**FINDING COMMON PURPOSE**

**TEMPLATE MODEL STANDING ORDERS**

**CHILDREN’S SERVICES**

**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 should 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 children’s 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. Children’s services are treated differently for the purpose of the EU Public Procurement Directives. The Council is mindful of the duties in respect of the commissioning of such services under the statutory scheme for children, including in particular the Children Act 1989, the Children Act 2004, the Childcare Act 2006, the Child Poverty Act 2010, the Children and Families Act 2014 and associated regulations and statutory guidance (all as amended). The Council is also mindful of its obligations to respect children’s human rights, including the rights contained in the UN Convention on the Rights of the Child. 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 children’s 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 children’s 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 circumstances   1. an employment contract; or 2. a grant agreement |
| **“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); |
| **“NHS bodies”**  **“Notification Procedures”** | Bodies which form part of the National Health Service, including clinical commissioning groups and the NHS Commissioning Board (“NHS England”)  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”** | services for children commissioned by the Council or jointly commissioned by the Council and a health or other 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”**  **“young person”** | 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.  a person who is not a child but is aged under 25 and is within the scope of the duties owed to disabled young people, young people with special educational needs and/or care leavers under the Children Act 1989 (a amended) or the Children and families Act 2014. |
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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. In this context this will include both children generally and specific groups of particularly disadvantaged children, for example disabled children, children with special educational needs, looked after children and children in the youth justice system;
   3. the involvement and empowerment of users; and
   4. innovation in the type of and/or delivery of services.
4. In procuring and commissioning Contracts for the Services, the Council and its officers will:
5. ensure that the best interests of children affected by procurement and commissioning decisions are treated as a primary consideration, meaning that they are considered first and only not followed if outweighed by the cumulative impact of other considerations;
6. safeguard and promote the well-being and welfare of children who are or may be in receipt of the Services;
7. ensure that all Providers have robust safeguarding procedures in place which include a commitment to notify the Council in the event of any safeguarding concerns and work with the Council to ensure that these concerns are addressed promptly and effectively;
8. aim to reduce inequalities between young children in their area in relation to their well-being;
9. cooperate with relevant partners with a view to reducing, and mitigating the effects of, child poverty in the responsible local authority's area under the local child poverty needs assessment and joint child poverty strategy;
10. cooperate with partner agencies, including as appropriate, but not limited to any relevant district council, NHS bodies, the responsible body for schools and colleges, the local probation board, youth offending teams and the police;
11. without limiting the generality of paragraph (d) enter into joint commissioning arrangements around education, health and care provision for children with special educational needs and/or a disability as set out in more detail below;
12. keep under review the educational, training and social care provision for children and young people who have special educational needs or a disability and consider the extent to which this provision is sufficient to meet the needs of the children and young people concerned;
13. ensure that there are sufficient social care services for disabled children to allow such services to continue until such time as there is a final decision on their case by adult services;
14. ensure, so far as is reasonably practicable, that there is sufficient provision of children's centres to meet local need;
15. ensure, so far as is reasonably practicable, that there is sufficient childcare for working parents, including parents of disabled children;
16. secure sufficient accommodation for children in its care, both in quantity and in the range of provision and providers available;
17. ensure that looked after children who cannot live with a family member are placed in the most appropriate placement for them;
18. ensure that there is support in place so that care leavers (‘former relevant children’) are provided with the support required under the relevant legislation;
19. improve the choice and quality of the Services available;
20. be active in managing the market for the Services and in responding to changing demand;
21. consult with children, families and local voluntary and community sector organisations at all stages of the commissioning cycle;
22. ensure that where funding is reduced for children’s services disproportionate reductions are not passed on to voluntary and community sector organisations and small businesses;
23. base commissioning on strategic needs assessments and evidence that the Services procured will be effective at meeting needs and desired outcomes. This will include ensuring that data in relation to numbers of children and their particular needs is accurate and kept up-to-date; and
24. adopt a whole system approach to designing universal, targeted and specialist services to improve outcomes for children ‘in need’, children at risk of entering care, looked after childrenand children involved in the young justice system including those in custody.
25. The Council will encourage collaborative working in the form of consortia of Providers, joint commissioning, multi-agency working and pooled budgets.
26. The Council will act in accordance with the Public Services (Social Value) Act 2012 as amended from time to time when procuring Contracts for the Services. In the context of Services for children this will generally involve consideration of how what is proposed to be procured might improve children’s well-being and how the process of procurement might assist with securing that improvement.

**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 children or young person(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 needs of the children or young person (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. the extent to which the submission will safeguard and promote the welfare of children;
   2. social and environmental aspects of the submission;
   3. the quality, continuity, accessibility, affordability, availability and comprehensiveness of the Services being offered;
   4. the wishes, feelings, views and preferences expressed by the children or young person(s) who will be in receipt of the Services and / or those of their parents or representatives;
   5. the outcomes the Services are designed to achieve for children and young person(s); and
   6. the degree to which the Services are designed to prevent, delay or reduce the needs of children or young persons 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 60% in favour of quality and the other factors listed under paragraph 1 above. This reflects the duty on the Council to treat children’s best interests as a primary consideration in actions concerning them by administrative authorities. 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. In commissioning and procuring the Services, the Council will have regard to the best interests of the children and young people in their authority and will in particular consider the following:
   1. the views, wishes and feelings of the child and his or her parent, or the young person. The Council will take all necessary steps to ascertain these prior to making the relevant decision and give the child’s wishes and feelings due consideration; and
   2. the importance of the child and his or her parent, or the young person, participating as fully as possible in decisions relating to the Services and being provided with sufficient information and support necessary for them to do so.
2. The Council will design Contracts which deliver agreed outcomes for children and young people in receipt of the Services.
3. The Council recognises that different cohorts of children may require quite different packages of Services and that there is a duty to safeguard and promote the welfare of each individual child and treat their best interests as a primary consideration. As such the Council will not use flat rates other than to provide an indicative allocation of funding.
4. The Council recognises the importance of the choice in the Services available to a child and his or her parent or to a young person and will proactively encourage and endorse choice in the commissioning and procurement of the Services. In particular the Council will establish a robust infrastructure (advocacy and information, advice and support services) to support micro-commissioning by those 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: Joint Commissioning**

1. The Council will make arrangements (“joint commissioning arrangements”) with NHS bodies about the education, health and care provision to be secured for:
   1. children and young people for whom the authority is responsible who have special educational needs; and
   2. children and young people in the authority’s area who have a disability.
2. Joint commissioning arrangements will include arrangements for considering and agreeing:
   1. the education, health and care provision reasonably required;
   2. by whom education, health and care provision is to be secured;
   3. what advice and information is to be provided about education, health and care provision;
   4. by whom, to whom and how such advice and information is to be provided.

**Standing Order 7: Framework Agreements**

1. The Council will work in partnership with other departments and external agencies, in housing, in health and with 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 children, 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 recipients of the Services into the decision making process in any Framework Agreement it sets up.
5. 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 8: 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.