

# CONTRACT STANDING ORDERS

## 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 the best value for the Council in all the relevant circumstances.

### Compliance

2. Every contract made by or for the Council must comply with these Standing Orders except in the circumstances where exemptions are obtained in advance.
3. Where tenders or quotes have been invited on behalf of any consortium, collaboration or agency arrangement of which the Council is a member, the Standing Orders or requirements adopted by the lead agency can be observed if they differ from these Standing Orders.

## PREPARING FOR THE CONTRACT

### Contract file to be set up from the start

4. All contracts must be fully documented on a dedicated contract file, with a complete audit trail recording all significant decisions and actions taken.
5. All contract files should clearly record the identity of the staff member undertaking the procurement (the Procurement Manager).

### Requirement for a nominated procurement manager

6. The Procurement Manager is responsible for ensuring and recording on the contract file that the relevant authority (Council, Cabinet or delegated as appropriate) has been obtained and there is sufficient budgetary provision in place for the procurement before any steps are undertaken.

### Contractor Suitability

7. The Procurement Manager is to ensure that the contractor is sufficiently capable and financially sound to undertake the contract by making enquiries, pursuing references and reviewing the quotes, tender proposals/method statements as appropriate, during the procurement process. The Procurement Manager is also required to ensure that the contractor has appropriate health and safety policies and procedures in place (as appropriate).
8. Only where considered appropriate by the Procurement Manager will a two-stage assessment process including a pre-qualification stage to assess suitability of those invited

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to quote or tender be used. Advice should be sought from the Head of Corporate Governance as to whether a two stage process is required for contracts above the EU procurement thresholds. If a two stage process is used the person authorised under column 6 of table 1 shall be authorised to select the bidders to be invited to quote or tender.

### **Specification and Selection Criteria**

9. A specification and selection criteria must be prepared in advance of tenders or quotations being sought. The main selection criteria will normally be the lowest price. Where this is not appropriate, a reasonable balance needs to be struck between cost and quality, including other factors such as timing. Both the specification and the selection criteria must be recorded on the contract file and be used to evaluate tenders/quotations received.
10. If a potential contractor requires information not provided in the specification, such additional information must be copied to all other bidders. It is important that all potential contractors are treated equally.

### **Procurement Board**

11. The role of the Procurement Board is to take a strategic approach to the Council's procurement. All contracts likely to exceed £20,000 (other than urgent contracts) should be notified at the planning stage to the Chief Finance Officer, who will maintain a forward plan of contracts to advise Procurement Board and where appropriate Cabinet, on relevant procurement matters.

### **Electronic Procurement**

12. All procurement opportunities, whenever possible should be advertised through the Council's electronic procurement system (Pro-Contract).

## **PROCEDURAL STEPS OF THE PROCUREMENT**

### **Estimated Value of Contracts**

13. 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.
14. For contracts which continue over a number of years, the estimated value of the contract shall be taken to be the annual value multiplied by four years as this will allow the Procurement Manager to assess whether European procurement rules may apply.
15. For concessionary contracts (contracts for which the Council does not pay the provider for the services/works/goods but the contractor receives consideration in other ways e.g. directly from the end user), the contract value will be based upon the anticipated income which the contractor is likely to receive from any source pursuant to such contract.

### **Division of Contracts**

16. 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

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for doing so. Any such action must be authorised by the Chief Finance Officer in writing with the reasons recorded on the contract file. The avoidance of any provision of these Standing Orders is not an acceptable reason for such action.

### **Special Requirements**

17. All contracts must comply with the Public Contract Regulations. Where there is a conflict between these Standing Orders and any statutory provision, the law must prevail. Advice on the tender process and form of contract should be taken from Legal Services at the start of any procurement project.
18. The procedures outlined below by contract value are the minimum. It is important to remember that we are trying to get the best value for the residents of Spelthorne. Consequently where better value for the Council might be achieved by seeking more tenders or quotations this should be done. The figures outlined in this document are exclusive of VAT.

### **Procedural rules for steps of the procurement**

19. The Procurement Manager must ensure that the procurement procedurally complies with Table 1 below.
19. In Table 1 below the following abbreviations mean as follows:

DCX means: the relevant Deputy Chief Executive for the Service concerned.  
CFO means: Chief Finance Officer  
HoS means: the relevant Head of Service  
HoCG means: the Head of Corporate Governance  
RFQ means: Request for Quote  
ITT means: Invitation to Tender.

### **Framework Agreements**

20. Procurement Managers wishing to let a Framework Agreement should follow the steps required in Table 1.
21. Procurement Managers may purchase goods, works or services from existing Framework Agreements subject to (i) the agreement of the Chief Finance Officer that the call-off represents good value for money and (ii) the agreement of the Head of Corporate Governance that the proposed Framework Agreement has been procured appropriately. In which case the procedures in columns 2,4, and 5 of Table 1 may be dispensed with.

**Table 1: Procedural steps of the procurement**

| 1. Value over 4 years?      | 2. Advertising required?   | 3. Specification?                               | 4. Method?                                      |  | 5. Receipt of quotes/tenders? | 6. Selection of Contractor?                | 7. Contract required?                  | 8. Who signs contract? | 9. Exemption agreed by? | 10. Errors subsequent signed off by? |
|-----------------------------|--|---|---|--|-------------------------------|--|--|------------------------|-------------------------|--------------------------------------|
| Under £5000                 | None   | Communicated to bidder and confirmed in writing | Confirm price in advance                        |  | Procurement Manager           | Procurement Manager                        | No<br>Keep invoices and quotes on file | Procurement Manager    | HoS                     | HoS                                  |
| £5,000 - £40,000            | None   | Communicated to bidder and confirmed in writing | Three verbal or written quotes recorded on file |  | Procurement Manager           | HoS  | Yes <sup>3</sup>                       | HoS                    | HoS                     | HoS                                  |
| £40,001 - £100,00           | Contract placed on e-sourcing website                                | Detailed in RFQ                                 | Three written quotes                            |  | Recorded opening of quotes    | DCEX                                       | Yes <sup>3</sup>                       | HoS                    | CFO                     | CFO                                  |
| Over £100,001               | Contract placed on e-sourcing website                                | Detailed in ITT                                 | Three tenders                                   |  | Recorded opening of tenders   | DCEX in consultation with Portfolio Holder | Yes - agreed by Legal and under seal   | HoCG                   | Cabinet                 | Cabinet                              |
| Over £173k PCR <sup>1</sup> | Advert in the OJEU and placed on e-sourcing website                  | Detailed in ITT                                 | Three tenders as appropriate <sup>2</sup>       |  | Recorded opening of tenders   | Cabinet                                    | Yes - agreed by Legal and under seal   | HoCG                   | Cabinet                 | Cabinet                              |
| Framework Agreements        | Yes with OJEU advert if required and/or placed on e-sourcing website | Detailed in ITT                                 | Three tenders                                   |  | Recorded opening of tenders   | Cabinet                                    | Yes - agreed by Legal and under seal   | HoCG                   | Cabinet                 | Cabinet                              |

Notes:

1. Contracts over £100,000 may also be caught by the Public Contracts Regulations (PCR) thresholds which are:  
Supplies: £173,934 Services: £173,934 Works: £4,348,350
2. Different procedures can apply, open procedure, restricted procedure, negotiated procedure, competitive dialogue and innovative partnership. Check with Legal Services to agree which is the most appropriate.
3. Any contract over £20,000 must be agreed by legal services.

## **Tendering and Quotation handling procedure – Paper Procedure**

22. For all non-electronic procurement where written quotations or tenders are invited, the bidder should be asked to return their quotation or tender in a sealed, plain envelope with only the word "Quotation", or "Tender" and the title of the contract and the closing date and time for receipt written on it. No marks which identify the sender must appear on the envelope.
23. It should be made clear that where contracts are estimated to be worth £40,001 or over they will not be considered unless returned in this way.
24. Envelopes containing tenders or quotations should be kept secure, 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.

### **Construction Line**

25. Procurement Managers may generate a shortlist for works contracts by undertaking a search of "Construction line" for at least 4 suitably qualified contractors who have expressed an interest in undertaking the works and have agreed to submit a quote or tender.

### **Errors and clarifications of tenders**

26. 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**

27. The Procurement Manager should take advice from Legal Services and no negotiations may be entered into with any contractors submitting tenders or quotations unless the Chief Finance Officer considers it necessary to obtain best value for the Council, to accommodate unforeseen changes in the specification, or for any other reason the Chief Finance Officer considers is appropriate. In this event, details of the negotiations must be recorded in writing and must be conducted either solely with the contractor who has won the tender, or with all contractors who have submitted tenders. The reasons for entering into post tender negotiations must be recorded on the contract file.

# CONTENT OF CONTRACTS

## Form of Contracts

28. Every contract over £5,000 must be in writing, in a form approved by the Head of Corporate Governance. All contracts of £100,001 and over in value (other than for vehicle purchase) must be in writing and under seal.
29. For contracts over £5,000 where the Council may be obliged to contract on the standard terms and conditions of another organisation, the following minimum requirements must be adhered to:
  - (a) a specification of services required should be produced and sent to the contractor. This is required in all cases where the Council procures goods and services together. It is not required where the Council only procures goods.
  - (b) a copy of the applicable standard terms and conditions should be retained on the contract file.
  - (c) an appropriate letter or other document should be agreed with the contractor which refers to the Council's specification of services required and confirms the terms and conditions on which the supply is to be made.

## Public liability insurance and professional indemnity insurance

30. The Procurement Manager must consider the Council's need for appropriate indemnities backed by insurance. 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 Chief Finance Officer.
31. In the case of a contract for professional services, the contract must require the contractor to carry professional indemnity insurance to a minimum of £5,000,000, unless otherwise agreed by the Chief Finance Officer.

## Assignment of Contracts

32. Assignment or under letting of contracts is not to be permitted except with the prior consent of the Chief Finance Officer, and then only where the Chief Finance Officer is satisfied that an effective vetting procedure of assignees or subcontractors has been implemented.

## Liquidated Damages

33. The Procurement Manager 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. Where considered appropriate by the Head of Corporate Governance, the contract must require the contractor to pay damages for any breach of the terms of the contract. Advice on liquidated damages should be taken from Legal Services at an early stage in the procurement project.

## **Corruption, Bankruptcy & Cancellation**

34. 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 Bribery Act 2010
35. Every contract must state that if the Contractor enters into liquidation or administration, the Council is entitled to cancel the contract and recover any resulting losses.

## **Performance Bonds**

36. Where a contract is estimated to be £100,001 or over, the relevant Deputy Chief Executive must consider before the procurement whether the Council should require security for its performance. It must be certified 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 relevant Deputy Chief Executive must ensure the required bond or other security for the due performance of the contract is given at the time the contract is let.

## **Nominating Subcontractors and Suppliers**

37. 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 Table 1 above.
38. 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**

39. 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 Council on request and handed over to the Council on completion of the procurement.

# **MANAGING THE CONTRACT**

## **Contract Management**

40. Unless prior written approval is given by the Chief Finance Officer to the Procurement Manager and recorded on the contract file, all contracts in excess of £40,000 should nominate a Contract Manager (and include provision for those details to be updated). Where reasonably practicable, the Contract Manager should be part of the procurement project team, and a member of Spelthorne Borough

Council staff. The Procurement Manager must notify the name of the Contract Manager to the contractor prior to letting of the contract.

41. The role of the Contract Manager will be to manage the contract throughout its duration, as well as enforce duties owed to the Council under contract and to be responsible on behalf of the Council for those duties owed to the contractor.
42. The responsibilities of the Contract Manager will include:
  - (a) monitoring performance of the contractor against the agreed level of service;
  - (b) monitoring the continuing level of operational and financial risk to which the Council is exposed and to institute controls as appropriate;
  - (c) ensuring the contractor's due diligence with all appropriate health and safety obligations;
  - (d) facilitating the resolution of issues between the contractor and users of the service;
  - (e) ensuring prompt payment of invoices and compliance with all financial regulations and Contract Standing Orders during the lifetime of the contract;
  - (f) ensuring that appropriate arrangements are made for the termination or re-letting of the contract at the appropriate time.

### **Variations**

43. Where the relevant Deputy Chief Executive considers an existing contract needs to be varied (i.e. practical changes which do not alter the essential nature of the original contract as opposed to additional works or supplies not originally envisaged) he or she 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. On contracts over £100,000 in value, where the approved budget would be exceeded because of the variation, approval must be obtained from the Cabinet or Council (according to financial regulations) for any such variation.

### **Registration of Contracts**

44. The Chief Finance Officer 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 name of the Council's Contract Manager, the work to be done or goods to be supplied, the duration and value of the contract. Any Procurement Manager letting a contract must ensure details are supplied to the Chief Finance Officer for entry in the register.
45. The Chief Finance Officer 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 the state of account of each contract between the Council and contractor, together with any other payments and related professional fees. The Procurement Manager letting such a contract must ensure details are supplied to the Chief Financial Officer for entry in the register.