

Appendix B - Constitution Part 4 G CONTRACT STANDING ORDERS

CSO 6 EXEMPTIONS FROM CONTRACT STANDING ORDERS

- 6.1 The Director of Corporate Services is authorised to grant exemptions to these standing orders.
- 6.2 Where an exemption is sought from these all or any part of Contract Standing Orders a report justifying the reasons for granting the exemption must be submitted in writing to the Director of Corporate Services on the form set out at Appendix 4 and must detail and the CSO being exempted must be provided in writing via an Exemption Report reference from which exemption is requested and the reasons for requiring the exemption and proposed alternate methodology. ~~T~~ to the Director of Corporate Services (or in their absence the nominated deputy). ~~will ask the Head of Commercial Services, Head of Shared Legal Services and Head of IT Service Delivery to provide comment. No requested exemption shall be permitted and take effect until the Exemption Report has been signed as agreed by the Director of Corporate Services (or in their absence the nominated deputy) and a recommendation made and signed by the Head of Commercial Services.~~

PLEASE NOTE AN EXEMPTION CAN ONLY BE GRANTED IN EXCEPTIONAL CIRCUMSTANCES.

No exemption can be granted where the request would result in a breach of EU Procurement Law.

- 6.3 A non-exhaustive list of reasons for seeking indicative circumstances where an exemption may be granted is set out in Appendix 2 and may be referred to in the exemption report by reference:
- 6.4 No exemption may be granted:
- a) that would result in a breach of European or U.K. law
 - a) that requires Cabinet to approve major contract variations
 - b) that requires Cabinet to accept certain tenders
 - c) that differs from the Scheme of Management
 - d) that removes the requirement for declaration of any Officer or Members Interests
- 6.5 The Director of Corporate Services, will maintain a register of exemptions granted by Department and contract, detailing the nature of the exemption and the value of the contract. The register will be reported bi-annually to the Procurement Board.
- 6.6 The Chief Executive will consider and where appropriate grant exemptions arising from within the Corporate Services Department.

- 6.7 The Head of Commercial Services and ~~Head of Shared Legal Services~~ or their nominated officers will analyse the nature of the exemptions being applied for

and those being granted and will make appropriate recommendations to the Director of Corporate Services about the operation of the exemptions procedure.

- 6.8 In exceptional circumstances if the Director of Corporate Services and/or the Chief Executive are not able to carry out their role in accordance with CSO 6 any 2 officers, from the Deputy S151 Officer, the Monitoring Officer or any of the councils remaining Directors may, acting jointly, consider and where appropriate grant exemptions.

APPENDIX 2 - EXEMPTIONS FROM CONTRACT STANDING ORDERS

- 1.0 Where an exemption is sought from all or any part of Contract Standing Orders a report justifying the reasons for granting the exemption and the CSO being exempted must be provided in writing in an Exemption Report to the Director Corporate Services (or in their absence the nominated deputy). No requested exemption shall be permitted and take effect until the Exemption Report has been signed as agreed by the Director Corporate Services (or in her absence her nominated deputy).
- 2.0 No Exemption can be granted where the request would result in a breach of EU Procurement Law.
- 3.0 A non-exhaustive list of reasons for seeking exemption are set out below and may be referred to in the Exemption Report by reference to this Appendix 2 and the relevant letter:
 - a) that only one provider is able to carry out the work or service or to supply the goods for technical or artistic reasons or because of exclusive rights, for example, the purchase of works of art , museum artefacts, manuscripts or archive collection items;
 - b) that time limits required for tendering cannot be met for reasons of extreme urgency (usually emergency contracts where a risk to life, or the security or structural viability of a property can be demonstrated; or contracts where the terms of a Court order set a time limit which specifically precludes all or part of the tendering process); and which, in the case of E.U. contracts, were unforeseen and un-attributable to the Council.
 - c) that additional goods, works or services are required which, through unforeseen circumstances, were not included in the original contract and which either are strictly necessary for the completion of the contract or, for technical or economic reasons, cannot be carried out separately without great inconvenience.
 - d) that goods are required as a partial replacement for or addition to existing goods or installations and obtaining them from another provider would result in incompatibility or disproportionate technical difficulties in operation or maintenance; that the rules of a design contest require the contract to be awarded to one of the successful candidates, provided all successful candidates are invited to negotiate
 - e) that the rules of a design contest require the contract to be awarded to one of the successful candidates, provided all successful candidates are invited to negotiate that for work carried out for other public bodies, an exemption from tendering has been requested by them in writing (provided exemption is lawful having regard to E.U. or domestic legislation);
 - f) the proposed contract is an extension to or variation of the scope of an existing contract, if permitted by the public procurement legislation and demonstrates value for money i.e. below the required EU limit, unless the existing contract provides for an extension;
 - ~~g) the purchase of works of art, museum artefacts, manuscripts or archive collection items;~~
 - ~~h) there is a need to develop and influence the market by extending the range and provision of services, provided the contract is for a fixed term of no more than three years;~~

- ~~i) it is necessary to enable the continuation of a new service, development of which was initially grant aided, provided the contract is for a fixed term of no more than three years;~~
 - ~~j) value for money can be demonstrated by inviting a single tender or quotation from a voluntary sector provider;~~
 - ~~k) value for money can be achieved by the purchase of used vehicles, plant or materials;~~
 - g) when a grant from a public body includes a recommendation as to the supplier or is time limited;
 - h) in furtherance of the Council's social enterprise policy, or other economic development aims, subject to the prevailing financial support limits for this type of activity and without breaching public procurement rules;
 - i) where the Council has agreed to collaborate with another public body and is satisfied that the contracting arrangements of the lead body (where different from the Council) do not contravene the Council's legal responsibilities in this respect.
 - j) if there are exceptional circumstances not previously identified or covered by existing policies, procedures, or the Contract Standing Orders;
 - k) purchase is to be made by auction (including on line auctions) or at any public fairs or markets;**
 - l) Collaborative/Joint purchasing - where another authority/public body is acting as "lead Buyer" and provided that person(s) awarding the contract can demonstrate the arrangement comply with the requirements of value for money and other applicable legislation including, where relevant, the EU Procurement Directives. This includes any recognized wider public sector agreements including, for example, Crown Commercial Services or contracts.**
-

APPENDIX 4 - FORM OF EXEMPTION REPORT

<p style="text-align: center;"><u>CHIEF OFFICER- DECISION-Director of Corporate Services Decision</u></p> <p style="text-align: center;"><i>(Chief Executive if a Corporate Services decision)</i></p>	<p>Approved / Not Approved</p>	<p>Signature</p>	<p>Date</p>
--	------------------------------------	------------------	-------------

SUBJECT:

LEAD OFFICER:

LEAD MEMBER:

KEY DECISION REFERENCE NUMBER: N/A

RECOMMENDATION:

<p style="text-align: center;"><u>Head of Commercial Services Recommendation</u></p>	<p>Approved / Not Approved</p>	<p>Signature</p>	<p>Date</p>
--	------------------------------------	------------------	-------------

<u>Chief Officer Decision</u>	<u>Approved</u>	<u>Not Approved</u>
<u>Signature</u>	<u>Designation Director of</u>	<u>Date</u>
<u>Chief Executive Signature (for Corporate Services Exemption Requests only)</u>	<u>Designation</u>	<u>Date</u>

Guidance For Officers

- Where the text is in brackets [] and / or highlighted in yellow relevant text needs to be inserted or deleted as appropriate.
- Where the text is written in blue, follow the instructions then delete them.

PLEASE ENSURE THAT ALL TEXT IS REVERTED TO BLACK AND HIGHLIGHTING IS REMOVED

1. EXECUTIVE SUMMARY AND PURPOSE OF REPORT

Why is this request to exclude the application of the Council's Contract Standing Orders to the process of awarding this contract being made and what is the business case to support this request? Please provide all relevant detail.

PLEASE NOTE AN EXEMPTION CAN ONLY BE GRANTED IN EXCEPTIONAL CIRCUMSTANCES

A non-exhaustive list of reasons for seeking exemption is set out in the Contract Standing Orders - Appendix 2 and must be referred to in the Exemption Report by reference to the relevant wording.

[http://intranet/contract standing orders - 1st april 2012.pdf](http://intranet/contract%20standing%20orders%20-%201st%20april%202012.pdf)

[Insert wording]

2. DETAILS

Description of Contract: [Insert]

What are you buying - Goods/Works/Services?
What are the volume/quantities?

Current Supplier(s) (if applicable): [Insert]

Proposed Contract period -

From: [Insert]

To: [Insert]

Total Contract Value £[Insert]

3. ALTERNATIVE OPTIONS

Please describe what alternative options to an exemption have been considered, for example:

- do nothing
- or undertaking a compliant procurement exercise

[Insert wording]

4. FINANCIAL IMPLICATIONS

Please provide a breakdown of cost by financial year

[Insert wording]

Please describe how costs will be controlled over the duration of the contract

[Insert wording]

5. BUDGET SIGN OFF

<u>Name of Budget Holder</u>	<u>Budget Approved</u>	<u>Signature</u>	<u>Date</u>

Please describe how:

- value for money will be achieved over the duration of the contract, including contract management
- social value will be considered

[Insert wording]

6-7. LEGAL IMPLICATIONS AND STATUTORY PROVISION

Is there a statutory requirement to deliver this provision? Yes / No

7-8. HUMAN RIGHTS AND EQUALITIES IMPLICATIONS

Will this contract impact on the Councils Human Right and Equalities strategic objectives?

'Equalities Merton' aims for full and equal access to learning, employment, services and cultural life and the celebration of diversity.

[Insert wording]

8-9. CONSULTATION UNDERTAKEN

Please set out which Service Area and Officer have been consulted in the preparation of this report. As a minimum please ensure you have consulted with Commercial Services who will advise if further consultation is required.

<u>Department</u>	<u>Comments</u>	<u>Date</u>	<u>Signed</u>
<u>Commercial Services</u>	<u>[x]</u>	<u>[x]</u>	<u>[x]</u>
<u>Insert details of other departments consulted</u>	<u>[x]</u>	<u>[x]</u>	<u>[x]</u>
	<u>[x]</u>	<u>[x]</u>	<u>[x]</u>

BACKGROUND PAPERS

Council Standing Orders

[Insert other papers if required]

OFFICER CONTACTS:

[Insert details]

This page is intentionally left blank