

# **CONTRACT STANDING ORDERS**

## **GENERAL**

### **Introduction**

1. These Standing Orders provide basic guidance to anyone making a contract or entering into an agreement (generally, contracts) for the Council. They apply equally to the supply of works, goods, materials and services or other (e.g. utilities). In making such contracts or agreements, the overriding objective is to obtain the best value for the Council in all 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. Every procurement over £40,000 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 specification of requirements and the identity of the staff member undertaking the procurement (the Procuring Officer)

### **Requirement for a nominated procurement manager**

6. The Procuring Officer is responsible for ensuring and recording on the contract file that the relevant authority (Council, the relevant Service Committee delegated or other as appropriate for the type and / or level of spend) has been obtained and there is sufficient budgetary provision in place for the whole life of the procurement before any steps are undertaken.
7. Where stipulated as required in table 1 (Procedural Rules), the Procuring Officer will seek the support from the Procurement Team.

### **Contractor Suitability**

8. The Procuring Officer (with support from the Procurement Manager where necessary) 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 Procuring Officer is also required to ensure that the contractor has appropriate health and safety policies and procedures in place (as appropriate).

9. The Procurement Manager will advise on the most appropriate procurement route, taking into account relevant factors such as the legal requirement to advertise (depending on the value); the works, goods or services required; the prevailing market conditions, etc.
10. The Procurement Manager will assist the Procuring Officer in developing compliant tender documents which optimise the achievement of value for money.

### **Specification and Selection Criteria**

11. A specification and selection criteria **must** be prepared in advance of tenders or quotations being sought. For lower value procurements, the lowest price may be used as the main selection criterion; however, whole life value for money will also need to be taken into consideration. For larger value procurements, and in particular those which are covered, by virtue of their value, by the Public Contracts Regulations 2015 (as amended), an appropriate split of quality and commercial factors must be used as the selection criteria. Both the specification and the selection criteria must be recorded on the contract file and be used to evaluate tenders/quotations received.
12. If a potential contractor requires information not provided in the specification, such additional information must also be provided to all other bidders, to ensure the equal treatment of all potential contractors.
13. In preparing the specification and selection criteria, the Procuring Officer should consider the opportunities to deliver additional Social Value which the procurement may offer. The Procurement Team will advise on the suitable requirements to be included, relative to the size, type and value of the procurement.

### **Procurement Board**

14. The role of the Procurement Board is to take a strategic approach to the Council's procurement. All contracts likely to exceed £40,000 (other than urgent contracts) should be notified at the planning stage to the Chief Finance Officer. The Procurement Manager will maintain a forward plan of contracts to advise Procurement Board and the appropriate Service Committee where required, on relevant procurement matters.

### **Electronic Procurement**

15. All procurement opportunities likely to exceed £40,000 should be advertised through the Council's electronic procurement system (In-tend).

## PROCEDURAL STEPS OF THE PROCUREMENT

### Estimated Value of Contracts

16. 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 procurement process to follow.
17. 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 the life (number of years) of the contract to allow the Procurement Manager to assess whether the procurement falls under the Public Contracts Regulations.
18. For concession contracts (contracts for which the Council does not pay the provider for any works, goods or services but the contractor receives consideration in other ways, e.g. rights, property or land granted by the Council), 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

19. Large scale or high value procurements 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 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

20. 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 the Procurement Team and Legal Services **at the start** of any procurement project.
21. 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.

### Contract Standing Orders Procedural Rules

22. The Procuring Officer and / or Procurement Manager as appropriate must ensure that the procurement procedurally complies with Table 1 below.

### Framework Agreements

23. Procuring Officers wishing to let a Framework Agreement must consult with the Procurement Manager for support in doing so.
24. Where the Council has set up Framework Agreements for a particular service, the use of these should be maximised, and in accordance with the stated call-off arrangements.

25. Procurement Managers may purchase works, goods or services from an appropriate external 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 Procurement Manager that the proposed Framework Agreement has been procured appropriately, and by following the procedure stated in the Procedural Rules.

**TABLE 1 CONTRACT STANDING ORDERS PROCEDURAL RULES**

Whole Life Contract Value	Level of Authority to Proceed required	Support Required from Procurement Team?	Procurement Process				Approval to Award Contract	Contract Required?
			Advertising the Opportunity	Approach to Market	Testing Market Capability	Evaluation by		
Under £5000	Budget Holder	No	Opportunity does not need to be advertised.	Local <sup>1</sup> suppliers must be sought. If no Local supplier can be found, then Regional <sup>2</sup> suppliers should be sought. If the selected supplier is not Local or Regional then approval to proceed must be sought from Group Head, and the variation must be added to the Exemption Report	Selected supplier(s) confirms price in writing / email in advance.	Budget Holder	No further approval required	No. Invoices and quotes to be retained in accordance with the retention policy.
£5,000 - £40,000	Procurement Business Case is approved by Group Head	No, except where the opportunity is to be advertised	Advertising of the opportunity is not required but if the value is over £25k	Requirement communicated to supplier(s) and confirmed in writing	A minimum of three written quotes to be obtained and retained on file	Budget Holder	Group Head	Yes. Support from Legal Services required.

<sup>1</sup> Local is defined as within the Borough of Spelthorne.

<sup>2</sup> Regional is defined as in the wider county of Surrey.

			and <i>is</i> advertised, it must also be placed on Find a Tender Services (FTS)					
£40,000 – PCR 2015 threshold	Procurement Business Case and Procurement process must be approved by Group Head & MAT	Yes. Project needs to be discussed at Procurement Board and put on Procurement Project Plan.	Contract advertised on e-sourcing portal and on Find a Tender Services (FTS).	Specification with required outcomes and outputs in Request for Quote (RFQ).	A minimum of three suppliers to be invited to tender, with full tender process	Project Lead with Procurement	Deputy Chief Exec or Service Committee (where the requirement is strategic / critical)	Yes. Support from Legal Services required. Contract made under seal if over £100,000)
Over PCR 2015 threshold <sup>3</sup>	Procurement Business Case and Procurement process approved by Group Head, MAT and appropriate Service Committee. Project must be on the Forward Plan.	Yes. Project needs to be discussed at Procurement Board and put on Procurement Project Plan.	Opportunity must be advertised with a Contract Notice in Find a Tender Services (FTS) via the e-sourcing portal.	Detailed Specification with required outcomes, outputs and performance indicators in Invitation to Tender (ITT).	Carried out in accordance with Public Contracts Regulations route selected <sup>4</sup>	Project Lead (and /or subject matter experts) with Procurement	Service Committee	Yes. Support from Legal Services is required. Contract made under seal.

<sup>3</sup> The Public Contracts Regulations threshold changes in January every two years (even years)

<sup>4</sup> Discuss with Procurement the most appropriate procurement process to be followed

Procurement from an internal Spelthorne Framework Agreement	Direct award or mini-competition in accordance with the requirements of the framework agreement.	Yes, where value exceeds £40,000. Project needs to be discussed at Procurement Board and put on Procurement Project Plan.	No	Detailed Specification, with required outcomes, outputs and performance indicators in Direct Award or Mini-Competition document	As required by the Framework conditions	Project Lead with Procurement	In accordance with the expected value as above	Yes. Support from Legal Services is required. Contract made under seal where above £100,000).
Procurement from an external Framework Agreement	In accordance with the expected value of the project as above and complying with the requirements of the framework agreement.	Yes, where value exceeds £40,000. Project needs to be discussed at Procurement Board and put on Procurement Project Plan.	No	Detailed Specification, with required outcomes, outputs and performance indicators in Direct Award or Mini-Competition document	As required by the Framework conditions	Project Lead with Procurement	In accordance with the expected value as above	Yes. Support from Legal Services is required. Contract made under seal where above £100,000).
Variations to a Contract over £100,000	Service Committee	Yes	N/A	N/A	N/A	N/A	N/A	Contract variations to be recorded on the contract file

### **Tendering and Quotation handling procedure**

26. All written quotations or tenders, where required, should be received electronically, either via email or via the e-tendering portal.
27. Contracts estimated to be worth £40,000 or over must be tendered electronically (either via the Procurement mailbox or e-tendering portal) with support from the Procurement Team.

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

28. 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. The confirmed or amended tender will then be evaluated accordingly.

### **Post tender negotiations**

29. The Procuring Officer should take advice from the Procurement Manager regarding the appropriateness of any post-tender negotiations. No negotiations (as permitted by the Public Contracts Regulations) may be entered into with any tenderers 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 in accordance with the Public Contracts Regulations. The reasons for entering into post tender negotiations must be recorded on the contract file.

## CONTENT OF CONTRACTS

### Form of Contracts

30. Every contract over £20,000 must be in writing, in a form approved by the Group Head of Corporate Governance. All contracts of £40,000 and over in value (other than for vehicle purchase) must be in writing and over £100,000 must be under seal.<sup>32</sup>
31. For contracts over £20,000 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

32. The Procuring Officer 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.
33. 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

34. 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

35. The Procuring Officer, with support from the Procurement Team, 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 Group 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**

36. 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
37. 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**

38. Where a contract is estimated to be £100,001 or over, the Chief Finance Officer 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 Chief Finance Officer 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**

39. 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.
40. 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**

41. 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**

42. Unless prior written approval is given by the Chief Finance Officer to the Procuring Officer 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 Procuring Officer must notify the name of the Contract Manager to the contractor prior to letting of the contract.

43. 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.
44. The responsibilities of the Contract Manager will include:
  - (a) monitoring the 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 quality, environmental, 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) providing assurance that the contractor has a long-term, sustainable supply chain, and that there is no evidence of modern slavery;
  - (g) ensuring that appropriate arrangements are made for the termination or re-letting of the contract at the appropriate time.

## **Variations**

45. Where the Contract Manager considers, and the relevant Deputy Chief Executive agrees, that an existing contract needs to be varied (i.e. practical changes are required which do not alter the essential nature of the original contract, as opposed to additional works or supplies not originally envisaged) The Deputy Chief Executive 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 appropriate Service Committee or Council (according to financial regulations) for any such variation.

## **Registration of Contracts**

46. The Chief Finance Officer will ensure that a register of all contracts of £5,000 and over, placed by the Council is kept. The register must state the name of the contractor, the name of the Council's Contract Manager, the scope of the work to be done or goods to be supplied, the duration and value of the contract. Any Procuring Officer letting a contract must ensure details are supplied to the Chief Finance Officer for entry in the register.
47. The Chief Finance Officer will also ensure that a register of all contracts for building, construction or engineering work and associated Consultants which provide for payment by instalments is kept. 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 Procuring Officer letting such a

contract must ensure details are supplied to the Chief Financial Officer for entry in the register.

### **Contract Management Audits**

48. The Procurement Manager shall propose an annual planned schedule of contract management audits (Contract Audit Schedule), to be agreed by the Chief Financial Officer and Group Head of Corporate Governance prior to implementation. The Procurement Team shall undertake such Contract Audits.
49. The Contract Audit Schedule shall include a minimum of ten high value, high complexity, and high-risk projects to be audited, as well as auditing a sample of lower value spends for compliance with these Contract Standing Orders (CSOs).