

Annex 1 - Proposed Constitutional Text for 'Contracts and Tenders Standing Orders'

It is the responsibility of anyone who buys on behalf of the Council to ensure that all purchasing or procurement of goods, services, or works comply with:

- a) legal requirements, including public procurement regulations
- b) the Council's Financial Regulations,
- c) 'Spending the Council's Money' (as approved by the Governance and Audit Committee),
- d) the Financial Regulations
- e) the Council's Code of Conduct (i.e. the 'Kent Code')
- f) the Council's Corporate Grants Procedure
- g) the Council's Anti-Bribery Policy
- h) the Council's Anti-Fraud Strategy and Policy
- i) standards for the management of property, information technology resources and staff,
- j) any conditions attached by the Leader or the full Council to the exercise of powers delegated by them, and

Non-compliance with any of these requirements will be reported to the Monitoring Officer who will ensure this is reported to the Governance and Audit Committee. Disciplinary action may be taken in line with the Council's Code of Conduct against anyone who breaches these requirements.

Authority

All transactions must either fall within the powers delegated to Senior Managers or have been approved by a decision (in accordance with the Council's Constitution) of the Cabinet, the Leader, an authorised Cabinet Member, the full Council or one of its Committees or Sub-Committees.

No contract, agreement or other document shall be signed or sealed unless it gives effect to:

- a) a decision or resolution (in accordance with the Council's Constitution) of the Leader, an authorised Cabinet Member, the Cabinet, or one of its committees or sub-Committees with decision-making authority), or
- b) a decision by an Officer exercising delegated powers.

Budgetary provision must exist before any contract can be entered into. This provision should be explicit in a Budget approved by resolution of the full Council.

Where there is no specific Budget line, the Director of the relevant service and the Head of Commercial may approve expenditure up to £1,000,000, provided the expenditure can be met within budget. Above £1,000,000 a formal decision by the Leader, the Cabinet or an authorised Cabinet Member is required in accordance with the Council's Constitution.

Thresholds

The financial values (exclusive of Value Added Tax) are defined within Spending the Council's Money and refer to the total aggregate contract value. Anybody who is buying on behalf of the Council must follow the procedure set out in the Spending the Council's Money for the total aggregate contract value of their procurement. The definition of aggregate contract value is also defined in the Spending the Council's Money.

In addition, public procurement regulations set thresholds for public contracts above which specific procedures are required to be followed. Anyone who buys on behalf of the Council should understand these regulations and follow the procedures as necessary.

There must be no attempt to avoid any of these thresholds by deliberately manipulating the requirement or frequency of ordering.

The Award

Senior Managers may sign documents on behalf of the Council or authorise Officers to do so in accordance with the Delegated Authorities Matrix in the Financial Regulations.

Any contract with a value in excess of £1m must be made in writing and either:

- a) affixed with the common seal of the Council and be attested by at least one authorised Officer (see section 13.18), or
- b) signed as a deed by at least one authorised Officer (as defined in 13.18) unless otherwise determined by the Monitoring Officer.

The common seal of the Council shall be affixed to any deeds (unless a specific statutory provision permits otherwise) and any document or agreement if the Monitoring Officer considers it appropriate for the purpose of transacting the Council's business or safeguarding its interests.

The affixing of the Common Seal, either by physical or electronic means (as defined in section 11.21), may only be attested by the Monitoring Officer, or Officers authorised by them in writing to do so.

The Monitoring Officer shall ensure a register is maintained of all documents and agreements that are sealed including the name of the person who witnessed the affixing of the seal.

Where a process that is non-compliant with Spending the Council's Money is required to determine the contractor, a waiver must be sought. A waiver cannot be given to contravene any applicable public procurement legislation. A waiver can be approved by the Officer delegated responsibility for the Council's procurement activity unless the value of the award exceeds £1,000,000 with which they will also seek approval from the Section 151 Officer and Monitoring Officer. The approved Award Report must be sent to the Monitoring Officer within two days of the contract being awarded so that they may notify Members of the Scrutiny Committee on a quarterly basis.

Where there is a requirement (legal or otherwise) for a 'wet ink' signature on legal agreements, they will be sealed and/or signed physically. Otherwise, section 13.23 may apply.

Where the law, and (where applicable) any additional requirements of a public registry (for example, HM Land Registry) allow, electronic signatures may be permitted, and will be accepted as a fair representation of a willingness to enter into a contract with the Council, as long as the following apply:

- a) the Contract will be entered into in relation to being either under seal or under hand,
- b) the electronic signature is a true representation of the authorised person's written signature, and
- c) is supported with a contemporaneous document of authenticity and authorisation from the Supplier.