

STANDING ORDERS FOR CONTRACTS

VERSION NUMBER V1	V1
DATE & MINUTE REFERENCE (Council)	FC 04.10.22 item 81.1b
DATE OF NEXT REVIEW	May 2024

These Standing Orders for Contracts were adopted by Council on 4th October 2022. They supplement the Council's main Standing Orders and Financial Regulations.

1. GENERAL

- 1.1 The following Standing Orders set out the procedures by which the Council will enter into contracts for the provision of goods, services, materials and work. Every contract made by or on behalf of the Council shall comply with these procedure rules and no exception from any of the provisions shall be made otherwise than by direction of the Council or under Standing Order. These Standing Orders should be read in conjunction with the Council's Procurement Policy and Financial Regulations applying at the time.
- 1.2 Contracts are an important part of the Council's purchasing procedures, used for the larger procurements. "Procurement" is the process by which they award contracts to third parties (frequently individuals or companies) to provide goods, services or to undertake works. A procurement process is designed to source the most suitable contractors based on factors such as cost and their knowledge, experience, quality, capability, and financial standing as well as giving fair access to public contracts. A procurement exercise by a local council is subject to the requirements in s. 135 of the Local Government Act 1972 ("the 1972 Act") and the Public Contracts Regulations 2015 ("the Regulations").
- 1.3 These Orders do not apply to contracts for the sale or purchase of land or buildings other than as set out in this Order. **Every contract relating to the sale or purchase of any land or buildings** shall be in writing and be signed on behalf of the Council by the Proper Officer. Purchases of land should not usually be above the current market value as determined by the Council's appointed valuer and sales of land should not usually be below the current market value as determined by the Council's appointed valuer. Where this is not the case a report should be made to Council setting out the reasons for such variation, which may take into account any community benefits or justification on the grounds that it helps fulfil a wider objective of the Council.
- 1.4 Subject to Rule 1.3 every contract made by or on behalf of the Council shall comply with;
 - 1.4.1 these Standing Orders for Contracts
 - 1.4.2 the Council's Financial Regulations
 - 1.4.3 the Council's Standing Orders
 - 1.4.4 all relevant statutory provisions
 - 1.4.5 any direction by the Council, committees, sub-committees having appropriate delegated authority.

- 1.5 These Contract Procedure Rules shall not apply or may be varied where or to the extent that:
- 1.5.1 the Council so resolves
- 1.5.2 statute or subordinate legislation prescribes otherwise.
- 1.6 Certain public contracts are exempted from the requirements of "the Regulations". Examples are contracts for the acquisition of land and buildings, legal services, bank services, a contract with an incorporated body, controlled by a local authority, where more than 80% of the body's activities are controlled by the local authority and there is no private sector ownership of the body, (with certain exceptions); and a contract between two or more local authorities who come together to provide a public service. These should always be checked closely with "the Regulations".
- 2 DELEGATED AUTHORITY TO ENTER INTO CONTRACTS**
- 2.1 The Council Manager shall have power to accept tenders (where required) and to enter into contracts on behalf of the Council, when the principle and budget have been approved by Council.
- 2.2 The Council Manager or Responsible Financial Officer (RFO), if different, have authority to issue official orders or letters for work, goods and services as set out in the Financial Regulations.
- 3. ORDERS FOR WORK, GOODS & SERVICES UPTO £3000**
- 3.1 Orders for work, goods and services up to the value of £3000 are not subject to the Standing Orders for Contracts, nor are formal quotations required but orders must comply with the Council's Financial Regulations.
- 3.2 Orders for work, goods and services which would normally be considered as one transaction shall not be divided into different orders so that the Standing Orders for Contracts are deemed not to apply.
- 4 CONTRACTS OF UP TO £25,000 (Low Value Contracts)**
- 4.1 Tenders need not be invited for contracts estimated to have a value of £25,000 or less but 3 quotations shall be obtained in accordance with the Council's Financial Regulations (i.e., value £3001-£25,000).
- 4.2 The Council's Procurement Policy states that in all contracts for goods, materials or services over £25,000, an evaluation model encompassing both price and quality, will be developed in advance against which best value can be judged.
- 4.3 Three quotations need not be invited in circumstances set out in regulation 11 the Financial Regulations (strive for 3 estimates for value up to £3,000) or in cases where genuine competition is not available because of the specialist nature of the work or goods, all subject to a resolution of Council which embodies the reason for not doing so.
- 4.4 The Financial Regulation 11.1 refers to the requirements of the Public Services (Social Value) Act 2012 and the Public Contracts Regulations 2015.
- 5 REQUIREMENTS FOR TENDER**
- 5.1 Where the council intends to procure or award a public supply contract, public service contract or public works contract as defined by The Public Contracts Regulations 2015 ("the Regulations") which is valued at £25,000 or more, the council shall comply with the relevant requirements of the Regulations.

- 5.2 All contracts over £25,000 but below the threshold below (public service or supply contract currently over £213,477 or public works contract over £5,336,93) must be advertised on Contract Finder as well as any other advertisements placed, including the Council's website) These thresholds are the total value over the period of the contract.
- 5.3 As a result of Brexit, the UK Government must now ensure procurement thresholds are aligned with the World Trade Organisation's thresholds. One of the most notable impacts of this change is that contract value estimations must now be inclusive of VAT. Under previous EU rules, procurement thresholds were net of VAT.
- 5.4 All contracts above the threshold in 5.2 must follow the more complex procedure of "the Regulations" including advertising on the Government website Find a Tender.
- 5.5 The full requirements of The Regulations, as applicable, shall be followed in respect of the tendering and award of a public supply contract, public service contract or public works contract which exceed thresholds in "the Regulations" which may change from time to time.
- 5.6 Where a council publishes information on Contracts Finder/Find a Tender, it must: -
- (a) by means of the internet, offer unrestricted and full direct access free of charge to any relevant contract documents; and
 - (b) specify in the information published on Contracts Finder/Find a Tender the internet address at which those documents are accessible;
- A council may advertise the contract opportunity on the "Contracts Finder" website when it does not advertise the contract opportunity elsewhere.
- 5.7 Subject to additional requirements in the financial regulations of the Council and of "the Regulations" for contracts valued above the thresholds in 5.2, the tender process for contracts for the supply of goods, materials, services or the execution of works shall include, as a minimum, the following steps:
- i. a specification for the goods, materials, services or the execution of works shall be drawn up;
 - ii. an invitation to tender shall be drawn up to confirm (i) the Council's specification (ii) the time, date and address for the submission of tenders (iii) the date of the Council's written response to the tender and (iv) the prohibition on prospective contractors contacting councillors or staff to encourage or support their tender outside the prescribed process;
 - iii. the invitation to tender shall be advertised in a local newspaper and in any other manner that is appropriate;
 - iv. tenders are to be submitted in writing in a sealed marked envelope addressed to the Council Manager;
 - v. tenders shall be opened by the Council Manager in the presence of at least one councillor after the deadline for submission of tenders has passed;
 - vi. tenders are to be reported to and considered by the appropriate meeting of the Council or a committee or sub-committee with delegated responsibility.
- 5.8 Neither the Council, nor a committee or a sub-committee with delegated responsibility for considering tenders, is bound to accept the lowest value tender.

6 OPEN COMPETITIVE TENDERS

Tenders shall be invited after giving at least 14 days public notice in at least one local newspaper circulating in the area of the Authority, in such trade journals as the Council Manager considers appropriate, on the Council's website and in accordance with the Regulations, stating the nature and purpose of the contract, inviting tenders and stating the last date when tenders will be accepted.

Ant notice issues shall contain a statement of the effect of Standing Orders 26.7 (1), (2) and (3).

7 AD HOC APPROVED LIST

7.1 Tenders shall be invited after giving notice in the manner set out in Rule 6 seeking applications to be placed on a list from which selected contractors will be invited to submit tenders. If this approach is considered a framework agreement under "the Regulations" further advertising is unlikely to be required.

8 STANDING APPROVED LIST

8.1 Tenders shall be invited from persons included in a list approved by the Council for the supply of goods or materials of specified categories values or amounts or for the carrying out of specified categories of work.

8.2 The list shall be compiled in the following manner:

8.2.1 Notices inviting applications for inclusion in the list shall be published not less than 28 days before the list is compiled in at least one local newspaper and one trade journal, on the Council's website and in accordance with the Regulations.

8.2.2 No person shall be included in the list unless, at the time of compilation of the list, the Responsible Financial Officer is satisfied as to his or her financial status and suitability.

8.2.3 The approved list may be amended as required from time to time by the Council and shall be reviewed at intervals not exceeding three years.

8.3 If this approach is considered a framework agreement under "the Regulations" further advertising is unlikely to be required.

9. APPROVED LIST OF ANOTHER AUTHORITY

9.1 Tenders shall be invited from persons included in a list approved by a Principal Council for the supply of goods or materials of specified categories values or amounts or for the carrying out of specified categories of work. If this approach is considered a framework agreement under "the Regulations" further advertising is unlikely to be required.

10 ESTABLISHED PROCUREMENT SPECIALIST

10.1 Where large, high value tender exercises take place, in areas in which the Council have limited expertise, it may be necessary to engage the use of established procurement specialists. These specialists will undertake the tender process on behalf of the Council, subject to compliance with Financial Regulations for the opening of tenders.

11 CONTRACTS EXCEEDING THE THRESHOLDS (see 5.2)

11.1 Contracts exceeding the thresholds are detailed and complex. It is likely that the Council will require technical and or legal advice from those who specialise in public procurement.

11.2 Procurement must take one of five forms; the open procedure, the restricted procedure, competitive dialogue, the innovations partnership procedure; and competitive procedure with negotiation. Accelerated forms of the open procedure and competitive procedure with negotiation and the restricted procedure in situations of urgency that a local council can duly substantiate.

- 11.3 There is a pre-qualification stage; Councils will need to comply with the requirements in respect of tenders; Contracts should be awarded on the "most economically advantageous tender. Contracts can be varied without going through a new procurement exercise in specified situations.

12 SELECTION OF TENDERERS OR INVITEES

- 12.1 The selection of persons from whom tenders shall be invited shall be delegated to the Council Manager in consultation with the Chairman of Finance & Administration. Advice should be taken from any procurement specialist who has been engaged.
- 12.2 The Council cannot include a pre-qualification stage under "the Regulations" for the "light touch" requirements below the thresholds. A "pre-qualification stage" is defined as "a stage in the procurement process during which the contracting authority assesses the suitability of candidates to perform a public contract for the purpose of reducing the number of candidates to a smaller number who are to proceed to a later stage of the process." A council may however, ask tenderers to answer "suitability assessment question" which is defined as relating "to information or evidence which the contracting authority requires for the purpose of assessing whether candidates meet requirements or minimum standards of suitability, capability, legal status or financial standing" if the questions are relevant to the subject-matter of the procurement; and proportionate.
- 12.3 In inviting applications for inclusion in a list of approved tenderers or in selecting persons from whom tenders are to be invited, steps shall be taken to ensure fair competition and not disadvantage small enterprises or new entrants to the sector. It may be necessary to supplement approved lists in cases where the specialist nature of the work or goods indicates that completion will be limited, subject to a resolution of Council which embodies the reason for doing so.

Where a contract will involve a design element, or in the case of other construction works, the chosen process may be varied minimally to ensure that the quality of the design is properly taken in to account. Construction processes which are taking forward the Government Construction Strategy may also be used.

13 FORMS OF INVITATION TO TENDER AND SUBMISSION OF TENDERS

- 13.1 All tenders shall be required to be submitted on a Form of Tender which complies with "the Regulations" where applicable and is approved by the Council Manager. This Form shall include a statement that the Council will not be bound to accept any tender and reserves the right to accept a tender other than the one which is the lowest price or not to accept any tender at all.
- 13.2 The invitations to tender shall state that no tender will be considered unless contained in an unmarked plain sealed envelope and endorsed "Tender" followed by the subject to which it relates.
- 13.3 Every tender shall be addressed to the Council Manager and the tender shall remain in his/her custody, or that of his nominated representative, until the time appointed for its opening. (See also 10.1).
- 13.4 Where the RFO intends to undertake a financial check on all or the preferred tenderer, this must be stated in the tender documents.
- 13.5 Where an evaluation model is to be used (price and quality), this must be disclosed and described in the tender documents.
- 13.6 Councils must ensure that contracts contain suitable provisions stating that valid undisputed invoices will be paid by within 30 days. Public contracts must also contain

a condition requiring contractors to include similar provisions in their contracts, and so on down the supply chain.

14 **EXTENSION OF TIME**

14.1 Subject to compliance with "the Regulations", where the Council Manager considers it to be in the best interests of the Council the time within which tenders must be received, may be extended after giving notice of such extension of time in the following manner: -.

14.1.1 **Open competitive tenders:** - in accordance with Standing Order 6.

14.1.2 **Ad hoc approved list / Established procurement specialist** - by giving 14 days written notice to each of the selected contractors.

14.1.3 **Standing approved list** - by giving 14 days written notice to each of the relevant persons on the list.

15 **OPENING OF TENDERS**

15.1 All tenders for a contract shall be opened at the same time and as soon as possible after the closing time for the acceptance of tenders. The tenders will be opened by the Council Manager or other nominated officer in the presence of two Members of Council. (See also 10.1)

15.2 The Council Manager shall prepare and maintain a register of tenders received and shall record in that register the following particulars:

15.2.1 the last date and time for the receipt of tenders

15.2.2 the date and time the tender was actually received

15.2.3 the name of the tenderer and the amount of the tender

15.2.4 the date and time they were opened and by whom

15.2.5 the signature of the officer to whom the tenders were handed after opening.

15.3 All persons required to be present at the opening of tenders shall immediately sign against the relevant particulars in the register and shall also sign each page of the tender as evidence of such tenders having been opened by them or in their presence.

15.4 Following the opening of tenders invited the Council Manager shall write to all persons who were invited to tender but who failed to tender to ascertain the reasons for that failure.

15.5 When a contract is awarded, the council, must publish on the Contracts Finder, required information on the successful tenderer. A council may withhold certain information where its release would impede law enforcement or would otherwise be contrary to the public interest, would prejudice the legitimate commercial interests of a particular economic operator, whether public or private, or might prejudice fair competition between economic operators.

16 **LATE TENDERS**

16.1 Any tender received late will be returned promptly to the tenderer by the Council Manager. A late tender which has been received may be opened in the presence of the two Members to ascertain the name and address of the tenderer but no details of the tender shall be disclosed.

17 **ALTERATIONS TO TENDERS**

17.1 Where the tender reveals errors or discrepancies, which would affect the tender figure in an otherwise successful tender, the tenderer shall be told of the errors and discrepancies and given an opportunity of confirming, correcting or withdrawing the offer.

18 ACCEPTANCE OF TENDERS

18.1 In accepting a tender, consideration will be given to price and quality (but see 11.3). A suitable pre-determined price-quality model (Evaluation Model) will be devised by the Council Manager or representative in accordance with the Council's Procurement Policy. Selection of the best tender will be based on this evaluation.

18.2 If no tenders are received or if all tenders are identical, the Council may make such arrangements for procuring the goods or materials or executing the works as it thinks fit, subject to the Regulations.

19 CONTRACTS TO BE IN WRITING

19.1 Every contract which exceeds £5000 shall be in writing in a form approved by the Council Manager.

19.2 Every contract shall specify, amongst other things:

19.2.1 the goods, materials, works, matters, or things, to be furnished, supplied or done (including any appropriate technical specifications)

19.2.2 the price to be paid with a statement of discount or other deductions

19.2.3 where applicable, the time or times that the contract is to be performed

19.2.4 how the contractor will be accountable for performance, and any information or reports that he will be required to submit.

19.3 The Council Manager shall sign every contract not required to be made under seal on behalf of the Council.

19.4 The Council Manager or his/her nominated representative shall seal every contract required or intended to be made under seal on behalf of the Council, in accordance with Standing Orders. *Note: The Council currently has no seal.*

19.5 Every contract for which provision has been made in the approved annual estimates and/or approved by the appropriate committee or sub-committee of the Council pursuant to Standing Orders and being in value of amount less than £3,000 shall be entered into on behalf of the Council by the Council Manager or delegated Officer by issuing an official order only.

20 ASSIGNMENT

20.1 In every written contract for the execution of work or the supply of goods or materials, the following clause shall be inserted:

"The contractor shall be prohibited from transferring or assigning directly or indirectly, to any person or persons whatever, any portion of the contract without the written permission of the Council. Sub-letting of any part(s) of the work, except to the extent permitted in writing by the officer concerned, shall be prohibited"

21 LIQUIDATED DAMAGES

21.1 Every contract that exceeds £50,000 shall, subject to "the Regulations" where considered appropriate by the Council Manager, provide for liquidated damages to be paid by the contractor in case the terms of the contract are not duly performed.

22 PERFORMANCE BONDS

22.1 Where a contract is estimated to exceed £150,000 in value and is for the execution of the works, or for the supply of goods or materials by a particular date or series of dates, the Finance & Admin Committee shall consider whether the Council should require security for its due performance and shall either certify that no such security is necessary or shall specify in the conditions of tender the nature and amount of any security to be given. In the latter event, the Council shall require and will take a bond or other sufficient security for the due performance of the contract, subject to compliance with "the Regulations".

23 **RETENTION**

- 23.1 Works contracts, which are estimated to exceed £50,000 in value, will be subject to a defects period. The Council will, subject to compliance with "the Regulations", retain a percentage of the monies due to the contractor for a period that the Council Manager deems appropriate, having regard to the current practice in the relevant industry and to the circumstances of the contract.

24 **CANCELLATION**

- 24.1 Every contract will include a clause allowing the Council to cancel the contract and to recover costs if the contractor has offered, or given, any gift or consideration whatsoever as an inducement or reward to obtain the contract, or any other contract with the Council.
- 24.2 A notice issued under this standing order shall contain a statement of the effect of main Standing Orders 26.7 (1), (2), (3).

25 **NOMINATED SUB-CONTRACTORS**

- 25.1 Where a sub-contractor or supplier is to be nominated to a main contractor the following provisions shall have effect.
- 25.2 Where the estimated amount of a sub-contract exceeds £40,000 then, unless the Council Manager certifies that it is not reasonably practicable to obtain competitive tenders, tenders for the nomination shall be invited and dealt with in accordance with these Contract Procedure Rules as if they were for a contract with the Council.
- 25.3 A nominated sub-contractor must be willing to enter into a contract with the main contractor on terms which indemnify the main contractor against his own obligations under the main contract in relation to the work or goods included in the sub-contract.

26 **ENGAGEMENTS OF CONSULTANTS**

- 26.1 In the event of the Council engaging the services of consultants, these Contract Procedure Rules will apply where relevant, and subject to approved exemptions set out in the Financial Regulations.