



# Thanet District Council **Contract Standing Orders**

**October 2018**

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# Contract Standing Orders

## 1 Introduction – Purpose of the Contract Standing Orders

- 1.1 Purchasing decisions and processes are important because the money involved is public money. The purpose of these Contract Standing Orders (CSOs) is to provide a structure within which purchasing decisions are made and implemented and which ensure that the Council:
  - 1.1.1 Furthers its corporate objectives
  - 1.1.2 Uses its resources efficiently
  - 1.1.3 Purchases fit for purpose goods, services and works
  - 1.1.4 Safeguards its reputation from any implication of dishonesty or corruption
  - 1.1.5 Improves the economic, social and environmental wellbeing of the district
- 1.2 Purchasing by the Council, from planning to delivery, shall incorporate (where appropriate) principles of sustainability, efficiency, whole life costing and cost savings.
- 1.3 These Contract Standing Orders are made in accordance with the requirements of Section 135 of the Local Government Act 1972.
- 1.4 These Contract Standing Orders do not provide guidelines on what is the best way to purchase works, supplies (goods), services and the granting of service or works concessions. They set out **minimum** requirements to be followed. Further information and guidelines are set out in the Council's Purchasing Guide that accompanies this document.
- 1.5 It is a disciplinary offence to fail to comply with these Contract Standing Orders. All employees have a duty to report breaches of Contract Standing Orders to the Section 151 Officer or the Council's Monitoring Officer.
- 1.6 Any Officer or Member who suspects any misconduct or corruption in relation to the purchase by or on behalf of the Council must refer to the Council's Whistleblowing Code and following the guidance contained. The Whistleblowing Code can be found on the Council's intranet @ <https://tom.thanet.gov.uk/corporate/policies/whistleblowing-policy> or a copy is available from the Council's Monitoring Officer

## 2 Regulatory Framework in Context

- 2.1 All purchasing shall be conducted in accordance with Regulatory Provisions which are:
  - 2.1.1 The relevant Public Procurement Rules and EC Treaty Principles which are defined in the Council's Purchasing Guide.
  - 2.1.2 Relevant UK legislation.
  - 2.1.3 The Council's Constitution including these Contract Standing Orders, the Council's Financial Regulations and Scheme of Delegation.

- 2.2 In the event of conflict between the above, the Public Procurement Rules will take precedence, followed by UK legislation, then the Council's Constitution as stated at 2.1.3

### **3 General Principles – Application and Compliance with Contract Standing Orders**

- 3.1 These Contract Standing Orders apply to the purchase by or on behalf of the Council of works, supplies (goods), services and the granting of service or works concessions.
- 3.2 These Contract Standing Orders apply to all contracts including all purchase orders, concessions and contractual arrangements entered into by or on behalf of the Council, but there are exemptions from part of the stated CSOs for specific types of contracts and purchasing methods which are listed in 3.3.
- 3.3 Contract Standing Orders 1.1 - 1.4 apply, all other Contract Standing Orders do not apply to the following contracts:
- 3.3.1 which are employment contracts,
  - 3.3.2 for acquisition or rental of land, existing buildings or other immovable property, or which concern interests in or rights over any of them;
  - 3.3.3 for arbitration or conciliation
  - 3.3.4 for the retention of legal counsel and the appointment of expert witnesses in legal proceedings.
  - 3.3.5 Service level agreements setting out the conditions which the Council applies to its funding of particular voluntary sector bodies provided these arrangements comply with the guidance on grant agreements set out in the Council's Purchasing Guide.

### **4 General Principles applying to All Contracts**

- 4.1 All purchases however small shall be evidenced in writing and (with the exception of purchases transacted on a Government Procurement Card) shall include the Council's Standard Clauses\* (Ref CSO 16)
- 4.2 All contracts of a value of £50,000 or more shall be made using one of the following as applicable to nature and size of contract\*:
- 4.2.1 the Council's Official Purchase Order conditions accompanied by the Council's Standard Clauses\* (Ref CSO 16)
  - 4.2.2 the Council's Standard Clauses\* (Ref CSO 16) available on intranet @ <https://sites.google.com/thanet.gov.uk/tom/financial-services/procurement-flexibility/quotation-and-tender-templates-toolkit>
  - 4.2.3 the Council's General Conditions of Contract\* available on intranet @ <https://sites.google.com/thanet.gov.uk/tom/financial-services/procurement-flexibility/quotation-and-tender-templates-toolkit>

- 4.2.4 a standard form of contract (e.g. NEC, JCT etc) using the latest edition as published accompanied by the Council's Standard Clauses\* (Ref CSO 16) or
- 4.2.5 the Suppliers Terms & Conditions (in exceptional circumstances only) accompanied by the Council's Standard Clauses\* (Ref CSO 16)

Advice and agreement must be sought from Legal Services prior to issue and award in respect of 4.2.4 and prior to award in respect of 4.2.5. **N.B.** In respect of 4.2.2 – 4.2.5 an Official Purchase Order must be raised relating to contract spend and budgetary commitment, as required under the Council's Financial Procedure Rules.

*\*Contract clauses are maintained by Legal Services and are subject to amendment from time to time. Officers must therefore check via the intranet that they are using the latest version/s.*

- 4.3 As a minimum, all contracts of a value of £50,000 or more shall include clauses which set out:
  - 4.3.1 The works, supplies (goods), services, material, matters or things to be carried out or supplied
  - 4.3.2 Specify the price to be paid, the estimated price or the basis on which the price is to be calculated
  - 4.3.3 The time within which the contract is to be performed
  - 4.3.4 Quality requirements and/or standards which must be met
  - 4.3.5 Requirements on the contractor to hold and maintain appropriate insurance
  - 4.3.6 Adequate contract management and audit provisions
  - 4.3.7 What happens in the event that the contractor fails to comply with its contractual obligations (in whole or in part)
  - 4.3.8 Inclusion of the Council's Standard Clauses (Ref CSO 16) placing a duty on the contractor to comply with all relevant legislative requirements and discharge of obligations under said legislation.
- 4.4 Additional termination clauses are required for contracts over the relevant Public Procurement threshold in accordance with the Public Contracts Regulations 2015 (Reg 73) enabling termination for the following events:
  - 4.4.1 the contract has been subject to a substantial modification (change) which would have required a new procurement process.
  - 4.4.2 the contractor has been, at the time of the contract award, in a situation which amounts to a mandatory exclusion and should have been excluded from participating in the procurement process.
- 4.5 Contracts shall not include non-commercial terms unless these are necessary to achieve best value for the Council or are included in accordance with the Public Services (Social Value) Act 2012. In this context, "non-commercial" means requirements unrelated to the actual performance of the contract.

- 4.6 All contracts shall include relevant specifications and/or briefs/technical requirements which are prepared taking into account the need for effectiveness of delivery, quality, sustainability, whole life costings, cost saving and efficiency (as appropriate).
- 4.7 All contracts of a value of £50,000 or more which are assessed as involving a substantial risk to the Council must be subject to a written risk assessment, which should be kept on the contract file. Responsible Officers should use the assessment methodology set out in Attachment 1 of the Council's Purchasing Guide and take the follow-up actions set out there.
- 4.8 The Procurement Section shall be made aware at [procurement@thanet.gov.uk](mailto:procurement@thanet.gov.uk) of all proposed variations when value is 20% or more of the initial contract value by submission of a Contract Variation form available from Procurement.

Where officers require:

- 4.8.1 legal advice on a procurement; or
- 4.8.2 terms of contract; or
- 4.8.3 award/sealing of the procured contract,

they should send to Legal Services a completed 'Contract Instructions' form which can be found on the intranet @ <https://sites.google.com/thanet.gov.uk/tom/corporate/legal>

## **5 Responsibilities of Chief Executive, Directors, Heads of Service and Responsible Officers**

- 5.1 The Chief Executive, each Director and each Head of Service shall have overall responsibility for the purchasing undertaken by his or her Directorate.
- 5.2 Each Head of Service shall be responsible for the purchasing undertaken by his or her service and shall
  - 5.2.1 be accountable to the Council for the performance of his/her duties in relation to purchasing
  - 5.2.2 comply with the Council's decision making processes including, where appropriate, implementing and operating a Scheme of Delegation
  - 5.2.3 attend training in relation to these Contract Standing Orders and ensure that any Responsible Officer to whom he or she appoints under CSO does the same
  - 5.2.4 take immediate action in the event of breach of these Contract Standing Orders, which will include as a minimum promptly informing their line manager (unless that person is suspected of being involved) and the Monitoring Officer and the Section 151 Officer of such breach.
- 5.3 A Responsible Officer is an officer with responsibility for conducting purchasing processes for the purchase of works, supplies (goods) or services as authorised by their Head of Service on behalf of the Council.
- 5.4 A Responsible Officer's duties in respect of purchasing are to ensure:

- 5.4.1 act within the scope of their responsibility and authority, as authorised by their Head of Service
  - 5.4.2 compliance with all Regulatory Provisions (see CSO 2.1)
  - 5.4.3 that all relevant officers are reminded of the relevant statutory provisions and the Council's requirements relating to declarations of interest and confidentiality undertakings affecting any purchasing process in order for them to comply with these requirements
  - 5.4.4 that there is an appropriate analysis of the requirement, timescales, procedure and documentation to be used
  - 5.4.5 the purchasing process, from planning to delivery incorporates (where appropriate) principles of best value, sustainability, efficiency, whole life costing and cost savings
  - 5.4.6 that all contracts of a value of £5,000 or more are included on the Council's Contract Register, maintained by the Procurement Section to meet transparency obligations of quarterly publication
  - 5.4.7 that proper records are maintained of all contract award procedures, waivers, exemptions, extensions and other variations and contract management activities, regardless of contract value, with separate files for each purchase of a value of £140,000 or more
  - 5.4.8 that proper records to justify decisions taken in all stages of the procurement process, as required under the Public Contracts Regulations 2015 (Reg 83/84), are maintained for every contract or framework agreement with a value of or exceeding £884,720.00 for supply (goods) or services contracts and £8,847,200.00 for works contracts. A Contract Report for this purpose is available on the intranet @ <https://tom.thanet.gov.uk/directorates/corporate-resources/financial-procurement-services/procurement/quotation-and-tender-templates-toolkit>
  - 5.4.9 that value for money is achieved
  - 5.4.10 that adequate and appropriate security (such as a bond or guarantee) is taken to protect in the event of non-performance as deemed necessary to the nature of the contract
- 5.5 In considering how best to procure works, supplies and services, the Chief Executive, Directors, Heads of Service and/or Responsible Officers (as appropriate in the context), shall take into account wider contractual delivery opportunities and purchasing methods including the use of Purchasing Schemes and e-procurement/purchasing methods, and in-house and/or commercial opportunities that may be available to the council, for which Legal guidance must be sought.
- 5.6 The Responsible Officer, if procuring services under the Public Contracts Regulations 2015, has obligations under the "Public Services (Social Value) Act 2012" namely "a duty to consider" at the pre-procurement planning stage, the following considerations:
- 5.6.1 how what is proposed to be procured might improve the economic, social and environmental well-being of the "relevant" local area.

- 5.6.2 how in conducting a procurement process it might act with a view to securing that improvement and whether to undertake a consultation with stakeholders on these matters.

## 6 Financial Thresholds and Procedures

- 6.1 The table below sets out the general rules applying to the choice of purchasing procedure for contracts at the stated threshold values. The table now separates out, concession contracts (services/works) previously falling within the scope of the Public Contract Regulations, however these arrangements are now subject to their own Regulations contained within The Concession Contracts Regulations 2016 (CCR 2016).
- 6.2 There is a general presumption in favour of competition. Wherever possible, Contract Notices should be advertised by way of a public notice. The Council must consider the potential effect of a contract on interstate trade (at a European level). If a contract may be of interest to contractors from other member states then this may result in a need to advertise in a manner which ensures that potential contractors from other member states are aware of the opportunity, even for small value contracts or contracts under the Public Procurement Threshold levels outlined below.
- 6.3 Sourcing of all Contracts of £50,000 or over must be undertaken in conjunction with the Procurement Section using the Council's e-tendering system **\*\*\***(unless agreed in advance as identified in table 6.6).
- 6.4 The public notice referred to at 6.2 must take the form of a notice or advertisement on an easily accessible website or other electronic media and/or in the press, trade journals or Find a Tender Service ("FTS") (as appropriate). The Responsible Officer may choose to place one or more public notices in different media.
- 6.5 In accordance with Part 4 of the Public Contracts Regulations 2015 and guidance issued by the Cabinet Office and, The Local Government (Transparency Requirements) Regulations 2015
- 6.5.1 All contract opportunities with a value (inclusive of VAT) estimated to be £30,000.00 and above must be published on 'Contracts Finder' where the Council has advertised such opportunity in the form of a notice or advertisement as set out in 6.3 above.
- 6.5.2 All contract opportunities for which a Contract Notice was sent to the FTS for publication must also be published on 'Contracts Finder'.
- 6.5.3 Contracts awarded of £25,000 and above must be published on Contracts Finder. This includes awards made following a call-off/s from a Framework Agreement **and contracts that may not have been openly advertised.**
- 6.5.4 Under the Local Government Transparency Code 2015, contracts of £5000 and over and spend of £500 and above must be published quarterly. Local authorities must also publish details of **every transaction undertaken using a Government Procurement Card** regardless of



value.

6.5.5 Provision is to be made to require contractors to pay the National Living Wage, see Standard Clause (Ref CSO16 [16.1.3]) being a legal requirement

**6.6 Table setting out financial thresholds and procedures:**

<b>Total value £</b>	<b>Type of contract</b>	<b>Procedure to be used</b>
1,000 to 24,999.99	Works, supplies and services	Local CSO rules apply - At least one quote in advance – Consideration to be given to suitably qualified Thanet Supplier/s, if available.
25,000 to 49,999.99	Works, supplies and services	Local CSO rules apply - At least three quotes in advance – Consideration to be given to suitably qualified Thanet Supplier/s, if available.
50,000 to 139,999.99	Works, supplies and services	Local CSO rules apply - At least three written quotes in advance using the Council's Invitation to Quote documents, sourced and receipted electronically using the Council's e-procurement system (**or an alternative electronic method agreed with Procurement in advance) – Consideration to be given to suitably qualified Thanet Supplier/s, if available.
140,000 to 179,085.99** Works, supplies and services	Works, Supplies and Services	Local CSO rules apply - At least three written tenders in advance using the Council's Invitation to Tender documents, sourced and receipted electronically using the Council's e-procurement system and advertisement by public notice
179,086.00** plus  <b>** PCR2015 Threshold for Supplies and Services</b>	Supplies and Services	PCR2015 & CSO apply – full competitive process using the Council's Invitation to Tender documents, sourced and receipted electronically using the Council's e-procurement system following advertisement in the FTS for supplies and Part A* services  For Light Touch * services reduced requirements apply under the Public Procurement Rules and the threshold is £663,540** including VAT. but there is a presumption in favour of advertising and a competitive process.
179,086 to 4,477,173.99 **	Works	Local CSO's rules apply - At least three written tenders in <b>advance</b> using the Council's Invitation to Tender documents, sourced and receipted electronically using the Council's e-procurement system and advertisement by public notice

4,477,174 plus ** <b>** PCR2015 Threshold for Works</b>	Works	PCR2015 & CSO apply – full competitive process using the Council’s Invitation to Tender documents, sourced and receipted electronically using the Council’s e-procurement system following FTS advertisement
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**Service/Works Concession Contracts:** The following spend thresholds are specific to Service and Works Concession Contracts - Officers should seek both Procurement and Legal guidance on Concession Contract arrangements.

Total Value £	Type of Contract	Procedure to be used
1,000 to 24,999.99	Services and works concessions	Local CSO rules apply - At least one quote in advance – Consideration to be given to suitably qualified Thanet Supplier/s, if available.
25,000 to 49,999.99	Services and works concessions	Local CSO rules apply - At least three quotes in advance – Consideration to be given to suitably qualified Thanet Supplier/s, if available.
50,000 to 139,999.99	Services and works concessions	Local CSO rules apply – At least three written quotes in advance, sourced and receipted electronically using the Council’s e-procurement system – Consideration to be given to suitably qualified Thanet Supplier/s, if available
140,000 to 4,477,173.99*	Services and works concessions	Local CSO rules apply – At least three written tenders in advance, sourced and receipted electronically using the Council’s e-procurement system and advertisement by public notice
4,477,174 Plus ** Plus <b>** CCR 2016 Threshold for Concessions</b>	Services and works concessions	Concession Contracts Regulations 2016 (CCR2016) apply – full competitive process using the Council’s e-procurement system following FTS advertisement - <b>seek guidance from Legal Services /Procurement</b>

\* For the purposes of the Public Procurement Rules services are divided into two types “A” & “Light Touch” and the Public Procurement Rules apply to a different degree. Responsible Officers should act cautiously and seek advice when considering the procedure to be used and application of the Public Procurement Rules to services contracts.

\*\* or relevant threshold in force at the time under the Public Procurement Rules.

Please note that the thresholds are fixed every two years and converted from Euro's to £ Sterling subject to the exchange rates applicable at that time and published in the relevant regulations.

6.7 Where contracts are of a type and value that mean the Public Procurement Rules apply to them then there are five main types of Public Procurement procedures available. These are the open, restricted, competitive procedure with negotiation, competitive dialogue and innovation partnership procedures. Care must be taken to ensure that the correct and most appropriate procedure is used and assistance on the choice and use of Public Procurement procedure should be sought from Legal Services and process progressed via the Procurement Section.

## **7 Financial Thresholds and Processes Applying to Approval and Execution of Contracts**

7.1 For contracts over the relevant Public Procurement threshold (in force at the time), the choice of purchasing procedure to be used and the decision to proceed to advertisement must be authorised in writing by the relevant Head of Service in consultation with the Head of Legal and Democratic Services (Deputy Monitoring Officer) & the Strategic Procurement Manager in advance.

7.2 Before the procurement process starts, the Head of Service must also consider:

7.2.1 how any service to be procured may improve the social environmental and economic wellbeing of the District of Thanet, how the improvement can be secured and whether consultation is needed. Examples of added social value are contained with the Purchasing Guide, which can be found on the intranet @

<https://docs.google.com/document/d/154SLYUkdLLcXFoJcUtOjahvwi6jDaQg3ze0yG79dntA/preview>;

7.2.2 ensure the Council has due regard to equality obligations under the Equality Act 2010; and

7.2.3 ensure the Council has due regard to data protection and obligations under the General Data Protection Regulation (GDPR).

7.3 For all contracts of £50,000 and above, the responsible officer must ensure the Council's Procurement Initiation Form, which can be found on the intranet @ <https://tom.thanet.gov.uk/directorates/corporate-resources/financial-procurement-services/procurement/quotation-and-tender-templates-toolkit>; is fully completed and authorised and submitted to the Procurement Section sufficiently in advance, for the procurement process to be scheduled within the procurement programme.

7.4 When a decision is made to award a contract then the Responsible Officer must, in addition to complying with his/her general obligations under these Contract Standing Orders ensure, in particular, that:

7.4.1 the appropriate approvals have been obtained to authorise that decision; and

- 7.4.2 where appropriate, a standstill period complying with the Public Procurement Rules is incorporated into the final award process.
- 7.5 Any contracts valued at £140,000 or above including any order made under a framework arrangement shall be executed as a deed under the Council's common seal. Officers with appropriate delegated authority may sign all other contracts.
- 7.6 Any contract with a value of £50,000 or more, entered into on behalf of the Council in discharging an Executive function shall be made in writing. Such contracts shall either be signed by one authorised officer of the Council or be made under the common seal of the Council attested by an authorised signatory of Legal Services.
- 7.7 Electronic signatures may be used in accordance with the Electronic Signature Regulations 2002 (or any amended regulations in force at the time) provided the sufficiency of security arrangements has been approved by the Senior ICT Manager.

## **8 Calculating the Contract Value**

- 8.1 The starting point for calculating the contract value for the purposes of these Contract Standing Orders is that the contract value shall be the genuine pre-estimate of the value of the entire contract excluding Value Added Tax. This includes all payments to be made, or potentially to be made, under the entirety of the contract and for the whole of the predicted contract period **(including proposed extensions and options)**.
- 8.2 There shall be no artificial splitting of a contract to avoid the application of the provisions of the Public Procurement Rules and/or these Contract Standing Orders.
- 8.3 The Public Procurement Rules can cover contracts, which are below the stated Public Procurement threshold, where they constitute repeat purchases and/or purchases of a similar type (goods/services or works) in a specified period. Responsible Officers should therefore seek advice from the Strategic Procurement Manager on the application of the Public Procurement Rules where they envisage that they may require repeat purchases and/or purchases of a similar type.

## **9 Principles Underlying Tendering Processes and Tender Evaluation**

- 9.1 All tendering procedures (including obtaining quotes), from planning to contract award and signature, shall be undertaken in a manner so as to ensure:
- 9.1.1 Sufficient time is given to plan and run the process
  - 9.1.2 Equal opportunity and equal treatment
  - 9.1.3 Openness and transparency
  - 9.1.4 Probity

- 9.1.5 Outcomes that deliver sustainability, efficiency and cost savings (where appropriate).

## **10 Submission and Opening of Tenders**

- 10.1 An Invitation to Tender shall be issued electronically by the Council for all contracts of £140,000 or more, via the Council's eProcurement system and tenders shall be submitted in accordance with the requirements of Invitation to Tender Document.
- 10.2 Any tenders received shall be kept secure electronically unopened within a sealed mailbox on the e-tendering system until the time and date specified for the opening.
- 10.3 No tenders received after the time and date specified for its opening shall be accepted or considered by the Council unless agreed in writing by the Monitoring Officer and only in exceptional circumstances.
- 10.4 Tenders shall be opened electronically by an officer of the Procurement Section on the Council's eProcurement system providing a full audit trail of all activity undertaken. Where Tenders are expected to have a value of £140,000 or more, invitations to the opening of these tenders will be sent to the appropriate Portfolio Holder or another Cabinet Member and the appropriate Shadow Portfolio Holder or another Shadow Cabinet Member, a Procurement Officer, one Responsible Officer and a Democratic Services Officer to undertake the completion of the Record of Receipt of Tender Document of all tenders received including names and addresses and the date and time of opening. In circumstances where both Portfolio/Cabinet member and/or, both Shadow Portfolio/Cabinet members are unable to attend, opening of tenders can and should be undertaken in presence of officers and at least one substitute Member to ensure procurement programme is maintained.

## **11 Evaluation of Quotations and Tenders**

- 11.1 All quotes and tenders shall be evaluated in accordance with evaluation criteria notified in advance to those submitting quotes/tenders by no fewer than 2 officers
- 11.2 Tenders subject to the Public Procurement Rules shall be evaluated in accordance with the Public Procurement Rules in the presence and under the guidance of procurement officer/s.

## **12 Waivers**

- 12.1 The requirement for the Council to conduct a competitive purchasing process for contracts of £25,000 or more may be waived in the following circumstances:
- 12.1.1 For contracts which are not subject to the Public Procurement Rules, the work, supply or service is required as a matter of urgency and a delay would be likely to lead to financial loss, personal injury or damage to property; or
- 12.1.2 the circumstances set out in the Public Contract Regulations 2015 Regulation 32 apply (whether or not the contract is of a type which is subject to the application of Part 2 of the Regs.); or

- 12.1.3 where the supply is for parts for existing machinery, or where the terms of supply of equipment require that maintenance be undertaken by a specified provider; or
  - 12.1.4 where the work is of a specialist nature, the skill of the contractor is of primary importance, and the supply market has been tested and found to be limited; or
  - 12.1.5 where the supply is for maintenance to existing IT equipment or software, including enhancements to current software, which can only be performed by the licensed developer or owner of the system; or
  - 12.1.6 at the discretion of the relevant Director who may proceed in a manner most expedient to the efficient management of the service/Council with reasons recorded in writing.
- 12.2 A Responsible Officer who seeks a waiver of Contract Standing Orders shall do so **only in advance and only in exceptional circumstances**. Further guidance on what may constitute exceptional circumstances permitting waiver of these Contract Standing Orders is set out in the Council's Purchasing Guide.
- 12.3 All waivers from these Contract Standing Orders must be:
- 12.3.1 Fully documented
  - 12.3.2 Subject to a written report in an approved format, available on the intranet, to be submitted **in advance** to the relevant Director for endorsement which shall include reasons for the waiver which demonstrate that the waiver is genuinely required
  - 12.3.3 Subject to comment and/or endorsement as to existence of exceptional circumstances by the Strategic Procurement Manager
  - 12.3.4 Subject to **approval in advance** by the Section 151 Officer or his/her authorised representative, who shall record that they have considered the reasons for the waiver and that they are satisfied that the circumstances justifying the waiver are genuinely exceptional.
- 12.4 All decisions on waivers must take into account:
- 12.4.1 Probity
  - 12.4.2 Best value/value for money principles.
- 12.5 For contracts subject to the Public Procurement Rules, any waiver from the requirement for competition must meet without exception the conditions set out in the Public Procurement Rules, in addition to the general requirements above.
- 12.6 Once a waiver is approved in respect of a specific contract value, the waiver shall cover contract spend up to the next spend threshold negating the need for a further waiver application on occasion when there may be a slight increase in contract spend.

### **13 Extensions and other Variations to Existing Contracts**

- 13.1 An extension to the duration of an existing contract can only be granted if specifically provided for by that contract and for the period (or periods) specified.

- 13.2 Extensions and other variations to existing contracts such as the inclusion of additional works or services must be:
  - 13.2.1 Made in accordance with any statutory restrictions and any specific terms of the contract;
  - 13.2.2 Made in accordance with the principles set out in the Council's Purchasing Guide;
  - 13.2.3 Discussed and notified to the Procurement Section
  - 13.2.4 In a written format approved by Legal Services.
- 13.3 Any extension or other variation must take into account:
  - 13.3.1 Probity
  - 13.3.2 Best value and value for money principles.
- 13.4 For contracts subject to Part 2 Public Contract Regulations 2015, , any extension or other variation must meet the conditions set out in these Regulations in addition to the more general requirements set out above. Responsible Officers should proceed cautiously and seek advice where any extension or other variations are proposed to contracts subject to Part 2 rules.
- 13.5 For all contracts which are not subject to Part 2 Public Contract Regulations 2015, no variation (nor the cumulative effect of more than one variation) of a contract may artificially modify the subject matter of a contract beyond its original specification nor increase its value by more than 20% of the initial contract value.
- 13.6 Subject to the nature of changes which may be required to the contracts and framework agreements, certain variations may be lawfully sought. Responsible Officers should contact Legal Services or Procurement to obtain advice on the lawfulness of the changes required.

#### **14 Purchasing Schemes**

- 14.1 A Responsible Officer may use Purchasing Schemes subject to the following conditions and the Council's Purchasing Guide.
- 14.2 Responsible Officers must check and validate in advance that
  - 14.2.1 The Council is legally entitled to use the Purchasing Scheme
  - 14.2.2 The purchases to be made do properly fall within the coverage of the Purchasing Scheme and are made according to any terms of said Scheme
  - 14.2.3 The establishment and operation of each Purchasing Scheme is in compliance with the Public Procurement Rules (where they apply) and meets the Council's own requirements.
- 14.3 A "Purchasing Scheme" may include:
  - 14.3.1 Contractor prequalification lists/select lists
  - 14.3.2 Framework arrangements (including those set up by the Crown Commercial Services and other Purchasing agencies i.e. ESPO, TPPL)

- 14.3.3 Purchasing arrangements set up by central purchasing bodies and commercial organisations
- 14.3.4 Consortium purchasing
- 14.3.5 Collaborative working arrangements
- 14.3.6 E-procurement/purchasing schemes and methods
- 14.3.7 Other similar arrangements such as the Government eMarketplace
- 14.4 Where a Purchasing Scheme is used then there shall be a whole or partial exemption from the obligations under these Contract Standing Orders in respect of the choice and conduct of procedures to the extent permitted and indicated in the Council's Purchasing Guide.

## **15 Review and Changes to these Contract Standing Orders**

These Contract Standing Orders shall be reviewed and updated on a regular basis. Save in the case of revisions to the Public Procurement Thresholds in Contract Standing Order 6.6, amended Contract Standing Orders shall be recommended by the Constitutional Review Working Party to Council. The Strategic Procurement Manager will make revisions to the Public Procurement Thresholds as applicable and is permitted to undertake such non-material amendments as a result of business restructuring as required from time to time.

## **16 Standard Clauses**

- 16.1 Each contract (with exception of purchases transacted on Government Procurement Cards) shall include standard clauses, including those indicated "where applicable" dependant on the nature of the contract as follows:
  - 16.1.1 Anti-Corruption and Bribery
  - 16.1.2 Prevention of Assignment
  - 16.1.3 Compliance with Statutes: Health and Safety, Equal Opportunities and National Minimum/Living Wage
  - 16.1.4 Freedom of Information
  - 16.1.5 Prompt Payment of Invoices
  - 16.1.6 Conflict of Interest
  - 16.1.7 Child Protection and Safeguarding Generally
  - 16.1.8 Performance Data Sharing
  - 16.1.9 Data Protection
  - 16.1.10 TUPE and Employment Matters (where applicable)
  - 16.1.11 Termination (Reg 73 PCR 2015) (above EU threshold procurements only)
  - 16.1.12 Electronic Invoicing



16.1.13 Insurances

16.1.14 Liquidated Damages (where applicable)

These Standard Clauses are available on the intranet @ <https://sites.google.com/thanet.gov.uk/tom/financial-services/procurement-flexibility/quotation-and-tender-templates-toolkit>. Standard Clauses are maintained by Legal Services and are subject to amendment from time to time.