

# **STANDING ORDERS RELATING TO CONTRACTS**

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## **PART I**

### **STANDING ORDERS RELATING TO CONTRACTS**

#### **GENERAL - ALL CONTRACTS**

#### **PROVISIONS APPLICABLE TO ALL CONTRACTS FOR THE SUPPLY OR DISPOSAL OF GOODS AND MATERIALS, THE PROVISION OF SERVICES AND THE EXECUTION OF WORKS**

##### **1. APPLICATION**

- 1.1 The provisions of Standing Orders apply to all contracts irrespective of the source of funding, or type of supplier.
- 1.2 All values referred to in these Standing Orders shall be exclusive of VAT. It should be noted that for social services, education and leisure supplies and services, different EU limits may apply.
- 1.3 All procurement must be undertaken in accordance with the Council's policies.
- 1.4 Supporting corporate guidance is provided in the Corporate Procurement Manual.
- 1.5 "Director" means the Director of any Directorate of the Council, the Chief Executive of the Council, or their duly authorised representative. Any delegations should be recorded in writing. Other definitions for the purposes of Standing Orders are supplied in Appendix A.
- 1.6 For the avoidance of doubt, nothing in these Standing Orders shall be read or construed as permitting a Director to accept a tender and/or enter into a contract which is not within approved available resources without the approval of the Council.
- 1.7 All waivers of Standing Orders can only be made by the Cabinet Member for Finance in consultation with the Treasurer .
- 1.8 Where any statutory provision or European Union [EU] Directives require procedures to be followed in the letting of contracts which are inconsistent with the procedures set out in these Standing Orders the requirements of the statutory provisions or EU Directives shall prevail [insofar as they are inconsistent] and shall be fully complied with. Directors shall notify the Head of Procurement [HoP] of all contracts awarded within EU Directives no later than one month after the award of the contract.
- 1.9 For all contracts over EU limits [currently £170,000] in respect of tenders referred to in 1.9a, 1.9b, and 1.9c and for all contracts of any value in respect of 1.9d, at six monthly intervals each Director shall submit details to the Head of Audit so that a report can be presented to the Audit & Standards Committee setting out details of :-

- a. A successful tender which is other than the lowest valid tender if payment is to be made by the Council, or the highest valid tender if payment is to be made to the Council
- b. A successful tender where the appropriate Director has determined that a contract shall be let based upon criteria of which the tendered price is only a part of the evaluation and the tender is awarded to other than the Contractor evaluated as making the most economically advantageous offer in accordance with the pre-determined criteria e.g highest score
- c. A successful tender which is not within the amount of the Estimated Contract Value plus 10% or £75,000 whichever is the greater
- d. Any waiver of Standing Orders.

- 1.10 The appropriate Director will ensure that action taken at all stages of the procurement or disposal process shall be with a view to the Council obtaining the most economically advantageous outcome
- 1.11 The appropriate Director will ensure that before any quotations/tenders are invited or negotiations conducted, an estimated contract value [ECV] is determined for the total period of the contract. This should not normally be disclosed to third parties but if requested, an indicative range may be disclosed to contractors who request an indication of the scale of the contract. The ECV shall be recorded in writing and signed by the person preparing it, and retained on the scheme file or on the tender evaluation record.
- 1.12 Contracts shall not be packaged in such a way that results in the ECV falling into a lower value band except for sound operational reasons which shall be approved by the appropriate Director and recorded in writing. The Director would need to ensure that EU Directives are followed. In consideration of statutory or local guidance, contracts may be split into lots
- 1.13 Where consultants are procured then corporate guidance should be followed and if they are appointed to act on behalf of the Council in any part of a procurement exercise they shall be provided with a copy of these Standing Orders and, the Council's Financial Regulations by the appropriate Director and it shall be a condition of the engagement that these Standing Orders and Financial Regulations are strictly observed.
- 1.14 The appropriate Director shall ensure that the Corporate Procurement Manual is used and applied to the letting of all contracts. Directors will ensure that officers have the requisite skills to undertake contracting and as appropriate, project management.

## 2. **CONTRACTING**

- 2.1 For the purposes of Standing Orders, contracting is taken to include commissioning and procurement.
- 2.2 Irrespective of how a service is funded or whether outcomes and/or method of delivery is specified, a contract should be in place using standard terms and conditions.
- 2.3 For service agreements between Council departments a service level agreement can be used.

- 2.4 Partnerships shall also utilise standard contracts. Partners shall be evaluated to ensure that their policies, practices, performance and corporate governance procedures are in accordance with the Council's requirements before the Partnership is entered into. Partnering contracts can be considered for any value of contract and partner selection should be undertaken on an appropriate basis to ensure the most economically advantageous outcome.

3. **TERMS AND CONDITIONS OF CONTRACTS**

- 3.1 All contracts for the supply or disposal of goods and materials and the provision of services and execution of work shall be in writing and shall contain appropriate terms and conditions as agreed by the Director of Corporate Resources or approved external legal advisers of the Council. For the avoidance of doubt this standing order shall include terms and conditions proposed by contractors provided they are approved by the Director of Corporate Resources or approved external legal advisors. Master terms and conditions are shown on the Procurement intranet site.
- 3.2 Where applicable an appropriate standard form of contract such as but not limited to those published by the Joint Contracts Tribunal, the Institution of Civil Engineers or the Institution of Electrical Engineers must be used. Any amendments to a standard form of contract which have not been approved by the appropriate body, must be approved in writing, in advance, by the Director of Corporate Resources or approved external legal advisors of the Council.
- 3.3 There shall be inserted in every contract entered into under these Standing Orders a clause empowering the Council to cancel a contract and recover from the contractor the amount of any loss resulting from such cancellation if the contractor or his/her employees or persons acting on his/her behalf has committed an offence under current legislation affecting fraud, bribery, corruption, cartels, etc.
- 3.4 If a contract is procured via the provisions of paragraph 7.1c or 15.1b then Directors must ensure that the wording of any contract is cleared with the Director of Corporate Resources or approved external legal advisors of the Council.

4. **RESTRICTIONS ON CONTRACTS WITH CERTAIN PERSONS**

- 4.1 No employee, member, spouse or other close relative [see Appendix A] will supply goods, services or carry out works unless they have been procured by competitive tender or quotation.

The same applies to any company, partnership or firm in which they have an interest.

Officers and members shall refer to the relevant codes of conduct in the Constitution.

5. **WORK BY COUNCIL DIRECTORATES**

- 5.1 Where legislation allows the Council to undertake work using its own work force such work shall be awarded to the Council's work force provided that the Director awarding the work is satisfied that the offer submitted by the Council's work force represents value for money and the Council's work force has sufficient resources to undertake the work.

6 **FORWARD PROCUREMENT PLAN**

- 6.1 Each Director shall produce a Forward Procurement Plan [FPP] in the approved format that shall include all contracts where the Estimated Contract Value is likely to exceed £100,000 in value. Each Director shall provide a copy of the FPP to the HoP, who shall ensure that the FPP is published on the internet and updated regularly to reflect changes notified to the HoP.

7. **CORPORATE CONTRACTS**

- 7.1 Before inviting quotations or tenders or entering into negotiations in respect of any contract, reasonable steps must be taken to demonstrate whether an existing contract exists i.e. :-
- a. Corporate Contract [see Procurement intranet site for details of their Corporate Contracts].
  - b. Another such contract let by a Director that may be appropriate and satisfy the contract requirements
  - c. Another public sector contract, or framework procured for the benefit of the public sector, which have been procured in accordance with that organisation's procurement rules so long as they have complied with EU Directives.

If one does exist then this should be used unless the appropriate Director is satisfied that there are special factors justifying a different course of action. Such special factors shall be recorded in writing.

- 7.2 Where a Corporate Contract or other such contract is used the Director placing the order shall be responsible for ensuring that the contractor complies with the Council's terms and conditions.
- 7.3 Officers should ensure that the rules governing any public sector contract or framework are followed, and if further procurement exercises are required they will comply with Standing Orders.

8. **NEGOTIATION**

The following procedures shall be adopted in all Negotiations:-

- 8.1 A contractor shall not be employed by the Council on the basis of a negotiated contract or series of negotiated contracts for more than three consecutive years.
- 8.2 Officers conducting negotiations shall be designated in writing in respect of individual contracts by their Director.
- 8.3 There must be at least two officers present on at least Principal Officer Grade 9 or equivalent in respect of contracts over EU limits [currently £170,000] and one officer on at least Principal Officer Grade 9 or equivalent in respect of contracts under EU limit [currently £170,000]. The Treasurer must be invited to attend or be

represented at all negotiations over £1,000,000 and be given not less than 10 working days notice of the commencement of such negotiations.

- 8.4 All officers involved in negotiations under this Standing Order shall make a declaration in writing as to any personal or prejudicial interest they may have prior to commencement of negotiations to their Director and no officer with any such interest in any prospective contractor involved in the negotiations under this part shall be involved, at any stage, in the negotiations.
- 8.5 No information concerning a prospective contractor's offer shall be disclosed to third parties without the written permission of the appropriate contractor.
- 8.6 A record of the discussions held with prospective contractors and terms agreed shall be kept and shall be signed by all officers present at the negotiations.
- 8.7 Before any contract is entered into the appropriate Director must satisfy themselves that the result of negotiations represents good value for money.
- 8.8 All discussions with tenderers which take place following the receipt of tenders but prior to entering into a contract should be restricted in normal circumstances to clarification of tenders, and must be undertaken in line with normal negotiation rules identified above.
- 8.9 Post tender negotiations are restricted to those conducted with a supplier who has been identified as making the most economically advantageous offer via usual tender selections methodology [so the objective is simply to improve the value for money of the best offer evaluated]. A Director must authorise post tender negotiations and nothing must be done which would contravene EU Directives.

## **9. ALTERNATIVE CONTRACTORS**

- 9.1 Where a Director elects to let a contract to more than one contractor in order to maintain services they shall document the rationale and call off procedure.

## **10. PUBLIC AND EMPLOYER LIABILITY INSURANCE**

### **10.1 Employers Liability**

All contractors will comply with the *Employers' Liability [Compulsory Insurance] Act 1969*. This Act dictates a minimum of £5m is required but contractors will arrange a level of indemnity commensurate with the size and exposure of its workforce. The contractor shall provide a copy of this insurance upon request.

### **10.2 Public Liability & or Product Liability**

All contractors shall be required to maintain *Public* and or *Products Liability insurance* cover that is commensurate with the risk and exposure of the said contract. Generally this cover will be a minimum of £5M but in certain circumstances lower levels may be acceptable. The appropriate Director will specify appropriate insurance levels dependent upon the nature of the contract.

### 10.3 **Other Insurances**

Certain types of contracts may require additional insurances, common examples might be *Professional Indemnity* [usually associated with design or consultancy contracts], *Clinical Negligence*, *Contractors All Risks* and some others might be applicable. If necessary, officers letting contracts should consult the Risk Management & Insurance Manager about appropriate insurances to ensure they are correctly specified in conjunction with any tender.

### 11. **LIQUIDATED AND ASCERTAINED DAMAGES**

11.1 In all appropriate contracts for works over £75,000 [or lower in appropriate cases] a clause shall be included specifying that liquidated and ascertained damages will be payable by the contractor if the contract is not completed by the completion date or as amended by any duly authorised extensions.

11.2 Any sum assessed for the purpose of the paragraph above shall be calculated by the appropriate Director in a reasonable and justifiable manner to represent a reasonable pre-estimate of all pecuniary losses that shall be incurred by the Council if the contract is not completed by the contract completion date.

11.3 The recovery of liquidated and ascertained damages may only be waived with the approval of the relevant Director which must be recorded in writing.

### 12. **SPECIFICATIONS**

12.1 To accord with the requirements of EU Directives , and the desire to obtain the best value for money for the Council, when specifications are given in negotiations, invitations for quotations or tenders they are to be technical or performance specifications unless, in the view of the appropriate Director, it is impractical, in which case a proprietary name or description may be used provided it is made clear that equivalents may be permitted

### 13. **SELECTION & EVALUATION OF CONTRACTORS**

13.1 The importance of financial appraisals of potential contractors is closely linked with risk management. It may not be necessary to undertake anything other than the most basic of checks [such as company status and basic solvency] for a contractor who supplies items that are readily available elsewhere in the market i.e what could be termed a very low risk situation.

13.2 Financial appraisals should be carried out in line with corporate guidance for :-

- a. All service contracts including maintenance contracts
- b. All supply contracts over £75,000 in value [or lower in high risk contracts]
- c. All contracts involved in social care
- d. All contracts involving TUPE.
- e. All contracts awarded to new suppliers i.e. those who have not had a financial appraisal carried out on them during the previous 3 years
- f. Change of ownership e.g. a contracted company has gone into liquidation and is taken over by a company that has no previous contract history with Dudley
- g. Contracts that have been extended or awarded in excess of 3 years. After each three year period a new financial appraisal should be carried out.

13.3 Officers must ensure that the health & safety policies & practice of any company or organisation used by the Authority are appraised and deemed suitable prior to the signing of contracts. This appraisal will comply with the Council's published Corporate policies and procedures. Companies selected from "Constructionline" will have had basic Health & Safety accreditations checked. Further checks may be required by virtue of the nature of the works specified in the contract.

13.4 "Constructionline" must be used for the selection of contractors in construction related procurement exercises, and corporate guidance will be followed. If an approved list is required for other areas of procurement then corporate guidance on approved lists will be followed.

14. **SUSTAINABILITY**

14.1 For all service/supply contracts over £100,000, and works contracts over £250,000, a sustainability impact assessment must be carried out and this will ensure all environmental, , social and economic issues are assessed, understood and managed.

14.2 Any contract with staffing transfer implications must follow corporate guidance.

15. **CIRCUMSTANCES WHERE QUOTATIONS OR TENDERS NEED NOT BE OBTAINED**

15.1 Quotations or tenders need not be invited where:-

- a. The purchase is to be made at or sales effected at an auction
- b. Tenders have been invited on behalf of any public sector organisation, consortium, association, or similar body provided that the tenders are invited in accordance with the method prescribed by such body
- c. The appropriate Director is satisfied that emergency works are necessary provided that the appropriate Director records in writing the reasons for this decision.
- d. The Director has determined a fixed price contract rate which will be offered to all suppliers meeting pre determined conditions.

16. **SEALING/SIGNING OF CONTRACTS**

16.1 The appropriate Director shall ensure that an appropriate form of contract shall be completed before work is commenced or goods and/or services provided in respect of all contracts

16.2 Where a limitation period of 12 years is considered appropriate for commencement of legal proceedings in the event of breach of contract the contract shall be executed under seal.

16.3 Where a limitation period of six years is considered appropriate for the commencement of legal proceedings in the event of breach of contract the contract shall be signed by the appropriate Director.



17. **EXTENSION OF CONTRACTS**

- 17.1 The appropriate Director may extend an existing contract, provided the tendered prices are not amended [except for inflationary increases allowed in the contract], the expenditure is already included in the Council's approved capital programme or approved revenue budgets provided that the extension would not result in an infringement of EU Directives or exceed a period of three years. For the avoidance of doubt, if changes to the terms and conditions including prices of the contract are required, an extension of the Contract must be treated in accordance with Standing Order 8.

Negotiated contracts cannot exceed three years unless a waiver of Standing Orders is obtained.

**PART II**

**STANDING ORDERS APPLICABLE TO CONTRACTS FOR THE  
SUPPLY OR DISPOSAL OF GOODS OR MATERIALS THE PROVISION  
OF SERVICES AND THE EXECUTION OF WORKS UP TO £75,000**

- 18.1 Contracts shall be let by way of quotations, tenders or negotiation, as determined by the appropriate Director and in accordance with the Corporate Procurement Manual.
- 18.2 To ensure value for money the following minimum levels for the number of quotations or tenders applies. :-
- |                   |   |
|-------------------|---|
| Up to £5,000      | In accordance with Corporate Procurement Manual   |
| £5,000 TO £75,000 | Three written quotations or formal tenders returned to the Directorate and opened in accordance with the Corporate Procurement Manual. Intend must be used for all values of tenders. |
- 18.3 Where the contract has not been let in accordance with Paragraph 18.2 [e.g insufficient quotes/tenders] , the Director shall record the reasons in writing.

**PART III**

**STANDING ORDERS APPLICABLE TO CONTRACTS FOR THE  
SUPPLY OR DISPOSAL OF GOODS OR MATERIALS  
THE PROVISION OF SERVICES AND THE EXECUTION OF  
WORKS OVER £75,000**

- 19.1 Before a decision to procure contracts in excess of EU limits is made a detailed option appraisal including consideration of relevant service delivery options for the total scheme shall have been undertaken by the appropriate Director in accordance with the corporate guidance. Officers must also follow relevant

Property Management guidance such as the completion of Asset Decision Pro Forma's.

- 19.2 Options appraisal must consider the following :-
- a. Be clear about the objectives
  - b. Consider different ways of achieving the objectives
  - c. Assess the costs and benefits of the different options. This should include whole- life costs where appropriate.
  - d. Identify, and quantify/value if possible, the pros and cons of the options
  - e. Consider any risks and uncertainties.
  - f. Determine the best value, rather than the lowest cost, option

For an options appraisal to be meaningful, it should be carried out well before a final choice has been made on the preferred approach. Retrospective appraisals should not be undertaken as they merely serve to justify the decision that has already been made and are of no value.

The Director must approve the appraisal in writing before any further work in the project is undertaken.

- 19.3 The Director will determine how contracts are let i.e. by way of :-
- a. A Select List following Public Advertisement or
  - b. A List of Approved Contractors or
  - c. Open Tender or
  - d. Negotiation

- 19.4 The appropriate Director shall approve the letting of all individual contracts prior to the commencement of the procurement process. For the avoidance of doubt the approval of the procurement methodology is not a key decision, the key decision is the approval of the expenditure of resources.

20. **SELECT LIST FOLLOWING PUBLIC ADVERTISEMENT**

- 20.1 In addition to the use of the internet, a public notice may be given by the appropriate Director in one or more newspapers or journals circulating amongst such persons that undertake such contracts expressing the nature and purpose of it and indicating that the Council will appraise the applications received and invite tenders from those selected to tender. In appropriate cases the EU Journal will be used.

- 20.2 The appropriate Director shall appraise all applications received and shall send an invitation to tender to those contractors selected to tender and shall record in writing the reasons why those contractors were invited to tender. A minimum of five contractors should be invited to submit tenders but this may be amended if the relevant Director determines that this is not appropriate under the circumstances. The reasons for the Director's decision shall be documented.

21 **LIST OF APPROVED CONTRACTORS**

- 21.1 Directors will follow guidance in paragraph 13

22        **OPEN TENDER**

- 22.1      In addition to the use of the internet, a public notice may be given by the appropriate Director in one or more newspapers or journals circulating amongst such prospective tenderers as undertake such contracts expressing the nature and purpose of it inviting tenders for its execution and stating the last date on which tenders will be received. In appropriate cases the EU Journal will be used. Invitation to tender shall be sent to all contractors applying.

23        **NEGOTIATION**

- 23.1      In such cases negotiations shall be conducted by the appropriate officers of the Council strictly in accordance with Standing Order 8.

24        **SUBMISSION OF TENDERS**

- 24.1      The Council's approved electronic tendering system ["Intend"] must be used and the "Intend" Guidelines must be followed.

- 24.2      Electronic tenders submitted may only be "opened" in the presence of at least two officers duly authorised in writing in line with Directorate delegations.

- 24.3      In the event that "Intend" is not used corporate guidance must be followed, and the reasons documented by the Director

- 24.4      Tenders submitted to the Council after the date and time specified in the invitation to tender shall not be considered.

25        **CHECKING AND ACCEPTANCE OF TENDERS**

- 25.1.     The treatment of errors identified in tenders shall be in accordance with the relevant corporate guidance

- 25.2      The appropriate Director will sign off the tender evaluation which will include the particulars of all the tenders opened and those proposed for acceptance. No tenders shall be accepted until the evaluation is signed.

26        **POST COMPLETION REVIEWS**

- 26.1      In addition to regular contract reviews, a post completion review of each revenue scheme over £500,000 and capital scheme valued in excess of £1M will be undertaken by the appropriate Director to ensure all lesson learned are documented and shared with relevant officers both within the Directorate and on the Procurement Support Group. Reviews will comply with corporate guidance

- 26.2      A summary of the capital reviews shall be submitted to Cabinet within six months of practical completion for schemes which have :-  
a. Final costs in excess of budgets by 10%, or  
b. Outcomes different to those approved by Cabinet

## **DEFINITIONS**

## **Appendix A**

"Approved Available Resources" means the budget for any scheme as contained in the approved Capital Programme or approved Revenue Budget which shall include the budget for fees, furniture and equipment and other incidental costs.

"Contract" shall where the context so admits include sub-contracts

"Corporate Contract" means an agreement for the supply and disposal of goods and materials the provision of services and the execution of works arranged by the Director of Corporate Resources or other nominated Officer which is based on the aggregate expenditure by one or more directorate.

"Council" means the Council and where the context allows is deemed to include reference to the Cabinet, a Committee or person acting with delegated authority on behalf of the Council.

"Estimate" and "Estimated Contract Value" means a pre-determined figure representing the probable cost of works, goods, services or materials calculated for tender comparison purposes by a suitably qualified employee of or consultant to the Council which shall be recorded in writing.

For the avoidance of doubt "Contractor" includes Provider, Consultant, Supplier and Purchaser.

"Negotiation" means discussion on the terms of a Contract including prices [other than competitors' prices] with either an existing or potential contractor with a view to agreeing the most economically advantageous offer.

"Other Close Relative" shall include but shall not be limited to a person cohabiting on a similar basis to a spouse, a civil partner, a parent, grandparent, uncle, aunt, son, daughter, grandson, grand-daughter, brother, sister, niece or nephew of the employee or member or their spouse or cohabitee, whether the relationship is through blood, marriage or adoption.

"Partnering" is a partnership characterised by a formal contract that includes some transfer of risk from a traditional contractual basis; performance incentives for the contractor; open book accounting and the joint delivery of the project by both the Council's workforce [maybe at managerial level] and the contractor's staff so that there is one integrated team delivering the project.

"Partnerships" feature close collaborative working relationships between the Council and third parties using an approved form of contract.

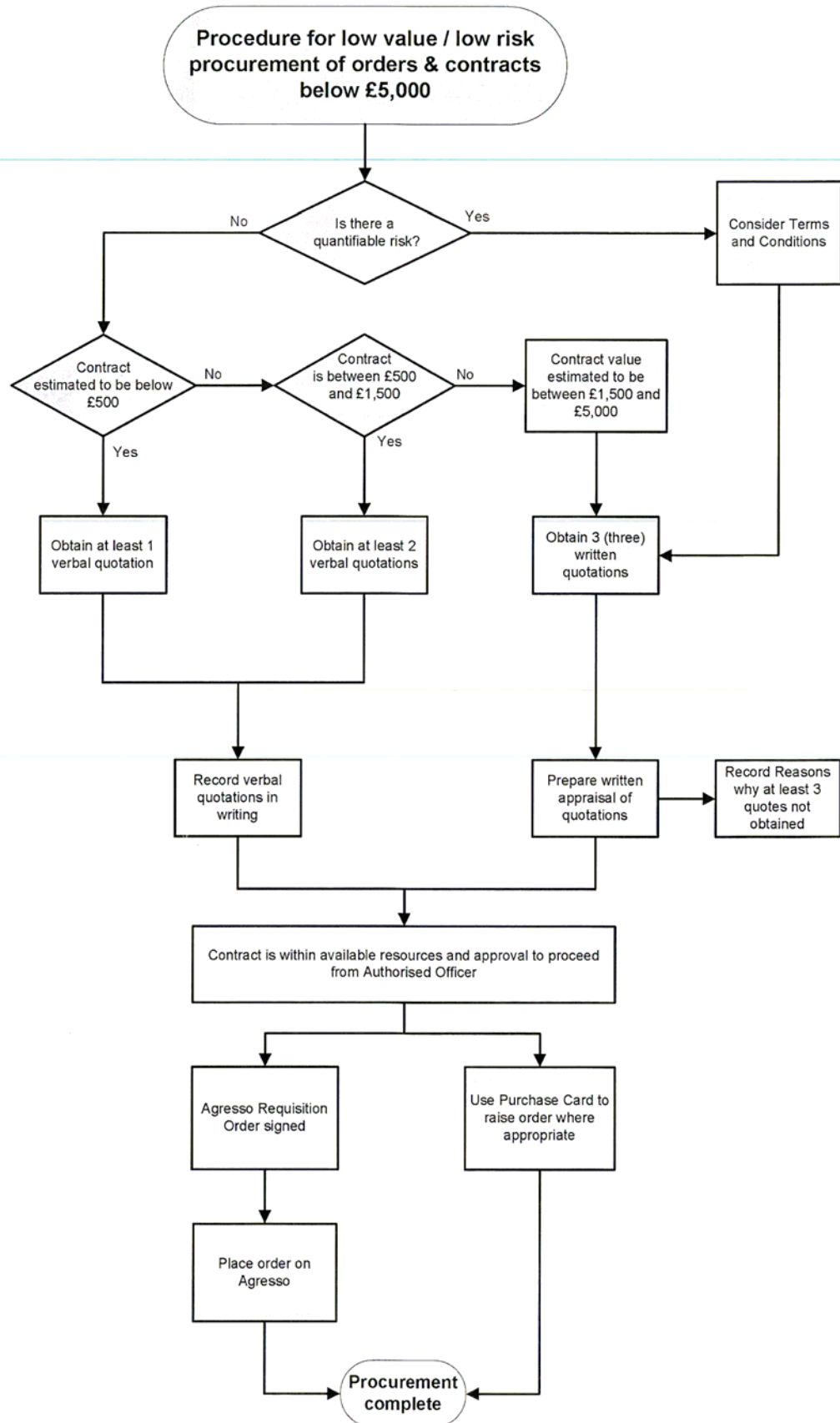
"Post Tender Negotiation" means instances where discussions are held with tenderers with the objective of changing something in their offer [price, terms and conditions, contract delivery methodology etc]

"Quotation" means an offer made by a prospective contractor to the Council.

'Service Level Agreement' is an agreement between Departments within the Council.

"Tender" means an offer made by a prospective contractor to the Council on a Council's Form of Tender

## Flowchart



## General Procurement Considerations

