers.

Council sets the financial thresholds by which tenders shall be accepted by Members as set out in Standing Order 6.

#### **3.2 Planning ahead**

Before any invitation to tender, Corporate Directors and their officers shall plan ahead and build into their project timetable the necessary informal approvals, notifications (via the Forward Plan) and the period of the formal decision-making process. Sufficient time should be planned to consider all service provision issues, including alternative decisions by the Cabinet or Cabinet Member.

Corporate Directors should first seek the informal approval of their Cabinet Member to invite tenders. For tenders that have a corporate impact, the Leader of the Council should also be consulted beforehand. Cabinet Members will expect officers to have considered all alternative options before presenting them with a proposal to tender a contract.

The Corporate Directors shall then ensure that the Forward Plan is updated with regard to forthcoming tender decisions which require formal approval by the full Cabinet or a Cabinet Member. Advance notice of at least 3-4 months should be given on the Forward Plan.

#### **3.3 Decision-making process and timings & transparency**

Any tender decision identified on the Forward Plan shall require a formal tender summary report to be prepared providing full tender evaluation information, using the sign-off procedures and templates approved by Democratic Services. For tender decisions to a particular meeting of the full Cabinet, officers should adhere to the report deadlines set out by Democratic Services. For tender decisions to a Cabinet Member(s), officers should ensure they are taken within the month notified.

From the time the report is ready, the formal decision-making process can take approximately 1 month before a decision is made. This time period is mainly for legal reasons, but also to ensure that Members have time to read the report. In addition, after any decision is made by the Cabinet or Cabinet Member, 5 days must expire for the 'scrutiny call-in' period before any decision can formally take effect and any contract can be signed, executed or sealed.

In exceptional circumstances to speed-up the democratic decision-making process, Special Urgency or Urgency procedures may be invoked to the relevant body

authorised to make the decision (Leader of the Council/Cabinet Member or the Cabinet) but only with the prior agreement of the Leader of the Council via the relevant Corporate Director. Such procedures are set out in Part 4 D - Access to Information Procedure Rules. For transparency, ordinarily all Cabinet and Cabinet Member decisions to accept (or not accept) a particular tender are made public immediately following the decision, including the name of the successful tenderer / organisation and the value of the contract.

## **Standing Order 4**

### **Invitations to Tender**

- 4.1 a) Tenders or quotations shall be invited for all proposed contracts with an estimated total contract value, equal to or exceeding the minimum thresholds as set out in the Procurement Standard Operating Procedures. These thresholds are as follows: -

<b>Total Value</b>	<b>Minimum number of quotations or tenders</b>	<b>Award criteria</b>
£0 – 10,000	3 Quotations	Lowest price to apply
£10,000 – 50,000	5 Quotations	Most economically advantageous quotation
£50,000 & above	5 Tenders	Most economically advantageous tender

Pursuant to paragraph 1.1, every invitation to tender shall comply with all regulations and directives in force at that time.

- b) Where the award criteria is based on most economically advantageous tender, unless agreed in writing by the Leader of the Council, in conjunction with the Head of Procurement, tender evaluations shall be based on a minimum of 80% weighting in favour of price.
- 4.2 EU directives and regulations shall apply to the procurement of contracts with an estimated aggregate value equal to or exceeding the EU thresholds listed below that are in force at the time of tender, as set out in the Procurement Standard Operating Procedures and pursuant to paragraph 4.3:-

<b>Goods and services</b>	<b>£164,176 or greater</b>	<b>Minimum 5 Tenders to be sought</b>	<b>Most economically advantageous tender or lowest price</b>
Works	£4,104,394 or greater	Minimum 5 Tenders to be sought	Most economically advantageous tender or lowest price

*\* The Head of Democratic Services may update the above OJEU figures in the Standing Orders, as and when prescribed from time to time.*

- 4.3 Unless it is in the best interests of the Council, or forms part of a provision of duty of care, no requirement for goods, works or services may be sub-divided into smaller contracts with the intention of circumventing the requirements of paragraph 4.1, or for the purpose of avoidance of EU statutory requirements, as stated in Regulation 8 of the Public Contracts Regulations 2006 (amended 2009).
- 4.4 Pursuant to paragraph 4.1 and the requirement for obtaining best value and adequate competition, competitive tenders or quotations shall not be required if the Approved Officer is satisfied, and has obtained written agreement from the Head of Procurement and the Leader of the Council, that:
- (i) it is not reasonably practicable or prudent in meeting the Council's objectives to obtain competitive tenders or quotations; or
  - (ii) there would be no effective or genuine competition; or
  - (iii) it is necessary to safeguard life or property; or
  - (iv) the works, services or goods will be obtained through an approved buying consortium, or from their nominated suppliers; or
  - (v) the works, services or goods will be obtained through a corporately tendered and managed contract that has been established for all officers of the Council to use, and
  - (vi) all such decisions are authorised by the Head of Procurement in writing.
- 4.5 Before proceeding in accordance with paragraph 4.1 in relation to any expenditure, the Approved Officer shall consult the Procurement Standard Operating Procedures, to confirm and determine how the goods, works or services should be tendered. Appropriate guidance shall also be sought from the Procurement Team.
- 4.6 Tenders for all proposed contracts with an estimated total contract value greater than £50,000 shall be conducted by the Procurement Team, unless otherwise instructed by the Head of Procurement. All such tenders shall be published on the appropriate eTendering portal as advised by the Procurement Team.

## **Standing Order 5**

### **Custody, Receipt & Opening of Tenders by Democratic Services**

- 5.1 The Approved Officer shall ensure that custody, opening and acceptance of tenders is in accordance with the Procurement Standard Operating Procedures.
- 5.2 Receipt and custody of tenders

- (a) Tenders shall be returned by the tenderer to the Civic Centre. Electronic tenders shall be returned to the email address specified in the tender instructions, or uploaded to the appropriate e-tendering portal as specified.
- (b) On receipt by the Council, tenders shall be date-and time-stamped on their envelope or outer wrapper. Each electronic tender received shall be electronically date stamped.
- (c) The Mail Room Supervisor, or equivalent officer responsible for receiving mail or online documents, shall:
  - (i) provide a receipt for tenders received, on request;
  - (ii) keep a record of the number of tenders received;
  - (iii) after the time and date specified for their return, hand all tenders received to the officer responsible for them, and obtain a receipt / signature.
- (d) Tenders shall be kept in secure custody until they are opened. Electronic tenders shall be stored in a secure folder.

### 5.3. Register of tenders

A register of tenders received shall be maintained by each Corporate Director and updated by each Approved Officer as necessary. The register should contain details of each tender, the signatures of the officer opening the tenders and the witness and the signature of the officer to whom the tenders were passed for custody after opening. Where tenders are received electronically this register shall be maintained within the appropriate eTendering portal as advised by the Procurement team.

### 5.4. Tender opening

- (a) Tenders shall be opened at one time and only in the presence of such officer or officers as the Head of Democratic Services and/or Approved Officer or the Corporate Procurement Unit may determine.
- (b) An officer from the Corporate Procurement Unit or Democratic Services should be present when tenders are opened.
- (c) The tenders shall be opened one at a time and the opening sequence recorded, together with any appropriate comments or notes.
- (d) As each tender is opened the name of each tenderer and the amount of the tender must be recorded in the tender register.

### 5.5 Late Tenders

- (a) A tender received after the last date and time when tenders should be received must be recorded as a late tender in the tender register.
- (b) Such a late tender shall only be opened and considered for acceptance on the authorisation of the Head of Procurement and the Head of Democratic Services.
- (c) The Head of Procurement and the Head of Democratic Services may consider that a tender received late should be considered for acceptance under the following circumstances:
  - (i) there is a bona fide reason, recorded in writing, for the tender being late; and
  - (ii) other tenders that have arrived on time have not been opened.
- (d) Where a tender received late is for a contract greater than £50,000, the Head of Procurement and Head of Democratic Services shall in addition seek approval from the Cabinet Member for Central Services, Culture and Heritage prior to considering it for acceptance.

- (e) Where a tender received late is for a contract value of greater than £250,000, the Head of Procurement and Head of Democratic Services shall in addition seek approval from the Leader of the Council prior to considering it for acceptance.
- (f) In circumstances where the Head of Procurement and the Head of Democratic Services are uncertain whether a late tender should be opened and considered for acceptance, the matter should be referred to the Borough Solicitor for legal advice.

## **Standing Order 6**

### **Acceptance of tenders and financial thresholds for authority**

#### 6.1 General Rules

Where tenders or quotations have been received in accordance with the Procurement Standard Operating Procedures, they can only be accepted if the Approved Officer has satisfied themselves that: -

- a) All approvals required by Cabinet, Cabinet Member or Delegated Officers set out in these Standing Orders, the Council's Constitution and Financial Regulations have been obtained first;
- b) the tender is compliant;
- c) the tender offers best value in accordance with the Procurement Standard Operating Procedures.
- d) all appropriate risks have been assessed and mitigated, as required by Procurement Standard Operating Procedures.

#### 6.2 Acceptance of tenders or quotations

A tender or quotation summary report recommending final contractor selection will be required prior to acceptance. This document will form the basis for decisions required as set out below.

- (a) In the case of a tender or quotation which does not exceed £9,999 for which budgetary provision exists, the Approved Officer shall be authorised to accept the most satisfactory tender.
- (b) In the case of a tender or quotation which is between £10,000 but is below £50,000 for which budgetary provision exists, the Approved Officer, with informal written acceptance provided by the relevant Cabinet Member portfolio holder and Leader of the Council shall be authorised to accept the most satisfactory tender.
- (c) In the case of a tender which exceeds £50,000 but is below £500,000 for which budgetary provision exists, the relevant Cabinet Member portfolio holder and the Leader of the Council shall be authorised to accept the most satisfactory tender.
- (d) In the case of a tender which exceeds £500,000 for which budgetary provision exists, the Cabinet shall be authorised to accept the most satisfactory tender.
- (e) Additional authority may be provided for (or required) as set out in section 6.3 in order to accept tenders outside the ordinary thresholds above or for those significant in nature.
- (e) A re-assessment of the Contractors financial stability shall be carried out where the tender value exceeds £100,000. This would normally be undertaken during the pre-qualification and/or at the tender submission stage of the

process. This information should be presented in any report to the Cabinet or Cabinet Member.

- (f) Tenders or quotations can only be accepted in accordance with the agreed award criteria i.e. most economically advantageous or lowest price.

In the case of decisions required by the Cabinet or Cabinet Member then the procedures in Standing Order 3.3 shall be followed.

### 6.3 Authority levels for tender or quotation acceptance

- (a) Council has agreed the following financial thresholds for authority to accept a tender or quotation:

£0 – £9,999	Approved Officer *
£10,000 - £49,999	Approved Officer with <u>informal</u> written acceptance from relevant Cabinet Member and Leader of the Council *
£50,000 – £499,999	Formal democratic decision by the relevant Cabinet Member and the Leader of the Council *
£500,000 or greater	Formal democratic decision by the Cabinet */**

- (b) *\* Any tender, at any value, if deemed a 'key decision', must be indicated on the Forward Plan in advance and determined formally*

If any such decision on any tender is to have a significant impact upon communities, people or services within 2 or more wards and/or significantly outside the approved budget (by meeting the criteria for key decisions) then it must be taken by Leader & relevant Cabinet Member or the Cabinet, dependent on value as a formal democratic decision and prior details included within the Council's Forward Plan, except if taken under urgency rules. The Council's definition of a key decision is set out in Article 7.

- (c) *\*\* Tenders above £500,000 in the absence of a regular Cabinet meeting and if decision deemed urgent by the Leader of the Council*

Cabinet is the primary body where tenders over £500k in value are considered in the ordinary course of events. In the absence of a Cabinet meeting where a decision is required that if not taken may prejudice service or project delivery or if a decision is deemed urgent by the Leader of the Council, then the Leader of the Council and relevant Cabinet Member may take a formal democratic decision on the matter, with it being reported to a subsequent Cabinet for ratification via a formal report.

- (d) These thresholds and authority requirements shall also apply to single tender actions, contract extensions and variations.

- (e) In the case of a formal democratic decision required by the Leader of the Council / Cabinet Member or the Cabinet then the procedures in Standing Order 3.3 shall be followed.

## 6.4 Agency / Temporary Workers and Consultants

Council has agreed different financial thresholds for authority for appointing individual temporary workers and accepting tenders for appointment of consultants as follows:

Acceptance of tender for appointment of consultants	Less than £5000	Corporate Director	In writing
	£5000 - £50,000	Formal approval by the Cabinet Member	Report
	£50,000 or greater	Formal approval by the Cabinet	Report
Approval of individual temporary workers	Less than £5000	Corporate Director	In writing
	£5000 and £50,000	Cabinet Member (informal approval via HR and Director)	Report
	Over £50,000	Formal approval by the Cabinet	Report

In the case of decisions required by the Cabinet or Cabinet Member then the procedures in Standing Order 3.3 shall be followed.

- 6.5 Where individual orders for goods, works or services are placed with a single contractor independently of each other and the cumulative value over the period of a financial year moves between the authorisation levels in Standing Orders 6.3, officers should seek the necessary approval in accordance with the total cumulative value.

## Standing Order 7

### Execution of Contracts

- 7.1 Every contract that is entered into by the Council shall be in writing and executed in accordance with the following:-

<b>£10,000 – £49,999</b>	<b>Signed by, the Head of Procurement in writing.</b>  <b>As set out in 9.2 for purchases below £1,000 where no formal contract is in place, purchase orders shall be considered as a form of contract.</b>
£50,000 - £99,999	Signed by the Chief Finance Officer in writing
£100,000 or greater	Sealed with the Common Seal of the Council and attested by a Member of the Council and the Borough Solicitor or any other officer authorised by the Borough Solicitor and the Leader of the Council in writing.

- 7.2 Pursuant to Standing Order 1, a record of each contract executed in accordance with paragraph 7.1, shall be entered on a Register of Contracts maintained for that purpose by the Head of Procurement.
- 7.3 No Council officer may call off a contract for goods, works or services unless that contract is in writing and executed in accordance with paragraph 7.1.
- 7.4 Legal Services shall be responsible for ensuring that all contract executions are managed correctly, in accordance with paragraph 7.1. Sufficient copies of each contract shall be signed, and an electronic version will be passed to the Procurement Team, whereupon this will be stored in the Contracts Library.

## **Standing Order 8**

### **Contract Extension and Variation**

- 8.1 Before approval is granted to extend or vary contracts, Corporate Directors and their officers shall give due consideration to all potential options that may exist to repackage goods, works and services. An appraisal of such options shall be produced and provided to the appropriate Cabinet Member for review in accordance with the provisions of Standing Order 3. Only where the Cabinet Member approves the option that a contract shall be extended or varied shall such approval be sought.
- 8.2 Contracts may only be extended where the express provision in the agreement exists to do so and the appropriate approval to extend has been provided. This approval shall be sought in accordance with the levels of tender acceptance contained in Standing Order 6.3.
- 8.3 Contracts may only be varied where the express provision in the agreement exists to do so and the appropriate approval to vary the contract has been provided. This approval shall be based upon the approval required to execute the contract as contained in Standing Order 7.1.
- 8.4 Where any single proposed contract variation or cumulative value of agreed contract variations is likely to exceed the value originally approved then Officers should, at the earliest opportunity, seek approval to exceed the value from the relevant Cabinet Member and the Leader of the Council. If this exceeds 15% or more of the total contract value originally approved, a summary report shall be made to the Head of Procurement. Approval of the proposed contract variation shall be in accordance with Standing Order 8.2 and therefore may require either approved officer approval with informal written acceptance by the Cabinet Member, a formal Cabinet Member or Cabinet decision.

## **Standing Order 9**

### **Purchase Orders & Government Procurement Cards**

- 9.1 Where formal contractual arrangements are in place, purchase orders shall be considered as the method of commitment with a supplier and shall be required for all goods, works and services, irrespective of value, and raised in accordance with Procurement Standard Operating Procedures, pursuant to paragraph 1.1. No

goods, works or services shall be procured without the prior establishment of a legitimate purchase order, duly approved in accordance with the Council's Financial Regulations and the Scheme of Delegations.

Exemptions to this shall be approved in writing by the Chief Finance Officer and Head of Procurement as appropriate.

- 9.2 For purchases below £1000 where no formal contract is in place, purchase orders shall be considered as a form of contract and shall be required for all goods, works and services, and raised in accordance with Procurement Standard Operating Procedures, pursuant to paragraph 1.1. No goods, works or services shall be procured without the prior establishment of a legitimate purchase order, duly approved in accordance with the Council's Financial regulations and the Scheme of Delegations.

Exemptions to this shall be approved in writing by the Chief Finance Officer and Head of Procurement as appropriate.

- 9.3 The Council recognises the need to ensure efficient processes are used to procure lower value goods, works and services. Therefore Government Procurement Cards may be used to procure goods, works and services as follows:-
- a) Purchases less than £500
  - b) Single purchases where the supplier will not be used again
  - c) Urgent or emergency purchases where it is not possible to raise a purchase order, pursuant to paragraph 9.2

Exemptions to this shall be approved in writing by the Chief Finance Officer and Head of Procurement as appropriate.

## **Standing Order 10**

### **Delegated Authority / Local Authority Maintained School Procurement**

- 10.1 Delegated Authority to procure goods, works or services may be awarded only with the written approval of the Chief Executive, Chief Finance Officer and the Head of Procurement, and only when the application for Delegated Authority is supported by a detailed business case prepared in accordance with the Procurement Standard Operating Procedures.
- 10.2 Departments, Service Areas or Officers who have been awarded Delegated Authority shall comply with these standing orders and the Procurement Standard Operating Procedures at all times. Breaches of compliance will result in the removal of Delegated Authority, as required by the Head of Procurement, and possible disciplinary action may also be initiated.
- 10.3 Local authority maintained schools are required to abide by the Council's Standing Orders with respect to purchasing, tendering and contracting. Governing Bodies are also empowered under paragraph 3 of schedule 1 to the Education Act 2002 to enter into contracts, and in most cases they do so on behalf of the Local Authority as maintainer of the school. The Council has therefore set the following delegated authority and criteria for the acceptance, consistent with the Financing Scheme for Schools approved by Cabinet:

Value Range	Process to follow	Description	Approval
Up to £3,000	Best Value	Officers to demonstrate best value has been achieved	Headteacher
£3,001 - £10,000	Quotes	Three written quotes required	Headteacher
£10,001 – £50,000	Quotes	Minimum of 5 written quotes	Governing Body
£50,001 - £100,000	Tenders	Minimum of 5 tenders	Governing Body
£100,000 and above	Tender	Minimum of 5 tenders	Governing Body and Local Authority
£164,176 and above *	OJEU notice	European tender (goods/services)	Governing Body and Local Authority

Governing Bodies are required to obtain a counter-signature on contracts with the Local Authority where the value of the contract exceeds £100,000. The only exceptions to this are:

- a) contracts of employment entered into by aided or foundation schools;
- b) contracts for the works or fees associated with building projects at aided schools where the project is the governors' liability;
- c) contracts for the works or fees associated with building projects at foundation schools where the funding (including DfE funding) provided via the Local Authority is less than £100,000 (i.e. in practice this exemption is likely to occur only where a foundation school has generated the funding for the project itself through land disposal, sponsorship or other fund-raising).

The Local Authority counter-signatory for the London Borough of Hillingdon will be the Corporate Director of Finance or as sub-delegated by the Director in the Directorate's Scheme of Delegations.

*\* The Head of Democratic Services may update the above OJEU figures in the Standing Orders, as and when prescribed from time to time.*

## **Standing Order 11**

### **Exemptions from Standing Orders**

- 11.1 In any circumstances not provided for by the preceding Standing Orders, an Approved Officer will consult with the Chief Finance Officer and the Head of Procurement, in the first instance, where an exemption is required.
- 11.2 These Standing Orders shall not apply to the following services or actions that are managed by separate policies and guidelines:
  1. Contracts for the acquisition or lease of land and/or real estate.

2. Contracts for permanent or fixed term employment.
3. Direct Payments to citizens following care assessment, for example, payments provided under Self Directed Support or individual budgets.
4. When the Chief Executive's Emergency Contract Delegation Protocol is invoked, with the agreement of the Leader of the Council (see Annex A for protocol). Such decisions will be reported to Cabinet for ratification.
5. When the Leader of the Council deems a decision urgent under his delegation in relation to extreme weather and incidents. Such decisions will be reported to Cabinet for ratification.

11.3 Where these Standing Orders may conflict with any separate rules or guidance, and the Procurement Standard Operating Procedures, the Head of Procurement, the Cabinet Member for Central Services, Culture and Heritage and the Borough Solicitor will determine which takes precedence.

## **Standing Order 12**

### **Property Standing Orders**

#### 12.1 Application

1. This procedure rule applies where there is a Property (including land and/or buildings) transaction.
2. "Property transaction" means the acquisition or disposal of a freehold interest in property (including land and/or buildings) or a lease of greater than 7 years or other dealing with land, whether or not buildings, plant and equipment, fixtures and fittings, or other assets are included in that transaction. A transaction concerning only plant and equipment, fixtures and fittings, or other assets is not a Property transaction. The grant of a temporary licence to occupy is not a Property transaction.
3. "major disposal" means a Property transaction which consists of either a disposal of the freehold where the consideration exceeds £100,000, or the grant of a lease of greater than 7 years where the rent exceeds £30,000 per annum or where the premium exceeds £100,000.
4. "the property procedures" means the procedures adopted by Corporate Property and Construction from time to time for the management, use, acquisition and disposal of property, in consultation with the Deputy Chief Executive and Corporate Director of Residents Services and the Borough Solicitor.
5. "best consideration" means the legal obligation upon the Council to achieve a consideration, which is the best that can reasonably be obtained.
6. Principles to be applied are that policy decisions on property, (e.g. property policies and decisions on what property to purchase or sell), should be made by the Cabinet or by the Cabinet Member for Finance, Property and Business Services. Professional decisions, (e.g. how to market, negotiations etc) should be delegated to officers.

#### 12.2 Approval of Major Disposals

1. The principle and method of each major disposal must be approved by Corporate Property and Construction making recommendations to the

Cabinet Member for Finance, Property and Business Services or the Cabinet. When determining such matters they shall consider a report:

- a) specifying the property (land and buildings) to be disposed of;
  - b) confirming that the property has been declared surplus to the Services'/Council's requirements;
  - c) advising upon the proposed method of disposal, and providing the reasons for selecting that method;
  - d) in matters where the Council must achieve best consideration, confirming that the proposed method of disposal which has been selected, is most likely to achieve this;
  - e) in matters where it is proposed that the disposal should be for less than best consideration, giving reasons for and against seeking best consideration and, following consultation with the Borough Solicitor, specifying the relevant legal powers of the Council to accept less than best consideration.
2. The principal terms of major disposals (except where the approved method of disposal is by auction) must be approved by Corporate Property and Construction making recommendations to the Cabinet Member for Finance, Property and Business Services or the Cabinet as appropriate. When determining such matters, they shall consider a report confirming either that the consideration agreed represents 'best consideration', or, following consultation with the Borough Solicitor, specifying the relevant legal powers of the Council to accept less than best consideration.
3. In major disposals where the approved method of disposal is the inviting of tenders or offers, the disposal must be advertised in at least one local, national, international or specialist newspapers or publications, as determined by Corporate Property and Construction.

### 12.3 Dealing with tenders and offers

1. The receipt and opening of tenders and offers will be conducted in accordance with Standing Order 5 and the Council's Procurement Standard Operating Procedures
2. In cases where the duty to achieve 'best consideration' (the best price that can reasonably be obtainable) applies, when a tender or offer representing 'best consideration' is received late, or is otherwise invalid as described in Standing Order 5, Corporate Property and Construction will consult with the Borough Solicitor and the Cabinet Member for Finance, Property and Business Services. If they agree that the tender or offer should be considered for acceptance and it is possible that other tenderers/offers will otherwise be prejudiced, all tenders/offers shall, at the Council's discretion, be given the opportunity to resubmit their tenders/offers within a given timescale.
3. In cases where the duty to achieve 'best consideration' does not apply, when a tender is late or contains errors, the provisions in the Council's Procurement Standard Operating Procedures will apply.

## 12.4 Disposals and Acquisitions by Auction

1. In disposals where the approved method of disposal is by auction, up to three auctioneers approved by Corporate Property and Construction must be invited to provide a written quotation as to service offered, commission and additional costs. The most advantageous quote, taking into account pricing and service level offered, must be selected.
2. A “reserve price”, when recommended by the auctioneer, will be set by Corporate Property and Construction in consultation with the Borough Solicitor and the Cabinet Member for Finance, Property and Business Services. The reserve price must be disclosed only to the auctioneer and the Council’s legal and property officers attending the auction. The legal officer shall, upon a sale being 'knocked down' be authorised to sign contracts or relevant papers on the day of the sale.
3. In the case of any acquisition of land, property and artefacts at auction, the price bands and/or limits for bidding and the authority for a particular officer to acquire on behalf of the Council, will be determined by the Deputy Chief Executive and Corporate Director of Residents Services, with the agreement of the Leader of the Council and (if land/property) Cabinet Member for Finance, Property & Business Services. Following the auction, any successful acquisition will need to be formally ratified by the relevant body within existing delegations and thresholds in the Constitution and if property/land related, those given to Officers, the Cabinet Member for Finance, Property and Business Services or the Cabinet as set out in section 12.6 below.

## 12.5 Approval of Property Transactions (including Land and Buildings) other than major disposals

1. The principal terms of property transactions (other than acquisitions which are dealt with below), for the disposal of a freehold or leasehold interest in property (except where the method of disposal is by way of auction) and also other than those defined as major disposals in these Standing Orders, must be approved by Corporate Property and Construction in accordance with the Scheme of Delegations. Corporate Property and Construction must report each approval to the appropriate Cabinet Member in their Portfolio area or the Cabinet.
2. The principle and method of each acquisition, irrespective of value, and whether it relates to the acquisition of a freehold or leasehold interest or a licence, must be approved by Corporate Property and Construction making recommendations to the Cabinet Member for Finance, Property and Business Services or the Cabinet.

## 12.6 Authority levels for property matters

Council has agreed the following financial thresholds for property matters:

<p><b>General Acquisition and disposal:</b> Acquisition and disposal of land and property and also grant of easements and wayleaves</p>	Under £10k	DCE & Corporate Director of Residents Services	Informal - in writing
	£10k - £250k	Cabinet Member for Finance, Property & Business Services	Formal Democratic Decision - Report
	£250k or greater	Cabinet	Formal Democratic Decision - Report
<p><b>Purchase of Private Properties:</b> Acquisition and purchase of private properties in order to supplement affordable housing provision within the Borough</p>	All Values	Leader of the Council and Cabinet Member for Finance, Property and Business Services <b>Note: formal democratic capital release approval is also required.</b>	Formal Democratic Decision - Report
<p><b>Private Sector Leasing Scheme</b> (which includes the Finders Fee and Guaranteed Rental Schemes): authority to take any necessary decision, including those on expenditure, property and/or leases, in order to implement this Scheme.</p>	All Values	Deputy Chief Executive and Corporate Director of Residents Services, following informal sign-off by the Leader of the Council.	Informal - in writing
<p><b>Right to Buy - Housing Buy Back Scheme:</b> Authority to purchase and acquire properties, agree any necessary purchase prices and/or parameters and any other property transactions or decisions required to effectively implement the Scheme</p>	All Values	Deputy Chief Executive and Corporate Director of Residents Services, following informal sign-off by the Leader of the Council. <b>Note: formal democratic capital release approval is also required.</b>	Informal - in writing

Disposal at Less than Best Value - <b>disposal of any property for less than best consideration, including discounted rent on any property or premises owned by the Council</b>	All Values	Cabinet	Formal Democratic Decision - Report
<b>Property Licenses and Leases:</b> (including any surrenders, alterations or variations)	Under 7 years and under £10K	DCE & Corporate Director of Residents Services	Informal - in writing
	Under 7 years and £10k - £100k	Cabinet Member for Finance, Property & Business Services	Formal Democratic Decision - Report
	Under 7 years and above £100k	Cabinet	Formal Democratic Decision - Report
	7-25 years and any value up to £250k	Cabinet Member for Finance, Property & Business Services	Formal Democratic Decision - Report
	Over 25 years and any value	Cabinet	Formal Democratic Decision - Report

Any proposed property or land decision that will have a significant impact on two or more wards in the Borough and where the well-being of the community or change to the service level provided will affect a significant number of people, then this decision must be reported to Cabinet for determination (or ratification to a subsequent Cabinet meeting following a decision being made by the relevant body).

In the case of a formal democratic decision required by the Leader of the Council, Cabinet Member or Cabinet then the procedures in Standing Order 3.3 shall be followed.

## 12.7 Application of the Property Procedures and Standards

All property (including land) transactions must be conducted in accordance with the property procedures and standards, except:

- a) When the Chief Executive's Emergency Contract Delegation Protocol is invoked, with the agreement of the Leader of the Council (see Annex A for protocol).
- b) When the Leader of the Council deems a decision urgent under his delegation in relation to extreme weather and incidents. Such decisions will be reported to Cabinet for ratification.

## 12.8 Formalities

1. All contracts and other documentation entered into pursuant to all land transactions shall be in writing, and shall be signed or sealed with the Common Seal of the Council, as appropriate.
2. The Common Seal of the Council shall be attested by a Member of the Council and the Borough Solicitor or any other officer authorised by the Borough Solicitor in writing.
3. An entry of every sealing of a contract shall be made and consecutively numbered in a book kept for that purpose.

## **ANNEX A**

### **Chief Executive's Emergency Contract Delegation - Protocol**

In respect of a Council capital project or revenue service, where an emergency or exceptionally urgent situation arises in relation to a commercial contract where:

- a) The Leader and Chief Executive agree the urgency;
- b) There is no Cabinet meeting imminent;
- c) Any delay would seriously jeopardise the Council's finances or its ability to deliver services and;
- d) A previous executive decision has been made or proposed in respect of the capital project or service provision concerned,

authority is granted to the Chief Executive, subject to the written agreement of the Leader of the Council, to incur expenditure and make any new and necessary contractual decisions in order to secure the successful delivery of the project or service.

In such instances, the Council's Procurement and Contract Standing Orders can be waived. Any decisions taken must be reported to a subsequent Cabinet meeting for formal ratification.

This delegation is also set out in Part 3 - Officer Scheme of Delegations. The Deputy Chief Executive is authorised to invoke this power in the Chief Executive's absence.