

## **Contract Standing Orders**

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## **1.0 Contract Standing Orders**

### **1.1 Introduction**

Contract Standing Orders are the overarching policy that sets out how contracts and services should be procured by the Authority

Contract Standing Orders (CSO) are required by Section 135 of the Local Government Act 1972.

CSO promotes good purchasing practice, public accountability and deters corruption. This procedure covers procurement of Works, Supplies (Goods) and Services undertaken on behalf of the Council and within a partnering arrangement, regardless of the source of funding and sets out minimum requirements to be followed. CSO applies to all contracts regardless of value, including purchase orders and concessions

The Procurement Guidance (available to Officers) sets out the process that should be followed when procuring Works, Supplies (Goods) and Services undertaken by the Authority and should be read in conjunction with these Standing Orders.

### **1.2 Value for Money**

In some parts of these CSO, Officers are given discretion in what they do. If this is the case, then they are only able to exercise that discretion or issue such an instruction if they can show that it allows the Council to achieve value for money and the efficient provision of services by, or to the Council in all the circumstances.

### **1.3 Best Value**

When preparing Specifications Officers must be guided by the requirements of Best Value. Whole-life cycle requirements should be considered including Social Value (Social, Economic, and Environmental) and not just initial costs

### **1.4 VAT**

All figures quoted in the document are exclusive of VAT

### **1.5 Interpretation and Definitions**

1.5.1 The Solicitor to the Council and Monitoring Officer is responsible for the interpretation of these Contract Standing Orders and matters of law generally, relating to them.

## **1.6 Compliance with Contract Standing Orders and Legislation**

- 1.6.1 Every contract made by the Council or on its behalf shall comply with the EU Treaty, the EU Public Procurement Directives and all relevant EU and domestic legislation, Contract Standing Orders, and the council's Financial Procedure Rules. EU and UK legislation will always override the provisions of these CSO's.
- 1.6.2 Subject to 1.7 below these CSO's apply to all Contracts between the Borough Council, or any company wholly owned by the council and any Contractor (including consultants) whether or not the Contract involves the Council paying or receiving money or any other consideration.
- 1.6.3 The Corporate Procurement Strategy and Procurement Guidance held and disseminated by the Procurement and Contract Manager shall supplement these CSOs, but these CSOs will always take precedence over the provision of such guidance. Procurement Guidance is an internal document for Officers detailing procurement process.
- 1.6.4 Contract tendering procedures are contained in the Council's Procurement Guidance which shall be updated and amended from time to time to comply with these CSO's.
- 1.6.5 The procurement route for a project is decided between the Project Officer, the Procurement and Contract Manager and the Solicitor to the Council and Monitoring Officer.
- 1.6.6 The singular shall include the plural and the masculine gender shall include the feminine gender and vice versa.

## **1.7 Exceptions to Contract Standing Orders**

These Contract Standing Orders shall apply to all Contracts except:-

- (a) if the Council or the Cabinet decides otherwise and gives its reasons in the Minutes
- (b) in the case of an emergency or other special circumstance identified by the appropriate Head of Service. If this happens, the Head of Service must include a report in the Information Digest. The report must identify the particular Procedure rule(s) which have not been followed and the reasons
- (c) contracts of employment entered into by the Assistant Director of HR in relation to directly employed staff

Where Consultants or other individuals (including temporary staff) are appointed to carry out specific services, CSO's do apply

- (d) when dealing with the acquisition or disposal of interests in or rights over land
- (e) when dealing with Council funding of particular voluntary sector bodies
- (f) when using Framework Agreements entered into by third parties subject to;
  - (i) the proposed agreement having considered by the Procurement and Contract Manager
  - (ii) the proposed documentation having been agreed by the Solicitor to the Council and Monitoring Officer.

## **1.8 Exceptions to market testing/competition**

Exceptions to the need for tenders or quotations are conditional on any statutory or European constraints, including rules of disaggregation that would not allow the breaking down of a contractual need to avoid open tender rules applying. There is no exception to the need for open tender through public advertisement for contract values exceeding £25,000 except where the council's 'emergency' or 'urgency' procedures apply, in certain cases of legal service need or where it may be suitable and unavoidable. These instances should be the exception and decisions made transparent. The full exceptions and some examples where exceptions may apply are detailed in the Procurement Guidance.

## **1.9 Amendment and Review**

- 1.9.1 These CSO's may only be amended by submitting a report to the Selection and Constitutional Review Committee.
- 1.9.2 The Procurement and Contract Manager must, after consultation with the Head of Law and Governance and the Corporate Director of Housing, Customer, Technology and Finance review Contract Standing Orders and the financial thresholds therein at least every two years, to

take account of changes in EU thresholds, retail price index and other factors so that the effectiveness and impact is maintained.

## **2.0 Certificate under Local Authorities (Contracts) Regulations 1997**

- 2.1 The Local Government (Contracts) Act 1997 and regulations made thereunder provide for a local authority to certify that it has the powers to enter into a contract.
- 2.2 If any Officer is asked to issue a certificate under the Local Authorities (Contracts) Regulations 1997, the officer must immediately report the situation to the Solicitor to the Council and Monitoring Officer.
- 2.3 Any Certificate under the Local Authorities (Contracts) Regulations 1997 shall only be issued if the Council agrees with the proposal following a joint report to the Cabinet by the Head of Audit, the Solicitor to the Council and Monitoring Officer and the Chief Executive. The form of any such Certificate must be approved by the Council's Monitoring Officer and signed by the Council's statutory Chief Finance Officer.
- 2.4 The Cabinet will make a recommendation to the Full Council.

## **3.0 Contracts which must be made under Competition**

### **3.1 EU Tendering**

- 3.1.1 Whilst this Standing Order gives Financial Limits regard must always be had to the EU Requirements (EU Treaty) in respect of low value advertising.
- 3.1.2 The EU Treaty applies to all procurement activity regardless of value, including contracts below the thresholds at which advertising in the

Find a Tender (FTS) is required and including contracts which are exempt from application of the EU Procurement Directives

Fundamental principles flowing from the Treaty include;

- Transparency – contract procedures must be transparent and contract opportunities should generally be publicised
- Equal treatment and non-discrimination – potential suppliers must be treated equally
- Proportionality – procurement procedures and decision must be proportionate
- Mutual recognition – giving equal validity to qualifications and standards from other Member States where appropriate

### **3.2 Inviting Tenders for Contracts at or over EU Thresholds**

3.2.1 EU law sets minimum harmonised rules (EU Public Procurement Directive). These rules apply to tenders who monetary value exceeds a certain amount (current thresholds listed in the Procurement Guidance). These ‘above threshold’ tenders are, presumably, of cross-border interest; the tender value makes it worth-while for a business to submit a tender abroad.

3.2.2 For all tenders, the council;

- a) may not discriminate against a business because it is registered in another EU country
- b) may not refer to specific brands, trademarks or patents when describing the characteristics of products & services they wish to purchase
- c) may not refuse to accept supporting documents (certificates, diplomas, etc.) issued by another EU country, as long as they provide the same level of guarantee
- d) must make all information regarding tenders available to all interested companies, regardless of what EU country they are registered in.

3.2.3 The council has the right to exclude a business from a call for tenders if it;

- a) is bankrupt or being wound up
- b) has suspended its activities or its activities are administered by a court
- c) has been found guilty of grave misconduct
- d) has not paid taxes or social security contributions
- e) has made false declarations to a public authority



3.2.4 Only in specific cases the council may award contracts without publishing a call for tenders;

- a) emergencies due to unforeseeable events
- b) contracts that - for technical reasons, i.e. works on Utility Company owned equipment (eg. water mains) or because of exclusive rights - can be carried out by one particular company only.
- c) contracts that by law are excluded from public procurement (acquisition/rental of existing buildings, employment contracts, programme material for broadcasting, etc.)

3.2.5 Where a services, supplies, (goods) or works contract has an estimated value in excess of the EU Threshold, then Tenders shall be invited in accordance with European Procurement Legislation using the open, restricted, competitive procedure with negotiation, competitive dialogue, innovative partnership or negotiated (applicable to concession contracts only) procedure by placing a notice in FTS no later than any other advertisement placed in any other publication. An advertisement for such Tender will also be placed on Contracts Finder and the council's chosen e:tendering portal following the placing of the notice on FTS.

### **3.3 Inviting Tenders for Contracts below EU Thresholds**

Where a contract is below the EU Threshold, then Tenders shall be invited in accordance with:-

- (a) any requirements in the European Procurement Legislation relating to below EU Threshold contracts, if appropriate
- (b) these Contract Standing Orders
- (c) and, Procurement Guidance

### **3.4 Collaboration**

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 of these CSOs, be in accordance with EU Public Procurement Directives and UK Regulations, and approved by the relevant Head of Service on the advice of the Procurement and Contract Manager.

### **3.5 Estimate of Contract Cost**

Prior to issue of tender documentation, the Head of Service must estimate what they think the proposed contract will cost and keep a record of his estimate and how they made the calculation. Such estimate shall be

calculated on the basis of the value of the contract over the life of the contract including any period of extensions. The Budget must also be agreed and/or funding in place for the project, and the relevant committee and minute number recorded.

### **3.6 Public Advertisement**

3.6.1 A public advertisement must (unless otherwise agreed by the Solicitor to the Council and Monitoring Officer) be placed by the Procurement and Contract Manager;

(a) whenever the estimated cost or income exceeds £25,000 except in the case of Housing Revenue Account Programme of Works where this shall only apply to the first phase of any contract subject to full financial vetting being carried out when any (individual) extension exceeds £75,000 in value.

(b) if a Head of Service thinks it is in the Council's interest.

(c) if required under EU Rules or Government legislation.

3.6.2 Prior to placing an advertisement the Head of Service must have a clearly written selection criteria which will be used for selecting those to be invited to tender. The selection criteria shall not include any non-commercial matters unless the Solicitor to the Council and Monitoring Officer is satisfied that the provisions of the Local Government Best Value (Exclusion of Non-Commercial Considerations) Order 2001 apply. Selection Criteria should be based on the technical, economic and financial ability of the supplier. A written record must be kept by the Head of Service identifying the reasons why anyone who has responded to the advertisement has not been selected for tendering purposes. This record and the selection criteria should be retained with the contract documentation.

3.6.3 If EU Rules or legislation apply, then those Rules or legislation must govern the way in which the advertisement is placed. All EU advertisements must be placed by the council's Procurement and Contract Manager through the Office for Official Publications of the European Union, in consultation with Legal Services. The EU advertisement must be despatched before any national advertisement appears.

3.6.4 If the estimated cost of the project exceeds £25,000 the project must be advertised by the Procurement and Contract Manager through Contracts Finder the Government's online procurement service (in addition to any other e:procurement advertising portal). If EU rules apply this notice should not be published before it has been published on OJEU or at least 48 hours have elapsed from the receipt of the confirmation of the notice from OJEU.

### **3.7 Tendering Term**

- 3.7.1 Suppliers invited to respond must be given an adequate period in which to prepare and submit a tender, consistent with the urgency of the contract requirement. Best practice recommends a minimum of at least four weeks should be allowed for submission of tenders.
- 3.7.2 Where the estimated value of the contract exceed the EU Tendering Threshold for works, services or supplies, the procedure must follow the EU tendering periods. Details of the timescale for tendering is available in the Procurement Guidance.

### **3.8 Transparency Code 2015**

- 3.8.1 Government has published the Local Government Transparency Code which sets out the minimum requirements for local authorities to publish open data for re-use and in a timely way (see Procurement Guidance).

#### **3.8.2 Procurement Information**

The Council must publish details of every invitation to tender for contracts to provide works, goods and/or services with a value that exceeds £5,000. Details of any contract, commissioned activity, purchase order, framework agreement and any other legally enforceable agreement with a value that exceeds £5,000 must also be published. These details are held on the Contracts Register (see Procurement Guidance)

### **4.0 Surety Bonds/Parent Company Guarantees/Collateral Warranty**

- 4.1.1 If after assessment of the project a risk is identified, and the Head of Service requires a Surety Bond, it has to be:-
- (a) in a form to be determined by the Solicitor to the Council and Monitoring Officer and stated in the tender documentation
  - (b) valued at 10% of the contract Sum unless otherwise agreed with the Head of Finance
  - (c) with a financial institution approved by the Head of Finance.
- 4.1.2 The Head of Service can obtain a parent company guarantee instead of a Bond, in which case, it must be in a form which is acceptable to the Solicitor to the Council and Monitoring Officer.

- 4.1.3 The Head of Service can obtain a Collateral Warranty which must be in a form which is acceptable to the Solicitor to the Council and Monitoring Officer.

## **5.0 Tendering and Quotation Procedures**

### **5.1 Tenders and Quotes**

- 5.1.1 The Council has a statutory obligation under the Government's Best Value Review regime to seek competitive prices. Generally, it is the level of value and risk that determines if we ask for a quote or whether something goes out to tender.
- 5.1.2 The quotation process is normally used for relatively low value and low risk purchases. For higher value purchases which require greater accountability the more formal tendering process should be adopted. The tender document lays down the terms and conditions of the offer; the work requirement to be done, and the standard and quality expected.
- 5.1.3 In consultation with the Procurement and Contract Manager the Manager responsible for the project will make a choice if tenders or quotes are to be sought. In all cases there is a requirement to publish the opportunity (unless below publishing threshold). If quotes are sought an auditable account of the process should still be retained.

### **5.2 Fixed Budget Tenders**

- 5.2.1 Where a project has a fixed level of funding and it is not practical to specify in detail the extent of the work, supply or service required, tenderers should be given the budget figure and asked to specify what they would provide for the money.
- 5.2.2 The Tender documentation needs to set out how the Tender will be evaluated.
- 5.2.3 The Head of Service is responsible for making sure the selection process is clearly documented and "transparent" and should keep a full written record of his evaluation process.

### **5.3 E-Tendering**

Tenders will be managed through the corporate electronic tender facility including issuing, submission, receipt and opening of tenders. The use of e:mail submission for tenders will not be accepted.

### **5.4 Tender/Quotation Return: Receiving, Looking after and Opening of Tenders**

Except in the case of tendering via the corporate electronic tendering facility for which the rules in CSO 6.3 and Procurement Guidance shall apply, the receipt and opening of Tenders shall be managed by the Procurement and Contract Manager and conducted as follows;

- (a) All tenders shall be addressed to the Assistant Director of HR, Customer Contact Centre and the Tender shall remain in their custody until the time appointed for its opening.
- (b) Tenders shall be opened and details recorded by the Procurement and Contract Manager (or their duly authorised representative) and an authorised representative of the Service that is dealing with the project.
- (c) In the case of 'over OJEU' threshold tenders someone objective and independent to the procurement exercise should be present.

### **5.5 Marked Tenders**

If the Tender envelope or package reveals the identity of the Tenderer:-

- (a) the Tender must be opened in accordance with CSO 5.4
- (b) if the Head of Service wants to accept the Tender, they can only do so if the Solicitor to the Council and Monitoring Officer.

### **5.6 Late Tenders**

If a Tender envelope or package is received after the time and date for the return of tenders then it shall not be considered, unless the tenderer can provide sufficient evidence (in the opinion of the council) that the tender should have been received prior to the deadline, but for reasons outside of his control was not. This must be made clear to prospective tenderers in the Instructions to Tenderers.

### **5.7 Tender Negotiation**

This will only be permitted where:-

- (a) the Tender has been invited under the EU competitive procedure with negotiation, competitive dialogue, or negotiated procedure and notice has been given by the Procurement and Contract Manager in conjunction with the Solicitor to the Council and Monitoring Officer in the Supplement to the Official Journal of the European Communities.

OR

- (b) the Tender figure is below the appropriate EU threshold and the Solicitor to the Council and Monitoring Officer has agreed to the use of a negotiated procedure.

OR

- (c) the aim is to negotiate the continuation of an existing contract in accordance with the provision of detailed in the Procurement Guidance.

## **5.8 Tender/Quotation in Excess of Estimate**

5.8.1 Subject to 5.8.1(a), 5.8.1(b) and 5.8.2, if the most acceptable Tender or Quotation exceeds the budget estimate, it can only be accepted if it is approved by the Cabinet and only then if it is within the budget head threshold. If it exceeds that amount the Cabinet must make a recommendation to the Full Council,

- (a) If the cost of the scheme (including fees) is within the Capital Programme, and does not exceed the estimate by more than 10% or £25,000 (whichever is the less) the Tender/Quotation may be accepted by the Head of Service with the agreement of the Head of Finance and Cabinet Member, if compensatory savings on other approved capital schemes which are within the Capital Programme and which will be underspent at completion can be identified.

- (b) for a scheme funded from the Revenue Budget, a Tender/Quotation can be accepted which exceeds the estimate by up to 10% if the Head of Service can find equivalent savings within the approved Revenue Budget. Agreement for this course of action from the Head of Finance and Cabinet Member is also required.

5.8.2 The provisions of 5.8.1 may, in the case of Housing Revenue Account Programme of works be waived by the Head of Housing subject to the prior agreement of the Head of Finance

5.8.3 All waivers under 5.8 shall be collated by the Head of Finance and reported to Cabinet within the Budget Monitoring report.

## **5.9 Evaluation of Tender/Quotations**

5.9.1 The procurement documentation must explain how bids will be evaluated and clearly define how the bidder's response to price and quality aspects (incorporating the Social Value Act) will be assessed. Consideration to price/quality split, questions to be asked, the relative weightings applied to questions, scoring methodology, model answers, interviews, presentations.

Officers must consider Public Services (Social Value) Act 2012 and how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area and how in conducting the process of procurement, it might act with a view to securing that improvement.

These improvements and additional benefits can take almost any form, ranging from the very tangible, such as jobs for the long term unemployed, or sub-contracting opportunities for small business, to softer, but equally important benefits such as engagement with communities or groups of individuals.

- 5.9.2 Tenders shall be evaluated by a panel of a minimum of three where possible. Tender evaluation shall be carried out in an objective, equitable and accountable manner in accordance with the award criteria set out in the tender documentation. A written report must be produced detailing how the scoring was undertaken.

The evaluation panel should consist of experts in the relevant fields to include technical specialists, cultural, financial or legal expertise depending on the project requirements to ensure a full and thorough process.

- 5.9.3 The way quotations will be evaluated needs to be recorded by the Head of Service in advance unless price is to be the only criterion.

## **5.10 Acceptance of Tenders/Quotations**

- 5.10.1 No tender or quotation should be accepted by notifying the proposed Contractor in advance of the contract itself being issued unless the Solicitor to the Council and Monitoring Officer agree.

- 5.10.2 The award of contractor should be based upon:

- (a) The Most Economically Advantageous Tender (MEAT) to the council as evaluated in accordance with the tender evaluation criteria set out in the advert and tender documents; or
- (b) The highest tender if payment is to be received by the Council

UNLESS;

The Cabinet (in relation to executive functions) or the Council or appropriate Committee (in relation to non-executive functions) decides otherwise following a report from the Head of Service concerned.

- 5.10.3 Where a tender contains errors or discrepancies affecting the tender sum or rates, the relevant Senior Officer, prior to the tender award

decision, can, provided no information is given to the tenderer regarding the effect of such action, give the tenderer the option to:-

- (a) Correct the prices or rates concerned
- (b) Continue without correcting the prices or rates
- (c) Withdraw the tender

5.10.4 No tender or quotation which would be part of a larger contract should be accepted unless it fully satisfies the conditions of the principal contract concerning sub-letting.

5.10.5 No tender or quotation shall be accepted unless the Head of Service is satisfied that the Tenderer has adequate public liability and other relevant insurance.

### **5.11 Tender Results and Standstill Period**

Until a formal contract has been agreed with the successful Tenderer, all sums involved should be treated as confidential. They must only be disclosed to Officers, Members or Leaseholders who need to know in connection with their duties, property responsibility (in the case of Leaseholders) or to comply with these Contract Standing Orders.

The Standstill Period is a period of 10 calendar days where day 1 is the day after notification has been issued

## **6.0 Contractual Arrangements**

### **6.1 General Requirements**

For the purposes of the Localism Act 2011 every contract shall be in writing and be the subject of one of the following:-

- (a) a contract prepared or settled by the Solicitor to the Council and Monitoring Officer
- (b) one of the national standard forms of contract previously agreed with the Solicitor to the Council and Monitoring Officer for that type of work
- (c) some other documentation approved by the Solicitor to the Council and Monitoring Officer
- (d) an Official Order (subject to Procurement Guidance)

### **6.2 Commencement of Work**



No supply of works, goods, or services is to commence, or goods/materials ordered until a contractual arrangement is in place between the council and the Contractor (formal contract signed and/or official order has been raised) or unless authorised in writing by the Solicitor to the Council and Monitoring Officer.

### **6.3 Variations during the Course of the Contract**

6.3.1 Funding must be identified before any variation is approved. Every variation to a contract shall be authorised in writing by a person authorised to sign Official Orders (in the case of goods or services procured by way of an Order) or by a Manager in the case of other types of contract.

6.3.2 If authorising any variation is likely to cause the original contract sum (including any contingency sum) or total project budget to be exceeded by more than 10% the Senior Officer shall not issue such variation unless the Head of Service has agreed. If the variation is seen as a material increase to the original tender sum then the Solicitor to the Council and Monitoring Officer to be consulted before a variation is issued. The effect of this Standing Order shall not restrict the issue of a variation if it would result in a stoppage of the contract works or a breach of the contractual conditions.

### **6.4 Contract Records**

The Head of Service will maintain accurate and proper records of all contracts for which they are responsible.

### **6.5 Contracts Register**

The Council has a statutory duty to hold and publish an electronic register of all contracts (Contracts Register) above a total value of £5,000. This shall be managed centrally by the Procurement and Contract Manager and maintained by each Contract Officer using the intranet or similar. The register will be updated on a quarterly basis. Such register shall specify for each contract, the name and address of 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, and published on the council's website. (further information in the Procurement Guidance).

### **6.6 Custody and Retention of Contracts**

A copy of contracts awarded by the council is retained for the records by the Legal Team under the supervision of the Solicitor to the Council and Monitoring Officer.

Contracts signed as a deed are retained for 12 years after the contract term has expired.

Contracts not signed as a deed (signed under hand) are retained for 6 years after the contract term has expired.

Officers involved in contract management should keep a copy of each contract under their management either electronically in the relevant project folder and/or as a hard copy for their records. The same terms of retention detailed above is applicable.

## **7.0 Declaration of Interest**

7.1.1 At the beginning of any contract process the following persons shall declare any interest, as defined in the Code of Conduct for Staff set out in the Conditions of Service, which may affect the contract process:-

- (a) All Council Officials
- (b) Elected Members of the Council
- (c) Any other person involved in the contract process

7.1.2 The 'Declaration of Interest' form can be found on the Council's Intranet under HR.

## **8.0 Prevention of Corruption**

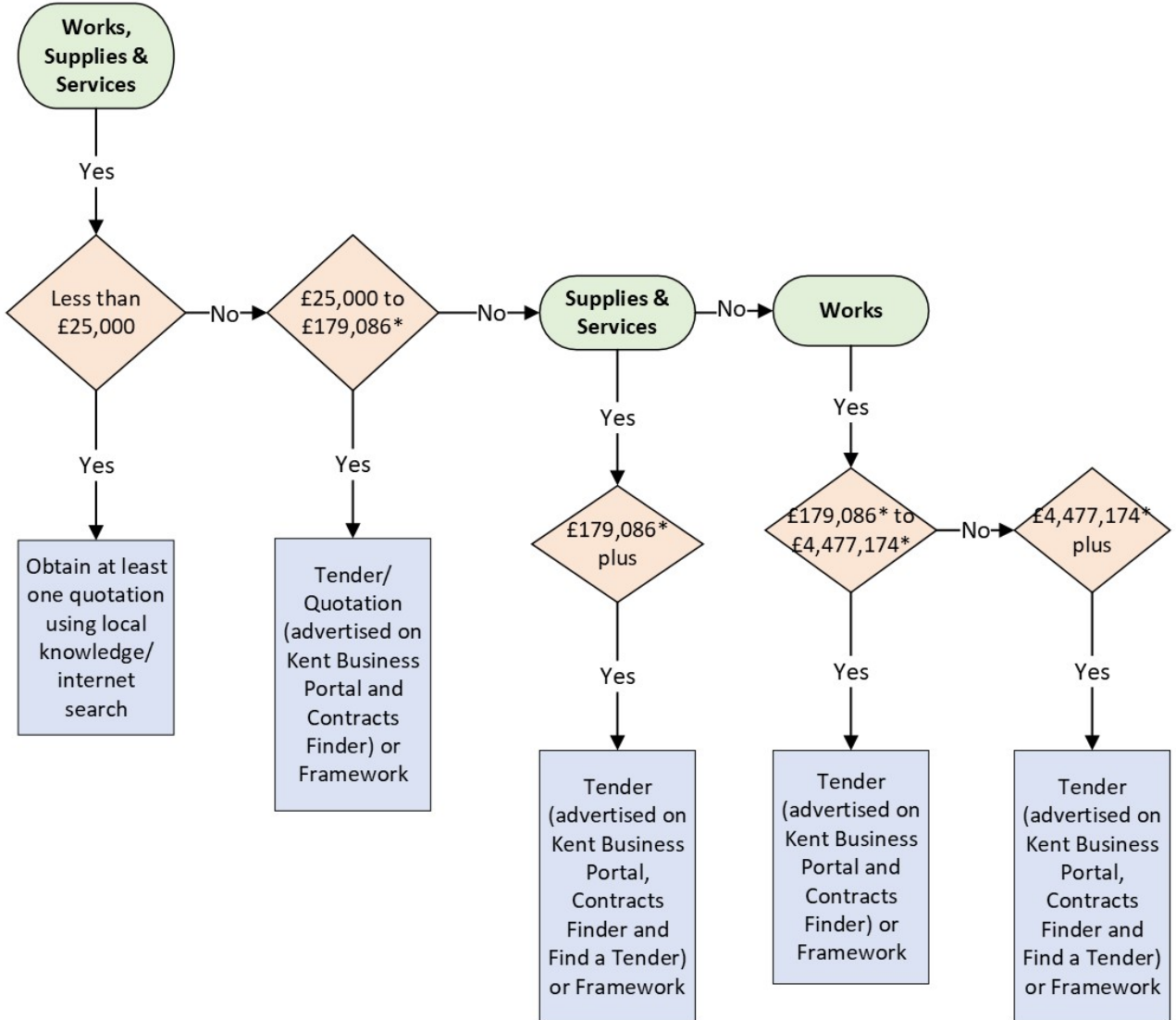
8.1.1 A Council Employee must not invite or accept any gift or reward in respect of the award or performance of any Contract. High standards of conduct are obligatory and corrupt behaviour will lead to dismissal.

8.1.2 The following clause, (or an equivalent clause in standard forms of contract or other wording as approved by Legal Services) must be put in every written council contract

*"The council may terminate this contract and recover all its loss if the Contractor, its employees or anyone acting on the Contractor's behalf do any of the following;*

- (a) offer, give or agree to give anyone any inducement or reward in respect of this or any other council contract; or
- (b) commit an offence under the Bribery Act 2010; or
- (c) commit any fraud in connection with this or any other council contract whether alone or in conjunction with Council Members or Employees.

Appendix A: Procurement Route



- Notes:
1. Values detailed exclusive of VAT.
  2. Values annotated with \* are EU thresholds. Thresholds are revised every two years and the current thresholds are effective from 1 January 2024. If you require confirmation of the current thresholds please contact the Procurement and Contract Management Team [procurement@ashford.gov.uk](mailto:procurement@ashford.gov.uk).
  3. Contracts Finder – a web portal advertising local and central government contracts.
  4. Find a Tender – a web portal advertising “over threshold” local and central government contracts, for eg. Works contract over £4.4m.
  5. Framework - an agreement established between one or more public sector buyers and one or more suppliers. Frameworks consist of pre-approved suppliers who have been evaluated and selected to provide a predefined set of goods, services, works.