

Appendix 1

CONTRACT STANDING ORDERS FOR SOCIAL CARE AND PUBLIC HEALTH SERVICES AND OTHER LIGHT TOUCH REGIME SERVICES

Introduction

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 UK Regulations. 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 and of the duties in respect of the commissioning of children's social services under the statutory scheme for children, including in particular the Children Act 1989, the Children Act 2004, the Childcare Act 2006, the Children and Families Act 2014 and associated regulations and statutory guidance. The Council additionally acknowledges its duties in respect of public health including those under the National Health Service Act 2006.

In order to reflect these principles, the Council has therefore adopted these Contract 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.

Contract Standing Order 1: Interpretation

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

“Authorised Officer” the relevant Executive Director, a Senior Officer within the relevant Executive Director's Directorate or the officer authorised by the relevant Executive Director to deal with the matter on behalf of their Directorate;

“Budget Holder” a Council Employee who is accountable for a defined budget and is responsible for committing expenditure

against that budget in accordance with the Council's Constitution including the Council's Financial Standing Orders.

- “Concession Contract”** a contract for pecuniary interest concluded in writing by means of which one or more contracting authorities or utilities entrust the provision and the management of services or works to one or more economic operators, the consideration of which consists either solely in the right to exploit the services or works that are the subject of the contract or in that right together with payment which also meets the requirements of Regulation 3(4) of The Concession Contracts Regulations 2016;
- “Contract”**
- (i) any agreement of the supply of the Services; or
 - (ii) any Framework Agreement for the supply of the Services;
- but does not include in any circumstances
- (iii) the use of external solicitors and counsel instructed by the Executive Director of Governance, People and Resources;
 - (iv) individual employment contracts;
 - (v) Grants; or
 - (vi) a Concession Contract.
- “Contract Consultant”** any person not being an employee of the Council who is acting for the Council in relation to a Contract or proposed Contract;
- “Contractor”** the party or potential party to a Contract;
- “Contracts Register”** the Council's electronic register of Contracts;
- “Council”** Brighton & Hove City Council;

“Council Employee”	any person employed on a permanent, temporary or agency arrangement by the Council;
“Dynamic Purchasing System”	an electronic system used to purchase commonly used goods, works or services within a limited duration;
“Executive Director”	the Chief Executive and all Executive Directors of the Council;
“Find a Tender”	the UK e-notification service where notices for new procurements are required to be published pursuant to the UK Regulations;
“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”);
“Grants”	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);
“Law(s)”	means any applicable statute or any delegated or subordinate legislation;
“Light Touch Regime”	a specific set of rules for certain service contracts. Those service contracts include certain social, health, education and cultural services. The list of services to which the Light Touch Regime applies is set out in Schedule 3 of the Public Contracts Regulations 2015. Please note that not all contracts procured by Adult

	Social Care, Children’s Social Care and Public Health will be Light Touch Regime contracts;
“Notification Procedures”	a contract notice, prior information notice or other method of advertisement or notification of Contracts in Find a Tender provided for by the UK Regulations from time to time;
“Prior Information Notice”	a prior information notice which issued in accordance with the UK Regulations;
“Provider(s)”	service providers or potential service providers of the Services;
“Procurement Threshold”	the procurement threshold for the Services as amended from time to time. As of the 1st of January 2022 the procurement threshold for the Light Touch Regime is currently £663,540 inclusive of VAT if applicable;
“Services”	Light Touch Regime Services including, but not limited to, children’s social care services and adult social care services and public health services commissioned by the Council or jointly commissioned by the Council under these Contract Standing Orders;
“Senior Officer”	all Heads of Service and any other officer who is a member of the Corporate Management Team;
“UK Regulations”	The Public Contracts Regulations 2015 (SI 102/2015) as amended, extended, re-enacted or consolidated from time to time;
“Young Person”	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 (as amended) or the Children and Families Act 2014.

- 1.2 In the event that there is any conflict or inconsistency between the provisions of these Contract Standing Orders and the Council's other Contract Standing Orders, in relation to the procurement of the Services, these Contract Standing Orders will take precedence.
- 1.3 The Chief Executive, after consultation with the Monitoring Officer and the Chief Finance Officer, may change the non-statutory thresholds in Contract Standing Orders annually (or as appropriate) to take account of changes in the retail price index and other factors so that the effectiveness and impact of the thresholds is maintained.

Contract Standing Order 2: Compliance with Contract Standing Orders and Legislation

- 2.1 The Monitoring Officer in consultation with the Head of Procurement shall compile and maintain these Contract Standing Orders and advise on their implementation and interpretation.
- 2.2 Every Contract governed by these Contract Standing Orders shall comply with these Contract Standing Orders, all applicable Laws and the Council's Financial Regulations. The Law including the UK Regulations will always override the provisions of these Contract Standing Orders.
- 2.3 Contractors, Contractors' employees, subcontractors and agents utilised by the Council shall be required to, at all times, to comply with the requirements of the Health & Safety at Work etc Act 1974, all secondary legislation made under that Act and all other Acts, Regulations, Orders or Rules relating to health and safety. All Contracts shall reflect these requirements and reference to the Council's Health & Safety Code of Practice should be made in this regard.
- 2.4 The Monitoring Officer and Head of Procurement may issue guidance which shall supplement these Contract Standing Orders, but these Contract Standing Orders will always take precedence over the provisions of such guidance.
- 2.5 It shall be a condition of any Contract between the Council and anyone who is not a Council Employee but who is authorised to carry out any of the Council's contracts functions, that they comply with these Contract Standing Orders, and the Financial Regulations of the Council, as if they were Council Employees.

Contract Standing Order 3: Scheme of Delegation/Authorisation

- 3.1 The relevant Executive Director has unrestricted delegated power to agree to the Council entering into Contracts or joining Framework Agreements or Dynamic Purchasing Systems which require the Council to fund up to

£500,000. Above this sum Council Employees must seek approval from the relevant Committee.

- 3.2 Where the relevant Executive Director is unavailable or otherwise unable to act, their functions under these Contract Standing Orders may be discharged by the relevant Senior Officer.
- 3.3 All Budget Holders (in relation to expenditure within their allocated budgets), Senior Officers and other officers authorised by the relevant Executive Director or a Senior Officer may agree to the Council entering into Contracts which require the Council to fund up to £250,000. Such authorisation may be expressed or implied from the duties attached to the officer's post.
- 3.4 The relevant Executive Director may agree to Prior Information Notices being issued prior to seeking Committee approval (if required) for any procurement.

Contract Standing Order 4: Declarations of Interest and Prevention of Corruption

- 4.1 Members of staff must avoid any conflict between their own interests and the interests of the Council. At the beginning of any Contract process the following persons shall declare any interest, as defined in the Code of Conduct for Employees set out in the Council's Constitution, which may affect the Contract process:
 - i. Council Employees involved in the procurement and management of a Contract;
 - ii. Contractors;
 - iii. Contract Consultants; and
 - iv. any other person involved in the Contract process.
- 4.2 The relevant Executive Director and Senior Officers shall ensure that all Council Employees within the categories set out in Contract Standing Order 4.1 and all Contract Consultants and Contractors appointed by them make written declarations of interest on their appointment and as required on any change in circumstances. Interests of Council Employees will be reviewed annually, either at the end or beginning of the financial year. The Executive Director or relevant Senior Officer shall either certify interests as acceptable or take any necessary action in respect of potential conflicts of interest.
- 4.3 The relevant Executive Director and/or Senior Officers shall keep completed Council Employee declarations on the register of staff declarations indicating the names and grades of those declaring an interest and the nature of their interest.
- 4.4 The relevant Executive Director and/or Senior Officers shall keep completed Contract Consultants' and Contractors' declarations of interest and relevant Council Employees' declarations affecting the Contract on the contract file.

- 4.5 A Council Employee within the categories set out in Contract Standing Order 4.1 has an interest in a Contract if they have or potentially have a pecuniary interest or have links (for example, a family member or close friend works for the organisation), with an organisation or Contractor tendering or quoting for a Contract with the Council or already has a Contract with the Council. If it is not the subject of an existing declaration, they must immediately give written notice of their interest to the relevant Executive Director or Senior Officer and in any event must take no part in the procurement process.
- 4.6 Council Employees must not invite or accept any gift or reward in respect of the award or performance of any Contract. It will be for the Council Employee to prove that anything received was not received corruptly. High standards of conduct are obligatory and corrupt behaviour will lead to dismissal.
- 4.7 The Contract process shall ensure that the Council will operate strict separation of duties by ensuring that two authorised Council Employees are involved in the ordering, receiving and payment process.
- 4.8 The following clause, (or an equivalent clause in standard forms of contract or other wording as approved by the Monitoring Officer) must be appear in every written Council Contract:

“The Council may terminate this Contract and recover all its loss if the Contractor, its employees or anyone acting on the Contractor’s behalf do any of the following things:

- (a) offer, give or agree to give to anyone any inducement or reward in respect of this or any other Council Contract (even if the Contractor does not know what has been done); or*
- (b) commit an offence under the Bribery Act 2010; or*
- (c) commit any fraud in connection with this or any other Council Contract whether alone or in conjunction with Council Members or Employees.*

Any clause limiting the Contractor’s liability shall not apply to this provision.”

- 4.9 A register of interests under Contract Standing Order 4 may be a separate register or it may form part of a general register of declarations of interest as the relevant Executive Director or Senior Officer considers appropriate.

Contract Standing Order 5: Contract Value and Aggregation

- 5.1 Council Employees shall estimate and record the total value of a proposed Contract inclusive of VAT.
- 5.2 Contracts must not be artificially separated so as to circumvent the application of any Contract Standing Order or the UK Regulations.

- 5.3 The total value of a Contract shall be estimated to be the same as the total consideration to be payable over the term of the Contract by the Council to the Contractor inclusive of VAT. Where the Contract period is indefinite or uncertain then the estimated total value is calculated by assuming a four-year term. If the Council has an option to extend the Contract, the value is the value of the Contract including the period of the extension.

Contract Standing Order 6: General Principles

- 6.1 Contracts for the Services must be procured in accordance with the UK Regulations to the extent that those rules apply.
- 6.2 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 the principles of transparency and equal treatment.
- 6.3 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 have particular regard to:
- i. the quality, continuity, accessibility, affordability, availability and comprehensiveness of the Services being procured;
 - ii. the specific needs of different categories of service users including in particular disadvantaged and vulnerable groups;
 - iii. the involvement and empowerment of service users; and
 - iv. innovation in the type of and/or delivery of services.
- 6.4 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 where the Care Act 2014 is applicable, 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:
- i. promote the well-being of the individuals who will be in receipt of the Services;
 - ii. 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;

- iii. promote the integration of care and support with health services;
- iv. provide a variety of different Providers of the Services in its geographical area;
- v. facilitate a variety of high quality services from which an individual can choose to obtain the Services;
- vi. properly shape and maintain the sustainability of the market for the Services; and
- vii. make available to Providers information about demand for the Services, both current and forecast and other relevant data about the market.

6.5 The Council also acknowledges its duties in respect of the commissioning of children's social services. Accordingly, in procuring Contracts for Services for children and Young Persons, the Council and its officers will also comply with its duties under the Children Act 1989, the Children Act 2004, the Childcare Act 2006, the Children and Families Act 2014 and associated regulations and statutory guidance.

6.6 The Council will comply with its duties in respect of public health under the National Health Services Act 2006 when procuring Contracts for the Services.

6.7 The Council will have regard to the Public Services (Social Value) Act 2012 when procuring Contracts for the Services.

Contract Standing Order 7: Tendering Processes

7.1 All tender processes will be proportionate to the value of the Contract and the nature of the Services.

7.2 Where the value of a Contract for the Services exceeds the Procurement Threshold, the Authorised Officer, following consultation with the Head of Procurement or Strategic Procurement Manager(s), will be responsible for deciding the process to be followed to ensure that the UK Regulations are complied with and the requisite details of the Contract are made known through the Notification Procedures.

7.3 Where the value of a Contract is below the Procurement Threshold, the Authorised Officer (who must in the case of Contracts over £25,000 must first consult with the Head of Procurement or Strategic Procurement Manager(s)) may determine that, save for any notice requirements set out in Contract Standing Order 7.2 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:

- i. the Service is of such a specialised nature that no other suitable Provider exists; and/or
- ii. the Provider(s) of the Service is(are) best placed to meet the needs of the service user(s) concerned; and/or
- iii. an innovative, specialised, cost effective or unique Service is being offered by a particular Provider(s) and the Council wishes to improve the effectiveness of that Service; and/or
- iv. a soft market testing activity conducted by Procurement indicates that the Provider is best placed to provide the Service; and/or
- v. 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
- vi. an urgent service user placement needs to be made and cannot be made under an existing Framework Agreement or Dynamic Purchasing System which the Council is signed up to; and/or
- vii. 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
- viii. the application of a competitive tender process would adversely affect or result in the loss of a linked service, cause destabilisation, affect continuity of existing Services or lead to a lack of Service provision; and/or
- ix. the application of a competitive tender process is not proportionate to the value of Contract or the nature of the Services; and/or
- x. it has become urgent to provide the Services and the timescales for a competitive tender process cannot be reasonably complied with.

- 7.4 The relevant Executive Directors will be required to maintain a list of all Contracts within their Directorate with a contract value of £25,000 or above which they decide do not require to be procured through a competitive procedure on the basis of the determinations made under Contract Standing Order 7.3. This list must be provided to the Head of Procurement on an ongoing basis in accordance with the Head of Procurement's reasonable instructions.

Contract Standing Order 8: Stakeholder participation and engagement

- 8.1 Where possible and proportionate, the Council will aim to involve and encourage service users and their representatives in the commissioning and procurement process, for example to help inform the design the specification for the Service and act on any feedback on a Service provided.
- 8.2 The Council will aim to engage Providers or their representatives in the commissioning and procurement cycle to enable planning and investment in the Services and improved design of the Services where proportionate.

Contract Standing Order 9: Evaluation and Award

- 9.1 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:
- i. social and environmental aspects of the submission;
 - ii. the quality, continuity, accessibility, affordability, availability and comprehensiveness of the Services being offered;
 - iii. any preferences expressed by individuals who will be in receipt of the Services or their representatives;
 - iv. the outcomes the Services are designed to achieve for individuals; and
 - v. the degree to which the Services are designed to prevent, delay or reduce the needs of individuals in receipt of the Services.
- 9.2 The Authorised Officer in consultation with the Council's Procurement team 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**").
- 9.3 The Criteria must be capable of objective assessment the Authorised Officer must consider including 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.

- 9.4 When deciding whether a tender submission offers best value for money, the Council will take into account the quality of the offer and any price/quality ratio. 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.

Contract Standing Order 10: Framework Agreements and Dynamic Purchasing Systems

- 10.1 Prior to accessing any Framework Agreement or Dynamic Purchasing System the relevant Executive Director or Senior Officer must firstly determine that the Framework Agreement or Dynamic Purchasing System is available for legitimate use by the Council in accordance with the UK Regulations.
- 10.2 Where two or more Framework Agreements of Dynamic Purchasing Systems exist which are capable of fulfilling the Council's requirements, the relevant Executive Director or Senior Officer shall select the one they consider (a) to represent the best value for money and (b) best meet any other relevant criteria including any potential service users' needs and shall keep a written record of the reasons justifying the selection.
- 10.3 When procuring Services from an existing Framework Agreement or Dynamic Purchasing System, the relevant Executive Director or Senior Officer must select Providers in accordance with the UK Regulations and the requirements and the terms and conditions of the Framework Agreement or Dynamic Purchasing System.
- 10.4 When setting up a Framework Agreement or Dynamic Purchasing System for the Council, the relevant Executive Director or Senior Officer shall use the most appropriate procurement procedure permitted by the UK Regulations and shall have regard to the criteria set out Contract Standing Order 9.1 above.

Contract Standing Order 11: Contract Formation and Threshold for Sealing

- 11.1 Subject to Contract Standing Order 11.3 and 11.4, Contracts should be formed using the Council's standard terms and conditions applicable to the type of contract in question, as issued from time to time by Legal Services.
- 11.2 Electronic signatures may be used provided that the sufficiency of security arrangements has been approved by the relevant Executive Director.
- 11.3 Any Contract with an estimated value of £100,000 or less which does not use the Council's standard terms and conditions must be referred to the

Procurement Strategy Manager(s) for advice prior to the issue of the tender or quotation documents and the execution of the Contract.

- 11.4 Any Contract with an estimated value over £100,000 which does not use the Council's standard terms and conditions must be forwarded to Legal Services prior to the issue of a tender and the execution of the Contract, for advice as to whether the proposed Contract adequately protects the Council's interests.
- 11.5 Without prejudice to paragraph Contract Standing Order 11.1, Legal Services may approve other terms and conditions to be used in respect of a particular Contract or type of Contracts when appropriate to protect the Council's interests.
- 11.6 Subject to Contract Standing Order 11.7 below:
- i. Contracts with an estimated value over £250,000 shall be executed as a deed using the Common Seal of the Council;
 - ii. Contracts with an estimated value of £250,000 or less may be executed as a simple contract and signed by an officer duly authorised for that purpose in accordance with Contract Standing Order 3.
- 11.7 The Monitoring Officer may, on a case by case basis or in relation to a particular class of contracts and taking all relevant circumstances into account, stipulate the method by which a particular contract or class of contracts is to be executed, irrespective of the overall estimated value of the Contract.

Contract Standing Order 12: Contracts Register and Records

- 12.1 The Contracts Register shall be kept centrally and maintained by the Head of Procurement. The Contracts Register is a public document which shall be available for inspection on the Council's website.
- 12.2 Each Authorised Officer shall be responsible for providing the information set out in Contract Standing Order 12.3 below to the Head of Procurement for inclusion in the Contracts Register within 5 working days of the Contract signature.
- 12.3 The Contracts Register shall specify for each Contract:
- i. the Contract number,
 - ii. the name of the Contractor,
 - iii. a summary of the services supplied,
 - iv. the Contract duration and value or estimated value.
 - v. Whether any extension is permitted.
- 12.4 The Authorised Officer responsible for procuring a Contract, Framework Agreement or Dynamic Purchasing System whose value is estimated to exceed the Procurement Threshold shall maintain a record of each

procurement and shall draw up a written report complying with the provisions of Regulation 84(1-5) of the UK Regulations.

- 12.5 All procurement procedures shall be documented regardless of value and the documentation retained for 3 years from the date of award of contract.

Contract Standing Order 13: Contract Modification

- 13.1 Funding must be identified before any modification of an existing Contract which will require the Council to provide additional funding is approved.
- 13.2 Subject to Contract Standing Order 13.1 an existing contract may be varied in accordance with specific provisions provided for in the Contract.
- 13.3 A modification not provided for in an existing Contract may be implemented subject to Contract Standing Order 13.1 and the approval of the relevant Executive Director or Senior Officer provided that the modification is permitted in accordance with the provisions of UK Regulations.