**FINDING COMMON PURPOSE**

**TEMPLATE MODEL STANDING ORDERS**

**Introduction**

When exercising its procurement functions, the Council must make efficient use of resources in order to achieve best value and ensure that high quality goods, services or works are provided. The Council’s reputation is equally important and will be safeguarded when making procurement decisions.

By law, the Council is required to make standing orders with respect to Contracts for the supply of goods or services or for the execution of works which provide for securing competition and regulation of the manner in which tenders are invited.

The Council is a Contracting Authority for the purposes of the EU Public Procurement Directives, and is thereby legally bound to comply with certain practices and procedures in the award of Contracts.

The Council recognises that the procurement of the health and social care services involves a range of unique considerations, which are different and/or additional to those that apply to the procurement of other goods, services and works. Health and social care services are treated differently for the purpose of the EU Public Procurement Directives. The Council is also mindful of the duties in respect of the commissioning of adult social care services brought into force by the Care Act 2014. In order to reflect these principles the Council has therefore adopted these standing orders setting out the underlying principles and administrative procedures that will be followed in relation to the procurement and award of contracts for such services.

These standing orders can be either added to or read in conjunction with the Council’s other standing orders, but are intended to take precedence over any other standing orders in relation to the procurement of adult health and social care services. These standing order can also be included as an annex or appendix to the Council’s core contracting standing orders.

**Contract Standing Order 1: Interpretation**

In these Contract Standing Orders, the following terms have the following meanings:

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| **“Contract”** | 1. any agreement of the supply of the Services;
2. any Framework Agreement; or
3. any agreement where no payment is made by the Council but which is of financial value to the Provider;

but does not include in any circumstances1. an employment contract; or
2. a grant agreement
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| **“Council”** | [Name of Council] |
| **“EC Treaty”** | the Treaty establishing the European Community signed on 25 March 1957 as amended by subsequent treaties; |
| **“EU”** | European Union; |
| **“EU Public Procurement Directives”** | EU Directive 2014/24/EU, and any re-enactment thereof and any Directives and Regulations by which it or any re-enactment etc. is applied, extended, amended, consolidated or replaced; |
| **“EU Thresholds”** | thresholds for the advertisement of goods, works and services contracts as set out in the EU Public Procurement Directives and reflected in pounds sterling from time to time, and in particular the threshold for “social and other specific services” described in Article 74 of EU Directive 2014/24/EU and set at €750,000;  |
| **“Framework Agreement”** | an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged., whether procured in accordance with the UK Regulations or outside of them, under which specific purchases can be made (or “called-off”); |
| **“Grant”** | an arrangement where money is given for the benefit of all or a specified section of the local community for a stated purpose other than for by the procurement of services (whether or not the services are to be provided to the Council or to third parties); |
| **“Notification Procedures”** | a contract notice, prior information notice or other method of advertisement or notification of Contracts in OJEU provided for by the UK Regulations from time to time.  |
| **“OJEU”** | Official Journal of the European Union; |
| **“Provider”**  | a party, prospective or potential party to a Contract for the Services; |
| **“Services”** | adult health and/or social care services commissioned by the Council or jointly commissioned by the Council and a health body under these Standing Orders; |
| **“State aid rules”** | the rules governing aid from a European Member State to a business that the Treaty of Rome declares generally incompatible with the aims of the common market, including financial aid that favours selected businesses and has the potential to distort competition and affect trade between EU Member States;  |
| **“UK Regulations”** | the regulations in force in the United Kingdom or any part of it from time to time giving effect to the EU Public Procurement Directives, in England, Wales and Northern Ireland at the time of writing being the Public Contracts Regulations 2015 (SI2015 (102)) and all subsequent regulations.  |
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Every Contract made by the Council or on its behalf (irrespective of the source of funding) shall (where they apply) comply with the EC Treaty, the EU Public Procurement Directives, the UK Regulations and all other applicable EU and domestic legal requirements, standing orders and other internal regulations. In the event that there is any conflict or inconsistency between the provisions of these standing orders and any legal requirement, the legal requirement will apply

In the event that there is any conflict or inconsistency between the provisions of these standing orders and the Councils other standing orders, in relation to the procurement of the Services, these standing orders will take precedence.

**Standing Order 2: General Principles**

1. Contracts for the Services must be procured in accordance with EU Public Procurement Directives and UK Regulations to the extent that those rules apply.
2. The Council acknowledges that, whilst the full requirements of the UK Regulations do not apply to Contracts for the Services, they are nevertheless subject to EU Treaty principles of transparency and equal treatment that are designed to facilitate the functioning of the EU. Care must be taken at all times to ensure that nothing is done which is in breach of those principles, is improper or distorts competition.
3. The Council recognises that Directive 2014/24/EU makes significant departures from the terms of previous EU public procurement Directives and, in particular repeals Directive 2004/18/EC in relation to the procurement of Contracts for the Services and replaces those rules with a new regime. Accordingly, in procuring such Contracts, from the formulation of the specification for a Service and throughout the tender and award process, the Council and its officers will have particular regard to:
	1. the quality, continuity, accessibility, affordability, availability and comprehensiveness of the Services being procured;
	2. the specific needs of different categories of users including in particular disadvantaged and vulnerable groups;
	3. the involvement and empowerment of users; and
	4. innovation in the type of and/or delivery of services.
4. The Council recognises that the Care Act 2014 introduces and consolidates a number of duties which will be relevant to its commissioning and procurement functions and decisions. Accordingly, in procuring Contracts for the Services, from the formulation of the specification for a Service and throughout the tender and award process, the Council and its officers will take account of the Council’s duties to:
5. promote the well-being of the individuals who will be in receipt of the Services;
6. provide and arrange Services which will contribute towards the prevention or delay in the development of or reduction in the needs of adults and carers in the area;
7. promote the integration of care and support with health services;
8. provide a variety of different providers of the Services in its geographical area;
9. facilitate a variety of high quality services from which an individual can choose to obtain the Services;
10. properly shape and maintain the sustainability of the market for the Services; and
11. make available to Providers information about demand for the Services, both current and forecast and other relevant data about the market.
12. The Council and its officers will take into account longer term commissioning strategies and information about the market for the Services available to the Council through Market Position Statements, Joint Strategic Needs Assessments and other analysis when designing, procuring and awarding Contracts for the Services.
13. The Council will encourage collaborative working in the form of consortia of Providers, joint commissioning, multi-agency working and pooled budgets.
14. The Council will have due regard to the Public Services (Social Value) Act 2012 as amended from time to time when procuring Contracts for the Services.

**Standing Order 3: Tendering Processes**

1. Prior to the tender of any Contract for any Services, the Council will, where appropriate, engage in transparent dialogue with Providers and explore the submissions and ideas (whether formally or informally) presented by Providers when developing the specification for a Contract for such Services as provided for in the UK Regulations.
2. Where the value of a Contract for the Services exceeds the EU Threshold, the [Director] will be responsible for deciding the process to be followed to ensure that the requisite details of the Contract are made known though the Notification Procedures.
3. The [Director], following consultation with [name relevant officers], and subject to the terms of the Council’s core contract standing orders and any overriding thresholds it has set, may determine that, save for any notice requirements set out in paragraph 2 above, a competitive procedure for the tender of the Contract is not required or only a limited competition is required. Such a decision may be appropriate for the reasons including (but not limited to) the following:
4. that it can be demonstrated that the Contract is of no interest to Providers in other EU member states; and/or
5. the total sum to be paid under the Contract is so low that Providers located in other EU member states would not be interested in bidding for the Contract; and/or
6. the Service is of such a specialised nature that no cross-border market of suitable Providers exists; and/or
7. the existing Provider(s) of the Service is(are) the only Provider(s) capable of delivering the Service to meet the needs of the individual(s) concerned; and/or
8. an innovative, highly specialised, cost effective or unique Service is being offered by a particular Provider(s) and the Council wishes to the effectiveness of that Service; and/or
9. the nature of the Service is such that it will not or cannot be adequately specified in advance because of the nature of the social care needs of the service user(s) concerned; and/or
10. there are special circumstances such as ownership of land or property, geographic locations or particular skills or experience of Providers of the Services which limit the choice of Provider; and/or
11. the application of a competitive tender process would adversely affect or result in the loss of a linked service; and/or
12. it has become urgent to provide the Service because of an emergency, crisis or as a result of unforeseen circumstances which are not attributable to the Council.
13. The [Director] will be required to maintain a list of all Contracts which he/she decides do not require to be procured through a traditional competitive tender on the basis of the determinations made under paragraph 3 above.
14. All tender processes will be proportionate to the value of the Contract, the nature of the Services and the Council will endeavour to produce clear and accessible documentation.
15. The Council will avoid duplicative or excessive paperwork in the tender process and will consider wherever possible using e-procedures which reduce the demand on administrative resources.
16. Procurement processes for the Services will involve realistic timescales which allow Providers sufficient time to meet and respond to the necessary requirements.
17. The Council will, give proper consideration to the financial and economic criteria it imposes on Providers through any procurement exercise for Services to ensure that they are proportionate to the contract in mind, and that small Providers, and Providers that are new in the market, are not unfairly or unnecessarily excluded from the procurement procedure.
18. The Council will endeavour to provide appropriate information to Providers before and during the course of any tendering processes to ensure that Providers are able to provide adequate detail in the tender responses and are able to provide prices which are firm and capable of being delivered. Where possible this will include an adequate and sufficient amount of detail on any staff that might be subject to a TUPE transfer, the associated costs and pensions arrangements.

**Standing Order 4: Evaluation and Award**

1. When awarding Contracts for the Services, the Council will use award criteria which are properly linked to the subject matter of the Contract. In addition to price the following will be (amongst others) appropriate considerations:
	1. social and environmental aspects of the submission;
	2. the quality, continuity, accessibility, affordability, availability and comprehensiveness of the Services being offered;
	3. any preferences expressed by individuals who will be in receipt of the Services or their representatives;
	4. the outcomes the Services are designed to achieve for individuals; and
	5. the degree to which the Services are designed to prevent, delay or reduce the needs of individuals in receipt of the Services.
2. The [Officer] will ensure that tenders received for the Services are evaluated in accordance with the evaluation criteria that have been adopted for the Contract, and stated in the invitation to tender (“the **Criteria**”).
3. The Criteria must be capable of objective assessment and must include quality aspects as well as price. Criteria will be weighted by relative importance in a way which reflects the needs of the Council and the ability of the market to deliver.
4. When deciding whether a tender submission offers best value for money, the Council will take into account the quality and sustainability of the offer and any price/quality ratio the Council applies will be no less than [***percentage***] in favour of quality and the other factors listed under paragraph 1 above. Within that the Council may choose the weighting of the different aspects as appropriate to ensure competent and quality delivery of the Services in balance with delivering against the Council’s other pressures.
5. In evaluating tenders the Council will consider the actual costs of prospective Providers so as to make realistic awards at rates such that delivery of the Services by the Provider(s) is sustainable.
6. The Council will provide timely and comprehensive feedback to Providers who are unsuccessful in a tender.

**Standing Order 5: Stakeholder participation and engagement**

1. The Council will involve and encourage the individual in receipt of the Services and/or his/her family, advocate or other representatives to be involved in the commissioning and procurement process as far as possible, for example in designing the specification for the Service and in acting on any feedback on a Service provided.
2. The Council will design Contracts which deliver agreed outcomes for individuals in receipt of the Services.
3. The Council recognises that different cohorts of service user may require quite different packages of Services and will approach the application of flat rates across wide ranges of Service with extreme caution.
4. The Council recognises the importance of the choice in the Services available to an individual and will proactively encourage and endorse choice in the commissioning and procurement of the Services. In particular the Council will establish a robust infrastructure to support micro-commissioning (advocacy, information and support services) by users in receipt of personal budgets or personally directed funds.
5. The Council will actively involve Providers or their representatives in the commissioning and procurement cycle to enable planning and investment in the Services and improved design of the Services.

**Standing Order 6: Framework Agreements**

1. The Council will work in partnership with other departments and external agencies, in housing, in health and Providers to develop shared outcome based Framework Agreements.
2. All Framework Agreements will have a clear statement of the commissioning intention underpinning the Service and the outcomes for users, their families and other stakeholders the Services under the Framework Agreement are designed to achieve.
3. Framework Agreements will be based on comprehensive, annual assessments and forecasts of demand.
4. When determining the Provider to whom a Contract will be called off under a Framework Agreement, the Council will (to the extent possible in compliance with the UK Regulations) have due regard to any preference as to Provider expressed by the prospective recipient(s) of the Services in question but shall adhere at all times to the award criteria set out in any Framework Agreement. Wherever possible, the Council will build consultation with service users into the decision making process in any Framework Agreement it sets up.
5. When establishing a Framework Agreement for the Services, the Council will have regard to the criteria set out in paragraph 1 of Standing Order 4 above.
6. The Council will aim to develop longer term strategic relationships with Providers on Approved Lists for the Services, whether those Providers hold current Contracts for the Services or not.

**Standing Order 7: Grants**

1. The Council shall consider when procuring the provision of the Services whether a Grant would be a preferable means to achieving its objectives rather than following a formal tender procedure. In such cases the Council recognises that, subject to the principles at paragraph 4 below, neither the UK Regulations apply, nor is a competitive application process required on the making of such a Grant. However, where the value of a Grant is high enough, the Council reserves the discretion to conduct a competitive process for the award of that Grant if doing so demonstrates best value for the Council.
2. Circumstances in which the Council may wish to make Grant payments available include (but are not limited to) the following:
3. where better outcomes may be available through the use of a Grant;
4. where the cost of a Grant is likely to be less than a tender for the same Service;
5. where the Provider has innovative ideas which it proposes to pilot;
6. where a consortia or other collaboration is involved and a Grant would be preferable to a tendered Contract.
7. When making a grant payment the Council will:
8. treat all potential grant applicants fairly;
9. act in a fair, transparent and consistent manner in relation to the making of the grant; and
10. set out the precise terms of the Grant, in writing.
11. When deciding whether or not to conduct a competitive process for the award of a Grant, the Council will have regard to the State aid rules. The Council will in particular take into account the following questions:
	1. would the grant give an advantage to one or more organisations (undertakings) over others?
	2. does the Grant distort or have the potential to distort competition?
	3. does the Grant affect trade between Member States? Is the Service tradable between EU Member States?
12. When the answers to all of the above questions is “yes” then the Council will investigate the application of the State aid rules in depth and will give due consideration to undertaking a competitive exercise of the Grant.

**Standing Order 9: Reserved Contracts**

1. The Council may reserve the rights for organisations to participate in the award of Contracts where the following criteria are met:
2. the Contract is exclusively for the provision of the Services;
3. the objective of the organisations is the pursuit of a public service mission linked to the delivery of the Services;
4. profits are reinvested in the organisation with a view to furthering this objective;
5. where profits are distributed or redistributed, the distribution is based on participatory considerations;
6. the management or ownership structure of the organisation is based employee ownership or other participatory principles, or requires the active participation of employees, users or other stakeholders;
7. the organisation has not been awarded a Contract for the Services concerned by the Council within the last three years; and
8. the maximum duration of the Contract awarded is three years.