

# **PART 4 - PROCEDURAL RULES**

## **SECTION I**

### **STANDING ORDERS FOR CONTRACTS**

#### **GENERAL**

##### **Introduction**

1. These Standing Orders provide basic guidance to anyone making a contract for the Council. They apply equally to the supply of goods, materials, services or other work. In making such contracts, the overriding objective is to obtain best value for the Council in all the relevant circumstances. Advice on tender and contract procedures should be taken from Legal Services, Audit Services or the Procurement Manager at the start of any procurement process. The Procurement Strategy provides a corporate framework within which all procurement should be managed and should be referred to when using these Standing Orders.

##### **Compliance**

2. Every contract made by or for the Council must comply with these Standing Orders except in the circumstances set out in paragraphs 16 to 22 (Exceptions) below.

##### **Documentation and Audit Trail**

3. All contracts must be fully documented on a dedicated contract file, with a complete audit trail recording all significant decisions and actions taken. The contract file should be in electronic format as far as possible, although hard copy may be kept when necessary.

##### **Division of Contracts**

4. Large scale works or orders must not be broken down into smaller units for the purpose of creating lower value contracts unless there are sound operational or management reasons for doing so. Any such action must be authorised by the relevant Director in writing with the reasons recorded in the contract file. The avoidance of any provision of these Standing Orders is not an acceptable reason for such action.

##### **Estimated Value**

5. An estimated value must be prepared and documented for every contract immediately before starting the procurement process to confirm there is adequate budget provision, and to determine the appropriate form of tender or quotation process to follow.

##### **Specification and Selection Criteria**

6. A statement of the specification and selection criteria must be prepared before tenders or quotations are sought. The main selection criteria should normally be

lowest price. Where a Head of Service in consultation with the relevant Director considers this is not appropriate and a reasonable balance needs to be struck between cost, quality, design, whole life costs and other factors such as timing, the selection criteria must be approved by the Strategic Management Team. Both the specification and the selection criteria must be recorded on the contract file and used to evaluate all tenders and quotations received.

7. If a potential contractor requires information not provided in the specification, such additional information must be copied to all other tenderers. It is important that all potential contractors are treated equally.

### **Special Requirements**

8. All contracts must comply with relevant European Law and any other relevant legal provisions such as those relating to Equalities, Health and Safety etc. Any particular requirements relating to the Private Finance Initiative, Partnership Funding and vehicle procurement must also be observed. Where there is conflict between these Standing Orders and any statutory provision, the law must prevail.

### **Authorisation to Officers**

9. Where a Director is authorised to take decisions under these Standing Orders, he may authorise a Head of Service to take decisions on any matters falling under the responsibility of that Head of Service. Where a Head of Service is authorised in this way, a record must be placed on the contract file by the relevant Director.

### **Officer Responsibilities**

10. It is the responsibility of the Head of Legal and Corporate Services together with the Head of Audit to maintain and communicate these Standing Orders to officers and Members. This includes the regular review and amendment of value thresholds as necessary. Subject to arrangements for authorisation noted at paragraph 9 above (Authorisation to Officers), it is the responsibility of Heads of Service as budget holders to ensure all contracts comply with these Standing Orders. It is the responsibility of Executive Head of Strategy and Policy to advise and support Heads of Service, oversee the operation and implementation of the corporate Procurement Strategy and to advise the Head of Legal and Corporate Services when there is any conflict between the Corporate Procurement Strategy and these Standing Orders, through the work of the Procurement Manager.

### **CONTRACT VALUES**

11. The procedures outlined below by contract value are minimum requirements. Where better value for the Council might be achieved by seeking more tenders or quotations, this should be done. All financial values stated in these Standing Orders are exclusive of VAT.

#### **Contracts estimated to be under £15,000**

12. At least three written quotations should be sought. If this is not possible or cost effective, one or two quotations may be sought provided this is agreed by the relevant Director and this agreement and the reasons for it are recorded in writing on the contract file. Verbal quotations are acceptable only in exceptional circumstances and these must be recorded and the accepted quotation confirmed subsequently in writing.

### **Contracts estimated to be between £15,000 and £50,000**

13. A minimum of three written quotations or tenders must be obtained.

### **Contracts of £50,000 and over**

14. Where the estimated contract value is £50,000 or above, a minimum of three tenders must be sought in accordance with the procedures set out in paragraphs 23 to 25 (Types of Tender Procedure) below. Where fewer than two valid tenders are returned, the Strategic Management Team shall consider whether or not the contract should be re-advertised before it is awarded.

### **European Procurement Rules**

15. Contracts for works over £3,834,411 and contracts for supplies over £153,376 and services over £153,376 (as at 31 January 2006) must also be advertised in the Official Journal of the European Union (OJEU) in accordance with European Public Procurement rules.

Note: The amounts specified in this paragraph change annually. Any large contracts for works or for the supply of goods and/or services should be discussed in advance with Legal Services or the Procurement Manager to check current limits and the appropriate process.

### **Exceptions**

16. Exceptions to these Standing Orders may be made without reference to the Executive or full Council only in the following circumstances:  
  
For contracts under £50,000 where the Director is satisfied their application
  - (a) would not be practical, or
  - (b) would not ensure genuine competition, or
  - (c) where the supplies, works or services can most sensibly be obtained by extending or adding to an existing contract and the cost can be contained within the budget for the existing contract.
17. Any such exception must be agreed with the Executive Head of Corporate Services and the reasons for the exception and the appropriate approval recorded in writing on the contract file.
18. For contracts of £50,000 and over where the Director is satisfied their application
  - (a) would not be practical, or
  - (b) would not ensure genuine competition, or
  - (c) would not achieve best value for the Council.
19. Any such exception must be approved in advance by the Executive after receiving advice from the Director in consultation with the Executive Head of Corporate Services. The reasons for the exception and the appropriate approvals must be recorded in writing on the contract file.
20. Where the need for supplies, works or services is so urgent (other than for reasons of delay on the part of any Council officer) that the invitation of estimates, quotations or

tenders is not practicable, exceptions may be approved by the relevant Director if the work is estimated to cost less than £50,000. The reasons for any exception and the appropriate approvals must be recorded in writing on the contract file.

21. In cases of civil emergency, where the need for supplies, works or services is so urgent that the invitation of estimates, quotations or tenders is not practicable, exceptions may be approved by the relevant Director in consultation with the Chief Executive for contracts estimated to cost more than £50,000. The reasons for any exception and the appropriate approval must be recorded in writing on the contract file as soon as possible.
22. Where tenders have been invited on behalf of any consortium, collaboration or agency arrangement of which the Council is a member such as Catalyst (formerly GCAT) or Surrey County Council Term Tenders, the Standing Orders or requirements adopted by such a body should be observed if they differ from these Standing Orders. The revised Procurement Strategy approved by Executive on 27 September 2005 sets out the corporate approach to securing an appropriate mix of partnering and joint working with other local authorities, public bodies, private and voluntary sectors.

## **TYPES OF TENDER PROCEDURE**

### **General**

23. All contracts estimated at £50,000 or more must be the subject of public advertisement. This can be either an open invitation to tender or an invitation to tender for a place on a select or standing list of contractors (i.e. a list from which a number of contractors will be invited to tender for the particular contract or particular types of work). The reason for choosing a particular course should be recorded in the contract file. Either procedure may also be used for contracts less than £50,000 if there are a large number of possible contractors or in the opinion of the relevant Head of Service it would be likely to be cost effective for the Council.

### **Open Invitation to Tender**

24. Where it has been decided that tenders for a contract should be obtained by open competition, at least 10 days public notice of the contract must be given in one or more local newspapers and in one or more relevant professional or trade newspapers or journals. The notice must state the nature and purpose of the contract, where further details and a specification may be obtained, invite tenders for its execution and state the last date and time by which tenders must be received. Where necessary, an advertisement must be placed in the Official Journal of the European Union in accordance with European Public Procurement.

### **Advertisement Inviting Persons to join a Select or Standing List**

25. Where it is decided to restrict the invitation to tender to persons from a select list (for use on a single contract only) or standing list (for longer term use on several contracts), public notice of the intention to do so must be given in at least one local newspaper and at least one relevant professional or trade newspaper or journal. The notice must give details of the proposed contract, invite persons or bodies interested to apply for an invitation to tender, and specify a time limit of not less than 10 days within which applications must be submitted to the Council. If necessary, an appropriate notice must also appear in the Official Journal of the European Union.

## **SELECTION OF TENDERERS**

### **Contracts less than £50,000**

26. Where there is no open invitation to tender, the persons invited to tender or quote should be approved by the relevant Director. This should be recorded on the contract file with the reasons for the choice of those invited.

### **Invitations from a Select or Standing List for Contracts of £50,000 and over**

27. The persons or bodies included on any select or standing list for contracts of £50,000 and over should be approved by the Executive after considering the responses to the public advertisement. A minimum of four persons on the select or standing list should be invited to tender for any contract and the persons to be invited shall be chosen by the Director of the relevant department in consultation with the Chairman of the Executive/relevant Portfolio Holder.

## **RECEIPT AND OPENING OF TENDERS OR QUOTATIONS**

28. Where written tenders or quotations are invited, tenderers should be asked to return their tender or quotation in a sealed, plain envelope with only the word "Tender" or "Quotation", the title of the contract, its discrete contract number and the closing date and time for receipt written on it. No marks which identify the sender must appear on the envelope. It should be made clear that where contracts are estimated to be worth £15,000 or over they will not be considered unless returned in this way. Envelopes containing tenders for contracts estimated to be £50,000 or over must be addressed to the Chief Executive. All others must be addressed to the Head of Legal and Corporate Services.
29. Envelopes containing tenders or quotations should be kept securely by the Head of Legal and Corporate Services, preferably in a tender box, until the time appointed for opening them. Tenders or quotations received after the closing time cannot be considered, unless the envelope bears a postmark prior to that time and has been received prior to the time fixed for opening.
30. Any tenders received late or improperly marked and not for consideration should be noted as "Late" or "Marked" respectively with date and time received, and kept securely by the Head of Legal and Corporate Services until after the list of tenders received is recorded.
31. All envelopes containing tenders or quotations must be opened at one time in the presence of at least two officers. Contracts estimated to be £50,000 or over must be opened in the presence of at least one authorised Member and an officer designated by the Head of Legal and Corporate Services.
32. All tenders and quotations received must be recorded in writing on a Tender List. This must record the contract title, its discrete contract number, the name of each person or organisation submitting a tender, the amount of each tender, the date and time of opening the tenders and the names of all persons present at the time of opening. A note should also be made of any disqualified tender and the reason for its disqualification. The Tender List must be signed by all present as an accurate record and placed on the contract file.

## **ERRORS AND POST TENDER NEGOTIATIONS**

### **Errors in tenders**

33. Where examination of tenders reveals errors or discrepancies which would affect the tender figure in an otherwise successful tender, the tenderer should be given details and an opportunity to confirm, withdraw or amend his tender to correct genuine errors. If the resulting tender is no longer the lowest, the next tender in order of value should be examined.

### **Post tender negotiations**

34. No negotiations may be entered into with any contractors submitting tenders or quotations unless the relevant Director considers it necessary to obtain best value for the Council, to accommodate unforeseen changes in the specification, or for any other reason the Director considers appropriate. In this event, any negotiations must be in writing and must be conducted either solely with the contractor who has submitted the lowest tender received, or with all contractors who have submitted tenders. The reasons for entering into post tender negotiations must be recorded on the contract file.

## **ACCEPTANCE OF TENDERS AND QUOTATIONS**

### **Budget provision and suitability of contractor**

35. Before any tender or quotation is accepted the officer accepting it must satisfy him/herself that
- (a) sufficient budget provision is available, and
  - (b) the contractor is sufficiently capable and financially sound to undertake the contract by making enquiries, pursuing references and reviewing tender proposals/method statements as appropriate.

### **Tenders less than £15,000**

36. The relevant Head of Service can accept a tender or estimate of less than £15,000.

### **Tenders of £15,000 and less than £50,000**

37. The relevant Director can accept a tender or estimate of between £15,000 and £50,000.

### **Tenders of £50,000 and over**

38. Tenders or quotations of £50,000 and over can be accepted by the relevant Director after consultation with the Chairman of the Executive/relevant Portfolio Holder, with all such acceptances being reported to the next meeting of the Executive. Successful tenders must also be recorded in the Tender Book.

## **ELECTRONIC TENDERING**

39. The implementation and use of any arrangements for e-tendering or e-procurement in general should ensure that the principles and control objectives of these Standing Orders are maintained, although the form of controls is likely to differ from those

described from paragraph 28 above. Advice should be taken from Audit Services in this event.

## **FORM OF CONTRACTS**

40. Every contract to which these Standing Orders applies must be in writing, in a form approved by the Head of Legal and Corporate Services. All contracts of £50,000 and over in value (other than for vehicle purchase) must be in writing and under Seal. Members of the Council may not enter into any contract either orally or in writing on behalf of the Council.

## **CONTENT OF CONTRACTS**

41. Every written contract must specify as a minimum the work, goods, materials or services to be provided; their price, with details of any discounts or other deductions; the time or times by which the contracts must be completed; and any other agreed terms. All contracts of £50,000 and over in value, and any with unusual or potentially onerous clauses, should be referred to Legal Services for review and approval of terms and conditions.

## **Public liability insurance**

42. In the case of a contract for works or services, the contract must require the contractor to carry public liability insurance to a minimum of £5,000,000, unless otherwise agreed by the Executive Head of Corporate Services.

## **Assignment of contracts**

43. Assignment or under letting of contracts is not to be permitted except with the prior consent of the relevant Director, and then only where the Director is satisfied that an effective vetting procedure of assignees or subcontractors has been used. The principal contractor remains responsible for all work done by such subcontractors and for it being carried out under the same conditions as if by himself.

## **Liquidated damages**

44. Where delays in contract completion are likely to result in significant additional cost to the Council, officers must consider whether the contract should provide for the contractor to pay liquidated damages on failure to complete the contract by the specified completion date. The contract should also require the contractor to pay damages for any breach of the terms of the contract. Advice on these issues should be taken from Legal Services or Audit Services at the start of the procurement process.

## **Standards**

45. Every contract must state that all goods, materials and works must comply with any relevant British, European Union, ISO Standards or Standard Code of Practice in force at the date of tender.

## **Corruption and cancellation**

46. Every contract must state that the Council may cancel the contract and recover any resulting losses if the contractor, his employees or anyone acting on his behalf, with or without his knowledge, does anything improper to influence the Council or

commits an offence under the Prevention of Corruption Acts 1889 to 1916, or section 117(2) and (3) of the Local Government Act 1972.

## **PERFORMANCE BONDS**

47. Where a contract is estimated to be £50,000 or over, the relevant Director must consider before procurement whether the Council should require security for its performance. Particular attention should be paid to the potentially high cost of obtaining performance bonds, and whether this is justified by the value of or risk associated with any contract. The Director must either certify on the contract file that no such security is considered necessary or specify in the conditions of tender the nature and amount of security to be given. In the latter event, the Director must ensure the required bond or other security for the due performance of the contract such as deposited sum or parent company guarantee is given at the time the contract is let.

## **NOMINATING SUB-CONTRACTORS AND SUPPLIERS**

48. Where it is decided to be in the Council's interest that a sub contractor or supplier should be nominated to a main contractor, at least three tenders for the nomination must be invited in accordance with one of the methods described in paragraphs 23 to 25 (Types of Tender Procedure) above. The only exception to this is if the relevant Director considers this to be impracticable and the reasons for this must then be recorded on the contract file. The invitation to tender as sub contractors or suppliers must require an undertaking from any tenderer to enter into a contract with the main contractor, including an obligation to indemnify the main contractor in respect of matters included in the sub contract.

## **CONSULTANTS**

49. Consultants may only be employed after submission and authorisation of a "Request for the Appointment of Consultants" form. All requests without budgetary provision must be reviewed by the Strategic Management Team. Major one-off appointments need approval in advance by the relevant Portfolio Holder. All contracts with consultants must comply with these Standing Orders.
50. Any consultant employed by the Council to let or manage contracts must comply with these Standing Orders. The contract with any consultant must provide that all records maintained by the consultant in relation to a contract must be made available to the Director or his representative on request and handed over to the Council on completion of the contract.

## **REGISTRATION OF CONTRACTS**

51. The Executive Head of Corporate Services will keep a register of all contracts of £5,000 and over placed by the Council. The register must state the name of the contractor, the discrete contract number, the work to be done or goods to be supplied, appropriate EU classification, the duration and value of the contract. Any officer letting a contract must ensure details are supplied to the Executive Head of Corporate Services for entry in the register.
52. The Executive Head of Corporate Services will also keep a register of all contracts for building, construction or engineering work and associated Consultants which provide for payment by instalments. This register must show contract titles and numbers, the state of account of each contract between the Council and contractor,

together with any other payments and related professional fees. Any officer letting such a contract must ensure details are supplied to the Executive Head of Corporate Services for entry in the register.

53. The Head of Legal and Corporate Services will maintain a tender book recording contracts opened in the presence of a Member.

## **VARIATIONS**

54. Where a Director considers an existing contract needs to be varied (i.e. practical changes that do not alter the essential nature of the original contract as opposed to additional works or supplies not originally envisaged) he may approve these subject to the proposed variation being contained within the total budget approved for the contract. The reasons for and details of any such variation must be recorded on the contract file. Where the approved budget would be exceeded, approval must be obtained from the Executive for any variation.

## **CONTRACT MANAGEMENT**

55. The name of the officer responsible for a contract should be clearly noted on the relevant contract file as the Contract Manager.
56. The responsibilities of the Contract Manager will include:
- (a) monitoring the contractor's performance against the agreed level of service
  - (b) monitoring levels of operational and financial risk for the Council and Controlling them appropriately
  - (c) ensuring the contractor's compliance with all health and safety obligations
  - (d) facilitating any dispute resolution between the contractor and service users
  - (e) ensuring prompt payment of invoices and compliance with Financial Regulations
  - (f) ensuring appropriate arrangements are made for termination or re-letting of the contract when appropriate.
57. Where contractors carry out work for the Council, it remains the responsibility of the Council to ensure that a safe system of work is used. The Contract Manager shall ensure that appropriate guidance is supplied to potential contractors and that all necessary information is collected from potential contractors before the evaluation of tenders, so that due weighting can be given to health and safety considerations during tender evaluation.

