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PART 8.3 CONTRACT STANDING ORDERS

General

Contract Standing Order 1: Interpretation

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

"Approved List"	a list drawn up for corporate use under CSO 6
"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 Financial Standing Orders and Regulations
"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
"Contract"	any agreement for the supply of goods, services, or the execution of works to or for the Council including the use of consultants but excluding the use of external solicitors and Counsel instructed by the Head of Law. The sale of land is specifically excluded from this definition of "Contract".
"Contract Officer"	a Council Employee nominated to deal with Contracts in accordance with CSO 3.1
"Contractor"	the party or potential party to a Contract
"Council"	Brighton & Hove City Council
"Council Employee"	any person employed on a permanent, temporary or agency arrangement by the Council
"CSO"/ "CSOs"	Contract Standing Order/ Contract Standing Orders
"EU"	European Union
"EU Public Procurement Directives"	EU Directive 2004/18/EC This directive consolidates all previous directives relating to public works, supplies (goods) and service contracts and any

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	Directives and Regulations by which it is applied, extended, amended, consolidated or replaced and any re-enactment thereof
"EU thresholds"	EU and Government Procurement Agreement thresholds for advertisement of goods, works and services contracts as advised by the Government (as of 1 January 2010 at £156,442 for goods and services contracts and £3,927,260, for works contracts)
"Framework Arrangements"	Zero value contracts for goods, services or works under which terms, conditions, quality standards and prices are agreed in accordance with EU Public Procurement Directives
"Lists"	Framework Arrangements and Approved Lists
"Most Economically Advantageous Tender"	A process of determining the best bid using weighted criteria. See CSO 13
"OJEU"	Official Journal of the European Union
"Procurement Guidance"	Corporate Procurement's Codes of Practice (including the Procurement Toolkit),, model contracts and other guidance which supplements these CSOs
"Senior Officer"	Lead Commissioner, Executive Head of a Delivery Unit or Head of a Resource or Finance Unit
"UK Regulations"	Public Contracts Regulations 2006 (SI 5/2006) as amended
"works" "supplies" & "services"	as defined in the EU Public Procurement Directives ("supplies" are also referred to as "goods" in these CSOs)
"Strategic Director"	The Chief Executive, Strategic Directors of People, Place, Resources and Communities, the Director of Finance and the Lead Commissioner for Adult Social Care and Health.

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1.2 The Chief Executive, after consultation with the Monitoring Officer and the Chief Finance Officer, may change the 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.

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

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2.1 The Monitoring Officer in consultation with the Procurement Strategy Manager shall compile and maintain CSOs and advise on their implementation and interpretation.

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2.2 Every Contract made by the Council or on its behalf shall comply with the EU Treaty, the EU Public Directives and all relevant EU and domestic legislation, CSOs, and the Council's Financial Regulations. EU and UK legislation will always override the provisions of these CSOs.

2.3 Contractors, Contractors' employees, subcontractors and agents utilised by the Council shall be required to, at all times, 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 & 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 Corporate Procurement Strategy and Procurement Guidance held and disseminated by the Procurement Strategy Manager, shall supplement these CSOs, but these CSOs will always take precedence over the provisions of such Procurement 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 CSOs, and the Financial Regulations of the Council as if they were Council Employees.

Contract Standing Order 3: Scheme of Delegation/Authorisation

3.1 Each Strategic Director has unrestricted delegated power to agree to the Council entering into Contracts up to the sum of £500,000. Above this sum and before inviting expressions of interest from potential bidders Council Employees must seek approval from the relevant Cabinet Member, committee or other executive decision-making body. All Budget Holders (in relation to expenditure within their allocated budgets) as well as Senior Officers and Contract Officers authorised by the relevant Strategic Director may agree to the Council entering into Contracts up to £250,000. Each Strategic Director shall draw up and maintain a scheme of authorisation for use within his/her area of service or function, which shall include one or more named Senior Officers, Budget Holder and Contract Officer and shall be copied to the Monitoring Officer and the Procurement Strategy Manager.

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Contract Standing Order 4: Declarations of Interests

4.1 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: -

(a) all Council Employees
(b) Contractors
(c) Contract Consultants
(d) any other person involved in the contract process

4.2 Strategic Directors and Senior Officers shall ensure that all Council Employees within the categories set out in CSO 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 relevant Strategic Director or Senior Officer shall either certify interests as acceptable or take any necessary action in respect of potential conflicts of interest. Council Employees who declare a conflict of interest will take no part in the relevant contracting process.

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4.3 Strategic Directors and 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.

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4.4 Strategic Directors and Senior Officers shall keep completed Contract Consultants' and Contractors' declarations of interest and relevant Council Employees' declarations affecting the Contract on the contract file.

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4.5 If a Council Employee within the categories set out in CSO 4.1 knows that a Contract in which he/she has a pecuniary interest is before the Council, and is not the subject of an existing declaration, he/she must immediately give written notice of his/her interest to the relevant Strategic Director or Senior Officer and take no part in the contract process.

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Contract Standing Order 5: Public Notices

5.1 Where, by virtue of these CSOs or by some other authority, public notices or advertisements are required they shall be placed in at least one relevant local publication and on the Council website ten days or more before expressions of interest are required by the Council. Where the estimated total value of the Contract exceeds £100,000, the notice or advertisement shall be placed in at least one newspaper or journal circulating among such persons or bodies who undertake such Contracts. The requirement to give notice in a local newspaper may be dispensed with if the relevant Strategic Director or Senior Officer certifies that there are insufficient Contractors in the locality.

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5.2 All Contracts whose value exceeds the relevant threshold of the EU Public Procurement Directives shall also be advertised in OJEU.

Approved Lists, Framework Arrangements and Single Contract Lists

Contract Standing Order 6: Approved Lists

6.1 The Head of Property and Design may compile and maintain Approved Lists of Contractors for works and works related service Contracts (construction related Contracts), each of which is below the relevant EU threshold. The Procurement Strategy Manager may compile Approved Lists for Contractors for the supply of goods and other services as appropriate.

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6.2 Approved Lists:

(a) shall be established by advertised competition (subject to CSO 6.3) and where possible formalised by Framework Agreements;

(b) shall contain the names and addresses of all Contractors who meet the Approved List criteria.

(c) shall indicate the nature and value of Contracts for which the Contractors listed may be used. The value may not exceed the relevant EU threshold.

(d) where maintained internally by the council shall be reviewed in full at least every three years in addition to a review of the use of external providers of such lists.

6.3 Construction Line and standing lists of providers maintained by other public sector bodies compiled following responses to a public advertisement shall be deemed to be Approved Lists for the purpose of these CSOs.

6.4 In addition Strategic Directors with the assistance of the Procurement Strategy Manager may set up Framework Arrangements in line with EU Public Procurement Directives with one or more suppliers of particular types of goods or services.

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6.5 The criteria for admission to and suspension and exclusion from internally maintained Approved Lists shall be specified in writing by: -

(a) the Procurement Strategy Manager, for goods and services

(b) the Head of Property and Design for works and works related services

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6.6 Any Contractor may, by giving written notice to the Council, withdraw from any Approved List.

6.7 Where there is no Approved List or Framework Arrangement, Strategic Directors and Senior Officers shall use an approved tender procedure in accordance with Procurement Guidance.

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Preliminary

Contract Standing Order 7

No longer used.

Contract Standing Order 8: Contract Value and Aggregation

8.1 Council Employees shall estimate and record the total value of a proposed Contract net of VAT.

8.2 Contracts must not be artificially separated so as to circumvent the application of any CSO or of the EU Public Procurement Directives or UK Regulations.

8.3 The total value of Contracts for works, services or supply of goods are estimated to be the same as the total consideration to be payable over the term of the Contract by the Council to the Contractor. Where the Contract period is indefinite or uncertain then the estimated total value is calculated by assuming a four-year term.

Requirement to Obtain Tenders

Contract Standing Order 9: Tendering Procedures

9.1 Where procurement of goods, services or works is required and the estimated total value of the Contract is in excess of the relevant EU threshold, EU public procurement procedures will be followed as set out in the UK Regulations and these shall prevail over tendering procedures set out in these CSOs. For most goods, services and works Contracts the restricted, open, or competitive dialogue procedure will be used. For Private Finance Initiative, Public Private Partnership and similar procurement arrangements introduced by the Government, where the total Contract value is in excess of the relevant EU threshold, the restricted or competitive dialogue procedure will be used.

9.2 The Council may procure goods, services or works to any value in collaboration with other local authorities or other public or voluntary sector bodies. Where the Council is the lead buyer within the consortium of the goods, works or services contracted for, these CSOs shall apply. Where the Council is not the lead buyer, procurement procedures shall follow the spirit

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of these CSOs, be in accordance with EU Public Procurement Directives and UK Regulations, and approved by the relevant Strategic Director or Senior Officer on the advice of either the Procurement Strategy Manager or the Assistant Director, Property and Design.

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Contract Standing Order 10: Contracts Not Exceeding £25,000

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10.1 Where the appropriate Strategic Director or Senior Officer estimates the total Contract value for goods, services or works is unlikely to exceed £25,000 (in the case of Consultants is unlikely to exceed £10,000) and there are suitable Framework Arrangements available, those Framework Arrangements shall be used. Where no Framework Arrangements are available competitive quotations in writing on the basis of Most Economically Advantageous Tender should be sought, or a commercial negotiation with one preferred Contractor may take place. In the latter case the Strategic Director or Senior Officer shall certify that Procurement Guidance has been followed and that the Council shall receive value for money.

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10.2 Contracts with an estimated total value not exceeding £25,000 shall be evidenced in writing in simple cases by the receipt of written quotations from Contractors or by sending orders to Contractors under Framework Arrangements. In the case of consultants (whatever the value) and in all other cases formal written Contracts shall be completed.

10.3 Although the tendering procedures for Contracts not exceeding a total value of £25,000 are less formal than for Contracts of greater amounts, Officers should at all times bear in mind the need to seek value for money and be able to demonstrate that they have obtained it.

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Contract Standing Order 11: Contracts Exceeding £25,000 and Not Exceeding £75,000

11.1 Where the appropriate Officer estimates the total Contract value is likely to be greater than £25,000 (in the case of Consultants greater than £10,000) and not exceeding £75,000 and one or other of the Lists is available then at least four competitive tenders in writing shall be sought from Contractors on the relevant List.

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11.2 In the absence of Lists being available an approved tender procedure shall be used in accordance with Procurement Guidance.

11.3 In either case, if less than four suitably qualified tenders are available, the Contract Officer must consult with the Procurement Strategy Manager.

11.4 Where criteria additional to price are to be used in evaluation, these must be set out in the invitation to tender. At least two bona fide tenders must be received and the Most Economically Advantageous Tender accepted.

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11.5 If only one compliant tender is received, the Contract Officer must consult with the Procurement Strategy Manager and provide evidence to show that the Council can obtain value for money.

11.6 Contracts with an estimated total value greater than £25,000 and not exceeding £75,000 shall be evidenced in writing in simple cases by the receipt of a written quotation and the delivery of an official order form, in the case of consultants and in all other cases by the completion of a formal written Contract.

Contract Standing Order 12: Contracts Exceeding £75,000

12.1 Where the appropriate Officer estimates that the total value of a Contract is likely to exceed £75,000 and one or other of the Lists is available, then at least five tenders will be sought from Contractors on the relevant List.

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12.2 In the absence of Lists being available an approved tender procedure shall be used in accordance with Procurement Guidance and, where applicable, in accordance with the EU Public Procurement Directives and UK Regulations and at least five tenders must be sought.

12.3 If less than five suitably qualified tenders are available, the Contract Officer must consult with the Procurement Strategy Manager.

12.4 Where criteria additional to price are to be used in evaluation, these must be set out in the invitation to tender.

12.5 At least two compliant tenders must be received and the Most Economically Advantageous Tender must be accepted. Notwithstanding CSO 12.7, if only one compliant tender is received, the Contract Officer must consult with the Procurement Strategy Manager and provide evidence to show that the Council can obtain value for money.

12.6 In the case of Contracts with an estimated total value over £75,000 the Contract shall be in a form approved by the Monitoring Officer and shall be given under the Common Seal of the Council.

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12.7 Where the estimated total value of the Contract is such that the Council is required by law to comply with the EU Public Procurement Directives the requirements thereof shall be complied with and the tender procedures set out in these CSOs shall be deemed to be satisfied by such compliance.

12.8 Decisions relating to the Contract process for Contracts exceeding the thresholds for the EU Public Procurement Directives shall be made by the Strategic Director or Senior Officer in consultation with either:

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(a) the Procurement Strategy Manager, for goods and services Contracts; or

(b) the Head of Property and Design for works Contracts.

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12.9 Social care Contracts must be procured in accordance with the EU Public Procurement Directives and UK Regulations, but are otherwise exempt from CSOs 10-12 save for the requirement to demonstrate obtaining value for money.

Tendering Process

Contract Standing Order 13: Delivery Opening and Evaluation of Tenders

13.1 All tenders for any Contract estimated to be under a total of £75,000 in value shall be returned to the Strategic Director or Senior Officer inviting the tender (or his/her nominee), or as otherwise indicated in CSOs, in envelopes which shall bear no mark to identify the sender. The Officer shall be responsible for ensuring that a record of all such tenders received is kept.

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13.2 For Contracts with an estimated total value exceeding £75,000 all tenders shall be returned as appropriate to the Head of Property and Design or the Procurement Strategy Manager in envelopes, which shall bear no mark to identify the sender and shall be opened by him/her at the same time in the presence of a Council Employee designated by the relevant Strategic Director or Senior Officer. The Head of Property and Design and the Procurement Strategy Manager shall each maintain a record of all such tenders received by him/her.

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13.3 All tenders shall be opened at the same time, as soon as is reasonably practicable after the closing date, normally on the closing date. On receipt, all tender envelopes shall be endorsed with the time and date of receipt and kept secure until the time specified for tender opening. Any tender received after the specified time shall not be considered for evaluation and shall be returned promptly to the tenderer. A late tender may be opened to ascertain the name of the tenderer but no details of the tender shall be disclosed.

13.4 Evaluation criteria and weightings for each criterion for both the pre-qualification and the invitation to tender stages shall be determined in advance and included in the invitation to tender. Price shall always be included as a criterion, but will be used as the sole criterion only where the Strategic Director, Senior Officer or the Council Employee preparing the Contract for him/her considers this to be appropriate. Determination of criteria at all stages shall be undertaken in accordance with Procurement Guidance.

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Contract Standing Order 14: Contracts Registers

14. An electronic register of all renewable Contracts above a total value of £25,000 (and all contracts over £75,000) in value, shall be kept centrally and maintained by each Contract Officer using the Intranet or similar. Such register shall specify for each Contract the Contract number, the name of the

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Contractor, a summary of the works to be executed or the goods and services supplied and the Contract duration and value or estimated value. The register shall be open for inspection by any Member of the Council.

Contract Standing Order 15: Prevention of Corruption

15.1 A Council Employee 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.

15.2 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. Except for low value orders with a value below £250, there must be a separation of duties between the person authorising an order and the person checking a written invoice or requisitioning the goods or services.

15.3 The following clause, (or an equivalent clause in standard forms of contract or other wording as approved by the Monitoring Officer) must be put in every written Council Contract:

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> *"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 Prevention of Corruption Acts 1889 to 1916 or Section 117(2) of the Local Government Act 1972; 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 clause."*

Operation of Contract

Contract Standing Order 16: Contract Variation

16.1 Funding must be identified before any variation is approved in accordance with the Council's Financial Regulations. See Financial Regulation D.2.2.17.

16.2 Prior approval must be obtained from the appropriate Strategic Director after consultation with the relevant Cabinet Member, if the proposed variation would together with all other variations to the Contract:

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(a) extend the Contract value or period by 50% or more; and / or

(b) mean the works, services or goods to be added to or deleted from the Contract are substantially different in scope.

16.3 Extensions to Contracts exceeding the relevant EU Threshold shall not be permitted unless indicated in the original OJEU notice. For Contracts below the relevant EU Threshold at original award, extensions to such Contracts shall not be permitted if the revised value then exceeds the relevant EU Threshold.

Contract Standing Order 17: Contract Award

17.1 No Contract may be awarded unless the expenditure involved has been included in approved estimates or on capital or revenue accounts, or has been otherwise approved by, or on behalf, of the Council. The Strategic Director or Senior Officer shall ensure that evidence of authority to spend, and the budget code to be used, is recorded on the Contract file.

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17.2 Each Contract shall be awarded in accordance with evaluation criteria that have been adopted for the Contract. (See CSO 13.4 relating to evaluation.)

Contract Standing Order 18: Waivers of Contract Standing Orders

18.1 Special procedural exemptions or waivers may from time to time be given by the Cabinet to particular classes of Contracts in line with the Council's procurement strategy, as specified in Cabinet reports.

18.2 Subject to CSO 18.6, in relation to Contracts estimated to not exceed a total value of £75,000, a Strategic Director may waive the requirements of any CSO, as long as

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(a) the Procurement Strategy Manager is notified as soon as possible.

(b) the Strategic Director certifies in writing to the Procurement Strategy Manager the CSO being waived and the reasons for doing so.

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18.3 Subject to CSO 18.6, in relation to Contracts estimated to exceed a total value of £75,000, a Strategic Director may, after consultation with the relevant Cabinet Member and the Procurement Strategy Manager, waive the requirements of CSOs as long as:

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(a) the waiver report (the Report) is compiled after consulting with the Procurement Strategy Manager;

(b) the Report is issued setting out the CSO being waived and the reasons for the waiver;

(c) the Report includes legal and financial comments and highlights, as necessary, any future commitment (whether of a financial character or not) which the Contract may entail; and

(d) the Report justifies the method of Contractor selection so that value for money and compliance with EU and domestic law can be demonstrated.

18.4 If an emergency has been declared under the Council's emergency planning or business continuity procedures and it is not possible or practicable for a Council Employee who would normally exercise the powers of waiver under CSO 18.2 and CSO 18.3 to do so, the powers may be exercised by (i) the Council Employee who is designated to be in charge, under those procedures or (ii) any Council Employee appointed by him / her to act on his / her behalf. Further, if it is not possible or practicable for that Council Employee, before exercising the powers under CSO 18.3, to consult the relevant Cabinet Member or the Procurement Strategy Manager or to issue the necessary Report, the Council Employee may exercise the powers without doing so but shall take such steps as appear appropriate at the time to keep the relevant Executive Member and the Procurement Strategy Manager informed and shall issue the Report as soon as is reasonably practicable.

18.5 A report for information giving a digest of all waivers under CSO 18.2, 18.3 and 18.4 shall be made by the Procurement Strategy Manager covering the previous financial year annually to Cabinet.

18.6 For the avoidance of doubt, no waivers may be made so as to alter the full application of CSO 4 (Declarations of Interest), CSO 14 (Contract Registers), CSO 15 (prevention of corruption) CSO 16.3 (Contract Variation), CSO 17 (Contracts Awards), CSO 19 (Risk Management), or to CSO 20 (Negotiation standards) or if such waiver would result in a breach of EU or domestic law.

18.7 A register of all waivers will be maintained by Property and Design and kept available for inspection by the public with reasonable notice during working hours.

Contract Standing Order 19: Risk Management

19.1 A database of procurement clauses that minimise unnecessary Contract risk shall be kept and maintained by the Procurement Strategy Manager.

19.2 Contracts with a total value exceeding the thresholds for the EU Public Procurement Directives shall not be let without reference to this database.

Contract Standing Order 20: Negotiation

20.1 Procurement of goods, services and works shall normally be through the competitive tendering process set out in these CSOs. Under these CSOs

negotiation with one Contractor is normally only permissible for very low value Contracts as set out in CSO 10 or when using the EU Competitive Dialogue Procedure under CSO 9. Where negotiation is undertaken this shall be conducted having regard to the Negotiation Code of Practice.