

### 1 INTRODUCTION

Contract Standing Orders are designed to promote good purchasing practice and accountability. They provide a framework within which officers can manage the procurement of goods, works and services in a pragmatic and appropriate manner. They link closely with the Council's corporate priorities, which are founded on the guiding principles of achieving value for money and meeting the needs of residents within the resources available. They apply to all areas of the Council's organisational structure, including service organisations and wholly owned subsidiary companies.

The Contract Standing Orders are set within the context of EU and UK legislation and EC Treaty provisions and principles, such as non-discrimination, equal treatment and transparency, which apply generally in the award of public contracts, including those below the EU threshold values. It is therefore important to ensure in all of the Council's procurements that nothing is done which is discriminatory or distorts competition, and that there is a clear audit trail to evidence the decision-making process.

The Contract Standing Orders, and other supporting documents and guidance notes, are held in the Procurement area of the Council's intranet. Staff are required to familiarise themselves with these documents, attend relevant internal training sessions and, where necessary, seek advice before taking any purchasing action.

A glossary of terms used in this document is included in Section 7.

### 2 BASIC PRINCIPLES

#### 2.1 General

These purchasing procedures have the following aims:

- Achieving the best possible value for public money spent;
- Maintaining the highest standards of integrity;
- Ensuring fairness in allocating public contracts;
- Ensuring compliance with all legal requirements; and
- Supporting the Council's corporate aims.

Officers should take steps in the procurement exercise to encourage a diverse and competitive supply market, and in particular should ensure the notification of opportunities to local businesses, small firms, social enterprises, and voluntary and community sector suppliers.

#### 2.2 Compliance with Contract Standing Orders and Legislation

All procurement processes must comply with relevant EU and domestic legislation, these Contract Standing Orders, the associated guidance notes available on the staff intranet, and the Council's Financial Regulations. Failure to comply with these Contract Standing Orders could lead to disciplinary action.

It shall be a condition of any contract between the Council and anyone who is not an employee of the Council, but who is authorised to carry out any of the Council's contract functions, that they comply with these Contract Standing Orders and the Financial Regulations as if they were an employee of the Council.

### **2.3 Estimated Value**

The procurement process to be followed depends on the estimated value of the works, goods or services required. This is the total cost, excluding VAT, which the Council expects to pay over the life of the contract. Where the length of the contract is not specified, the total cost to be used for these purposes is four times the annual cost.

Enquiries of contractors may be made before tenders or quotations are invited in order to:

- establish whether the goods, works or services are available, and within what price range; and/or
- prepare the relevant documents.

In making enquiries, it must be made clear to contractors that the information they offer will not necessarily lead to them being invited to tender or quote, or awarded the contract.

In addition, such suppliers must not be treated preferentially in the evaluation of tenders.

### **2.4 Specifications**

All tenders for the execution of works or the supply of goods or services in excess of £10,000 must be based on a written specification. Specifications shall where appropriate include requirements relating to methods of construction, design and costing, tests, quality assurance, inspection and acceptance.

With regard to building works contracts based on industry standard documents (i.e. the Joint Contracts Tribunal (JCT) and Intermediate Form of Contract (IFC)), the tender price shall either be based on a fixed price or include only those fluctuations agreed before commencement of the work.

### **2.5 Declaration of Interests**

In accordance with the Officer Code of Conduct, all staff, including any external consultants appointed, must declare any connections which they or family members may have with potential tenderers that may affect the tendering process, and must exclude themselves from the evaluation of tenders and any decisions with regard to appointment.

### **2.6 Procurement Log**

The [Procurement Log](#) is the repository of information regarding all quotation and tender processes for values between £1,000 and £10,000 and for contracts entered into. The equivalent information for tenders in excess of £10,000 is held within the Supply Hertfordshire procurement portal. This data is published on the Council's website in order, not only to comply with the Local Government Transparency Code 2014, but also to address the Council's local economy policy objectives by providing suppliers of goods and services with clear information on the Council's procurement activity. It is therefore important that the relevant information is entered into the Procurement Log on a timely basis.

### **2.7 Training**

Before undertaking any procurement related activity, officers are required to attend training in the procurement process and procedures, including these Contract Standing Orders and the Financial Regulations.

## QUOTATION AND TENDER PROCEDURES

### **2.8 Goods, works and services not exceeding £1,000**

The Procuring Officer must be able to demonstrate that value for money has been achieved and must maintain appropriate records. Purchase orders must be raised via the e5 system in accordance with Financial Regulations.

The relevant Director is responsible for ensuring that appropriate control mechanisms are in place in their Directorate.

### **2.9 Goods, works and services exceeding £1,000 but not exceeding £10,000**

The Procuring Officer must obtain prices from at least three potential suppliers, and must retain all relevant documentary evidence. The Head of Service must ensure that the procedure achieves demonstrable value for money and that the selection process is fair and equitable, with no favouritism being shown to any one supplier. It is good practice to obtain prices from other suppliers on a regular basis to demonstrate that value for money is being achieved.

As far as possible the process should be undertaken by electronic means. The use of the [Supply Hertfordshire tendering portal](#) is recommended as this enables the opportunity to be advertised widely.

The Procuring Officer is responsible for recording in the Procurement Log the details of the process (unless it has been managed through the Supply Hertfordshire portal) and of any contract awarded.

### **2.10 Goods, works and services exceeding £10,000**

All tender opportunities above £10,000 in value must be advertised and managed on the Supply Hertfordshire portal. Tenders may also be advertised elsewhere as appropriate, such as in specialist publications. In limited situations where for technical reasons tender documents cannot be submitted electronically, delivery by post will be accepted.

Tenders with a value of £25,000 and above are required by the legislation to be published on Contracts Finder, a national web-based portal established by the Cabinet Office. This can be effected automatically through the Supply Hertfordshire portal.

Where the estimated value is above the EU Threshold (see the Glossary in section 7 for the values), details must be published in the Official Journal of the European Union (OJEU) and specific timings and procedures adhered to. This is also managed through the Supply Hertfordshire portal.

After the tender deadline has passed, the tenders submitted to the Supply Hertfordshire portal will be opened by the Procuring Officer (or a designated substitute) who will then place all the tender documents in the Procurement section of the shared drive. Where the tender value is expected to be more than £50,000 the formal opening procedure within Supply Hertfordshire must be used and this must include one of the Independent Officers.

The relevant data for the published Procurement Log is extracted from the Supply Hertfordshire portal. The Procuring Officer is only responsible for recording the details of any contract awarded.

The Procuring Officer must keep a record of all unsuccessful tenders and quotations received for a period of twelve months after the award of the contract, or such longer period as may be required by legislation.

The Head of Service must ensure that the selection process is fair and equitable, and that no favouritism is shown to any one contractor.

### **2.11 Framework Agreements**

Where appropriate, a Framework Agreement may be used to simplify the procurement process and restrict the number of potential tenderers. The Supply Hertfordshire portal incorporates a mechanism for managing restricted tenders. A [Guide](#) to the use of Framework Agreements is available on the Procurement intranet page.

### **2.12 Sub-Contracts and Nominated Suppliers**

Where a sub-contractor is to be nominated to a main contractor the following provisions shall have effect:

2.12.1 Where the estimated amount of a sub-contract exceeds £50,000, tenders must be invited and dealt with in accordance with these Contract Standing Orders as if they were for a direct contract with the Council.

2.12.2 Any nominated sub-contract must be coterminous with the main contract.

### **2.13 Emergency Works**

Emergency works estimated to cost less than £25,000 do not require written quotations. For emergency works over £25,000, it is not necessary to seek tenders, but written quotations must be obtained. The minimum number of quotations required is the same as for non-emergency works.

### **2.14 Social Value**

The Public Services (Social Value) Act 2012 requires that at the pre-procurement stage of contracts for services (not goods or works) above the EU Threshold consideration is given to the economic, environmental and social benefits of the procurement in the Borough. There is no duty to implement any specific provisions, but they must be considered and it is the responsibility of the Procuring Officer to document the outcome of the procurement team's discussions on this matter.

Although not a legal requirement, it is good practice for these social value implications to be taken into consideration in all procurement exercises, and officers are recommended to incorporate this into the process.

These requirements do not override the fundamental competition provisions that prohibit any discriminatory measures in favour of local suppliers.

### **2.15 Exceptions to the Contract Standing Orders**

Exceptions to Contract Standing Orders are only permitted with the agreement of the Chief Executive or the S151 Officer and must be formally approved by means of a concurrence.

The use of an alternate method of contractor selection must still be able to demonstrate propriety, value for money and compliance with EU and domestic legislation. Approval for an exception to any part of these Contract Standing Orders must not be sought unless there is a clear advantage to the Council or there is a clear need to avoid breaches of statutory requirements. Exceptions will not normally be authorised where lack of foresight has given rise to difficulties. Advice should be sought on the specific requirements that apply to procurements above the EU Threshold.

The following are examples, but not a definitive list, of situations where a departure from Contract Standing Orders may be permitted:

- (i) The time limits for tendering cannot be met for reasons of extreme urgency and the reasons were unforeseen and not attributable to the Council.
- (ii) Additional works, services or supplies (not exceeding 50% of the value of the original procurement) have become necessary and a change of contractor cannot be made for technical or economic reasons, and would also cause significant inconvenience.
- (iii) New works or services are required which are a repetition of works or services carried out under the original contract.
- (iv) Goods are required as a partial replacement for or in addition to existing goods or installations and obtaining these from another contractor would result in incompatibility or disproportionate technical difficulties in operation or maintenance.
- (v) The goods, works or services are of a specialist nature or are obtainable from only one or a limited number of suppliers and there are no other satisfactory alternatives.
- (vi) Exceptional circumstances show that it is clearly in the best interests of the Council to negotiate a new contract with an existing supplier.

#### **2.16 Late Tenders or Quotations**

Any tender or quotation received after the advertised closing time and date shall not be considered, unless the tenderer can prove that the submission was made in time or that technical issues prevented online submission. The Procuring Officer must contact the tenderer as soon as possible to advise them of the situation and subsequently confirm it in writing.

#### **2.17 Errors**

If an error in the specification is identified before the closing date for the return of tenders, all tenderers must be informed and invited to adjust their tenders. If appropriate, the closing date may be deferred.

If an error in the specification is identified after the closing date for the return of tenders, all tenderers must be given details of the error and afforded the opportunity of withdrawing their offer or of submitting an amended tender. Where appropriate, the closing date should be deferred in order to give tenderers sufficient time to modify their submissions.

Where examination of tenders reveals errors or discrepancies that would materially affect the tender figure in an otherwise successful tender, the tenderer should be given the details and afforded an opportunity of confirming, correcting or withdrawing their offer.

#### **2.18 Evaluation of tenders**

The Procuring Officer must define and document award criteria that are appropriate to the contract before tenders are sought, and the invitation to tender should define the award criteria in the form of an evaluation framework that assigns a weighting to each criterion. No adjustment to the framework is allowed after tenders are received. The evaluation framework and other relevant documents must be retained and made available for audit if required. Evaluation criteria must be designed to secure that the contract is awarded to the most economically advantageous tender.

In determining the relative weighting of price and quality factors, price should account for no more than 80% and no less than 40% of the total. The approval of the Chief Executive must be sought for weightings outside these limits.

Sub-criteria within the quality category should be relevant to the goods, services or works being sought and the scoring set to enable differentiation between suppliers to be achieved.

Whilst early discussions with potential suppliers are encouraged in order to assist with the design of specifications and selection criteria, negotiation with individual tenderers after the tenders have been submitted is not permitted. Selection must be based solely on the application of the scoring criteria and weightings previously notified. However, subsequent negotiation with the successful tenderer is permitted in order to obtain additional benefits. Nevertheless, if the original specification is thereby amended such that it might affect the price, the tender process must be repeated to ensure fairness for all tenderers.

Following the evaluation of the tenders and the selection of the winning tender, all tenderers should be notified in writing whether they have or have not been successful in winning the contract. Unsuccessful tenderers should be offered the opportunity to be given feedback on their tender and the reasons why they were not selected.

Where the purchased goods or supplies are to be received over a period of time or where an ongoing service (e.g. maintenance) will be required and the estimated cost of the contract will exceed £25,000, the Procuring Officer must ensure that the financial standing of the winning tenderer has been properly assessed by the Treasury, Insurance & Risk Manager.

### **3 LETTING THE CONTRACT**

#### **3.1 General Provisions**

No contract may be awarded unless the expenditure has been included in approved estimates or on capital or revenue accounts or has been otherwise approved by or on behalf of the Council. In any case the appropriate approval process as mandated in the Financial Regulations must be adhered to.

Contracts with a value up to £150,000 may generally be evidenced by the issuing of an official order by the relevant Procuring Officer or his nominated substitute, although the Head of Legal Services should be consulted to ascertain whether or not the specific circumstances require a written contract to be effected.

Every contract with a value of over £150,000 (or where the Head of Legal Services so decides) must be in writing and shall include the mandatory provisions set out in the standard contract template available on the Procurement area on the intranet.

Every contract above the EU threshold (and in any other case where the Head of Legal Services so determines) must be under the Council's Common Seal. Contracts not under seal must be signed by two officers.

Emergency contracts need not be in writing before commencement but must be confirmed in writing as soon as possible.

#### **3.2 Bonds and Parent Company Guarantees**

Security to cover the risk associated with the performance of the contract must always be considered. In the case of a contract for goods, payment on or after receipt will normally suffice. A bond may be required for contracts with an estimated value of over £150,000 and possibly

even for lower values depending on the amount of any retention, the nature of the works or services, the length of the contract and the status of the contractor. A parent company guarantee may be acceptable where the tenderer is a subsidiary.

With regard to minor building works covered by industry standard Joint Contracts Tribunal contracts, the Council shall hold a retention of 5% of the total contract value until the Procuring Officer agrees practical completion. The Council shall hold 2.5% of the total contract value for twelve months after practical completion to allow for any defects that may arise in the works during that period.

### **3.3 Specifications**

Technical specifications should be defined by reference to relevant British and European specifications or standards, but must include the phrase 'or equivalent'.

### **3.4 Health and Safety**

Officers should take steps during the procurement exercise and in the drafting of the contract to ensure that health and safety issues are appropriately considered. Further guidance can be obtained from the Council's Health and Safety Coordinator.

### **3.5 Equal Opportunities**

Every written contract must incorporate a requirement that the contractor shall adopt and pursue an equal opportunities policy in compliance with statutory obligations.

### **3.6 Payment**

Every contract must contain the following provisions:

- (i) Payment must be made no later than 30 days after receipt of a valid and undisputed invoice;
- (ii) Any subcontract awarded by the contractor must contain the same provisions with regard to payment;
- (iii) Any subcontractor must incorporate the above provisions in its own contracts.

### **3.7 Reporting**

All contracts let which are above £50,000 in value will be reported to Cabinet. The report will include the names and prices submitted by all tenderers, and the reason for award.

## **4 CONTRACT MANAGEMENT**

### **4.1 Process**

Directors are responsible for ensuring that contracts are managed effectively, whether they are long term service agreements or shorter term construction contracts. A suitably trained and experienced officer (a Contract Officer) should be appointed to monitor the contractor's performance and ensure compliance with the provisions of the contract.

The Contract Officer should set up regular meetings with the contractor to discuss and resolve any performance issues, and should maintain written records of such meetings and decisions taken.

Periodic reviews of contract management processes will be carried out by the Lead Procurement Officer and/or the Project Management Board to ensure the sharing of best practice and the highlighting of any issues.

## **4.2 Variations**

A contract may, if its terms so provide, be extended for a period of up to one year with the approval of a Director or the Chief Executive, if there is adequate budgetary provision and the extension provides value for money.

Variations to the scope or other terms of a contract may be approved by a Director or the Chief Executive within existing budgets where the variation provides value for money.

Variation orders issued verbally on site must be confirmed in writing within two working days.

## **5 JOINT PURCHASING**

Any joint procurement arrangements with other local authorities or public bodies including membership or use of purchasing consortia must be approved by the relevant Director or the Chief Executive prior to the commencement of any procurement on behalf of the Council. In any joint procurement arrangements with other organisations, these Contract Standing Orders apply unless otherwise agreed by the Chief Executive or the S151 Officer.

### **5.1 Formal Collaborative Arrangements**

Where the Council enters into formal joint buying or consortium purchasing arrangements, the related agreement and procurement strategy must protect the Council to a level proportionate to the risk involved, whilst at the same time providing the basis for a partnering approach and delivery of best value.

As a minimum, the agreement should clearly state:

- the nature and extent of the arrangement;
- legal responsibilities;
- arrangements for governance, accountability and dispute resolution;
- the exit strategy;
- the auditing arrangements;
- the process for the induction of new partners.

### **5.2 Informal Collaborative Arrangements**

Where the Council enters into informal or ad hoc joint buying or consortium purchasing arrangements where no strategic agreement exists, the Council must be protected to a level proportionate to the risk involved, whilst at the same time providing for flexibility and delivery of best value. As a minimum this will typically be compliance with all procurement legislation and regulations and the ability to demonstrate delivery of best value.

Where the Council is not leading the procurement process, the lead authority or agency is required to comply with all relevant procurement legislation and with its own internal rules in undertaking the procurement exercise. The Procuring Officer is required to satisfy himself, as far as it is feasible to do so, that the process is consistent with the Council's requirements as set out in these Contract Standing Orders.

## **6 GLOSSARY**

"Contract Officer" is an officer to whom responsibility for oversight and monitoring of particular contract is assigned.

"Contracts Register" is an electronic database containing details of all Council contracts above £1,000 in value.



“Emergency Works” are works which are necessary to alleviate an immediate threat to life or property or an immediate and serious threat to the functioning of a public service for which the Council has a statutory responsibility.

“EU Threshold” is the contract value at which the procedures of EU public procurement directives must be applied. The current levels are £164,176 for the supply of goods or services and £4,104,394 for building, engineering and construction contracts. These figures are next due to be reviewed in January 2018.

“Independent Officers” are the Head of Business Management, the Head of Financial Planning and Reporting, and the Treasury, Insurance & Risk Manager, or such other officers as may from time to time be nominated by the Director of Finance.

“Lead Procurement Officer” is the officer with responsibility for the Council’s procurement processes. This is currently the Head of Business Management.

“[Procurement Log](#)” is an electronic database on the intranet containing details of all quotation and tendering exercises between £1,000 and £10,000 in value as well as all contracts awarded. This term also refers to the published document that gives details of all tenders.

“Procuring Officer” is any officer authorised to procure goods, works or services on behalf of the Council.