

Governance Committee 28th September 2023
Council 18th October 2023

CONTRACT STANDING ORDERS

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Contract Standing Orders

1. Introduction – Purpose of the Contract Standing Orders

1.1 Purchasing decisions and processes are important because the money involved is public money. The purpose of these Contract Standing Orders is to provide a structure within which procurement decisions are made and implemented (including the grant of service concessions) and which ensure that the Council:

1.1.1 Furthers its corporate objectives

1.1.2 Uses its resources efficiently

1.1.3 Purchases quality goods, services and works

1.1.4 Safeguards its reputation from any implication of dishonesty or corruption.

1.1.5 Improves the economic, social and environmental well being of the district

1.2 Procurement by the Council, from planning to delivery, shall incorporate (where appropriate) principles of sustainability, efficiency, whole life costings and cost savings.

1.3 These Contract Standing Orders are made in accordance with the requirements of Section 135 of the Local Government Act 1972.

1.4 These Contract Standing Orders do not provide guidelines on what is the best way to purchase works, supplies (goods) and services and grant service concessions. They set out minimum requirements to be followed. Further information and guidelines are set out in the Council's Procurement Guide and the guidance documents available on the Intranet.

2. General Principles – Application and Compliance with Contract Standing Orders

2.1 These Contract Standing Orders apply to the purchase by or on behalf of the Council of works, supplies (goods) and services and the granting of service concessions.

2.2 These Contract Standing Orders apply to all contracts including all purchase orders, service concessions and contractual arrangements entered into by or on behalf of the Council, except for the specific types of contracts and purchasing methods which are listed in 2.3.

2.3 These Contract Standing Orders do not apply to:

2.3.1 Employment contracts

2.3.2 Contracts relating solely to the purchase or sale of interests in land

- 2.3.3 Contracts for retention of legal counsel and the appointment of expert witnesses in legal proceedings
- 2.3.4. Service level agreements setting out the conditions which the Council applies to its funding of particular voluntary sector bodies.

3. **General Principles Applying to All Contracts**

- 3.1 All purchases however small shall be in writing.
- 3.2 All contracts of a value of £15,000 or more shall be made using either:
 - 3.2.1 the Councils *Standard Terms & Conditions of Contract* or
 - 3.2.2 a standard form of contract (e.g. New Engineering Contract (NEC), Joint Contracts Tribunal (JCT), etc) or
 - 3.2.3 the Suppliers Terms & Conditions

Advice and agreement must be sought from Legal Services prior to award.

- 3.3 As a minimum, all contracts of a value of £15,000 or more shall include clauses which set out:

- 3.3.1 The works, supplies (goods), services, service concessions, material, matters or things to be carried out or supplied
- 3.3.2 Specify the price to be paid, the estimated price or the basis on which the price is to be calculated
- 3.3.3 The time within which the contract is to be performed
- 3.3.4 Quality requirements and/or standards which must be met
- 3.3.5 Requirements on the contractor to hold and maintain appropriate insurance
- 3.3.6 What happens in the event that the contractor fails to comply with its contractual obligations (in whole or in part)
- 3.3.7 Requirements on the contractor to comply with all relevant equalities and health and safety legislation
- 3.3.8 That the Council shall be entitled to cancel the contract and recover losses in the event that the contractor does anything improper to influence the Council to give the contractor any contract or commits an offence under the Bribery Act 2010 or s117(2) Local Government Act 1972.

- 3.4 Written contracts shall not include non-commercial terms unless these are necessary to achieve best value for the Council and necessary to enable or facilitate the Council's compliance with the public sector equality duty¹

¹ Section 149 Equality Act 2010

imposed on it by the Equality Act 2010. In this context, "non commercial" means requirements unrelated to the actual performance of the contract.

- 3.5 All contracts shall include relevant specifications and/or briefs/technical requirements which are prepared taking into account the need for effectiveness of delivery, quality, sustainability and efficiency (as appropriate) and the information set out in the Council's Procurement Guide.

4. Regulatory Context

- 4.1 All purchasing shall be conducted in accordance with Regulatory Provisions which are:
- 4.1.1 All relevant statutory provisions
 - 4.1.2 The Public Contract Regulations 2015 (PCR2015)
 - 4.1.3 The Council's Constitution including these Contract Standing Orders, the Council's Financial Procedure Rules and Scheme of Delegation
 - 4.1.4 The Council's Procurement Guide and other policies and procedures of the Council as appropriate.
- 4.2 In the event of conflict between the above, the Public Contract Regulations 2015 will take precedence, followed by the Council's Constitution, then the Council's Procurement Guide and guidelines, policies and procedures.

5. Responsibilities of Directors, Heads of Service and Responsible Officers

- 5.1 Each Director shall have overall responsibility for the purchasing undertaken by his/her Directorate.
- 5.2 Each Head of Service shall be responsible for the purchasing undertaken by his or her service and shall
- 5.2.1 be accountable to the Executive for the performance of his/her duties in relation to purchasing
 - 5.2.2 comply with the Council's decision making processes including, where appropriate, implementing and operating a Scheme of Delegation
 - 5.2.3 appoint a Responsible Officer in writing who shall be an authorised signatory
 - 5.2.4 take immediate action in the event of breach of these Contract Standing Orders which will include as a minimum promptly informing the Councils Monitoring Officer of such breach.
 - 5.2.5 consider any procurement risk(s) as part of any overall risk assessment
- 5.3 A Responsible Officer is an officer with responsibility for conducting purchasing processes for the purchase of works, supplies (goods) or services on behalf of the Council.

- 5.4 A Responsible Officer's duties in respect of purchasing are to ensure:
- 5.4.1 compliance with all Regulatory Provisions (see 4.1) and integrity of the tender process
 - 5.4.2 that all relevant officers are reminded of the statutory provisions and the Council's requirements relating to declarations of interest affecting any purchasing process in order for them to comply with these requirements
 - 5.4.3 that there is an appropriate analysis of the requirement, timescales, procedure and documentation to be used
 - 5.4.4 the purchasing process, from planning to delivery incorporates (where appropriate) principles of sustainability, efficiency, whole life costings and cost savings
 - 5.4.5 compliance with the Council's decision making processes, in particular in relation to Key Decisions
 - 5.4.6 that all quotations or tenders sought of a value of £15,000 or more are undertaken in partnership with the Procurement Manager to ensure a corporate approach and delivery of the works, supplies (goods) or services
 - 5.4.7 that all contracts of a value of £5,000 or more are included on the Council's Contract Register (This includes purchase orders that meet the £5,000 threshold).
 - 5.4.8 that proper records of all contract award procedures, waivers, exemptions and extensions are maintained, with separate files for each purchase of a value of £15,000 or more
 - 5.4.9 that value for money is achieved
 - 5.4.10 that adequate and appropriate security (such as a bond or guarantee) is taken to protect the Council in the event of non-performance.
- 5.5 In considering how best to procure works, supplies and services, Directors, Heads of Service and/or Responsible Officers (as appropriate in the context), shall consult with the Procurement Manager to take into account wider contractual delivery opportunities and purchasing methods including the use of Purchasing Schemes and e-procurement/purchasing methods, and the availability of local authority charging and trading powers under the Local Government Act 2003.
- 5.6 It is a disciplinary offence to fail to comply with these Contract Standing Orders and the Council's Procurement Guide. All employees have a duty to report breaches of Contract Standing Orders to the Monitoring Officer.
- 5.7 Any officer or Member who suspects any misconduct or corruption in relation to the purchase by or on behalf of the Council of works, supplies (goods) and services must immediately report that suspicion to the Council's Monitoring Officer.

6. Scheme of Delegation

- 6.1 Council procurement may only be undertaken by officers with the appropriate delegated authority to carry out such tasks as set out in the Council's Scheme of Delegation. Officers with delegated authority may only delegate to other officers who have the appropriate skills and knowledge for the task and such delegation shall be recorded in writing by the officer delegating the task and notified to the relevant Director/Head of Service.
- 6.2 Officers shall, where appropriate, be informed by their Director/Head of Service of the extent of any delegated authority and applicable financial thresholds.

7. Financial Thresholds and Procedures

- 7.1 The table below sets out the general rules applying to the choice of purchasing procedure for contracts at the stated threshold values.
- 7.2 There is a general presumption in favour of competition. Wherever possible contract opportunities should be advertised by way of a public notice. The Council should consider the potential effect of a contract on interstate trade (at a European level). If a contract may be of interest to contractors from EU member states then this may result in a need to advertise in a manner which ensures that potential contractors from EU member states are aware of the opportunity, even for small value contracts or contracts under the PCR2015 Threshold levels outlined below.
- 7.3 The public notice referred to at 7.2 may take the form of a notice or advertisement in an electronic or paper format, on an easily accessible website or other electronic media and/or in the press, trade journals, Contracts Finder or Find a Tender Service ("FTS") (as appropriate). The Responsible Officer may choose to place one or more public notices in different media.
- 7.4 In accordance with Part 4 of the Public Contracts Regulations 2015 and guidance issued by the Cabinet Office:
- 7.4.1 All contract opportunities with a value of £30,000 inclusive of VAT and above must be published on 'Contracts Finder' where the Council has advertised such opportunity in the form of a notice or advertisement as set out in 7.3 above.
- 7.4.2 All contract opportunities for which a Contract Notice was sent to FTS for publication must also be published on 'Contracts Finder'.

Table setting out financial thresholds and procedures

| Total Value £ | Type of contract | Procedure to be used |
|---------------|------------------------------|--|
| 0 to £15,000 | Works, Supplies and Services | At least one written quote in advance (there is a general presumption in favour of competition and as such Officers may seek additional quotations where possible) |

| | | |
|--|---------------------------------|--|
| £15,000 to £100,000 | Works, Supplies and Services | At least three written quotes obtained by Procurement in advance using the Councils <i>Invitation to Quote</i> document |
| £100,000 to £177,898* ** | Supplies and Services | At least three written tenders obtained by Procurement in advance, using the Councils <i>Invitation to Tender</i> document |
| £177,898* ** plus ** *PCR2015 Threshold for supplies and services ex VAT Note: £552,950 threshold applies for social and some specific services listed within the Public Contracts Regulations 2015 | Supplies and Services | PCR2015 Rules apply – full competitive process following advertisement in the FTS for supplies and some services. For social and some specific services reduced requirements apply under the PCR2015 Rules but there is a presumption in favour of advertising and a competitive process* |
| £100,000 to £4,447,448** | Works | At least three written tenders obtained by Procurement in advance, using the Councils <i>Invitation to Tender</i> document |
| £4,447,448** plus **PCR2015 Threshold for works ex VAT | Works | PCR2015 Rules apply – full competitive process with tenders following FTS advertisement |

* The PCR2015 Rules apply to service contracts to differing degrees depending on the service. Responsible Officers should act cautiously and seek advice when considering the procedure to be used and application of the PCR2015 Rules to services contracts

** or relevant threshold in force at the time under the PCR2015 Rules

Note: Whilst the new PCR2015 thresholds now include VAT (due to the UK's obligations under the WTO), thresholds above are shown excluding VAT for ease and alignment with the Councils sub thresholds

7.5 Where contracts are of a type and value which means that they are subject to the PCR2015 Rules then there are five main types of PCR2015 procedures available. These are the open, restricted, competitive dialogue, competitive procedure with negotiation and innovation partnership procedures. Care must be taken to ensure that the correct and most appropriate procedure is used and assistance on the choice and use of PCR2015 procedure should be sought from the Procurement Manager and Legal Services.

8. Financial Thresholds and Processes Applying to Approval and Execution of Contracts

8.1 For contracts over the relevant PCR2015 threshold (in force at the time), the choice of purchasing procedure to be used and the decision to proceed to

advertisement must be authorised in writing by the relevant Director/Head of Service in advance acting in consultation with the Procurement Manager and/or Solicitor to the Council where appropriate.

8.2 When a decision is made to award a contract then the Responsible Officer must, in addition to complying with his/her general obligations under these Contract Standing Orders ensure, in particular, that:

8.2.1 the appropriate approvals have been obtained to authorise that decision; and

8.2.2 where appropriate, a standstill period complying with the PCR2015 Rules is incorporated into the final award process.

8.3 Any contracts valued at £100,000 or above shall be executed as a deed or be signed by at least two officers of the council with appropriate delegated authority or made under seal of the Council and attested by at least one officer. All other contracts may be signed by officers with appropriate delegated authority. £100,000 shall be the threshold for the purposes of Regulation 8 of the Local Authority (Executive Arrangements) (Modification of Enactments and Further Provisions) (England) Order 2001.

8.4 Electronic signatures may be used in accordance with the Electronic Signature Regulations 2002 provided the sufficiency of security arrangements has been approved by the Senior ICT Manager.

9. **Calculating the Contract Value**

9.1 The starting point for calculating the contract value for the purposes of these Contract Standing Orders is that the contract value shall be the genuine pre-estimate of the value of the entire contract excluding Value Added Tax. This includes all payments to be made, or potentially to be made, under the entirety of the contract and for the whole of the predicted contract period (including proposed extensions and options).

9.2 There shall be no artificial splitting of a contract to avoid the application of the provisions of the PCR2015 Rules and/or these Contract Standing Orders.

9.3 The PCR2015 Rules can cover contracts, which are below the stated PCR2015 threshold, where they constitute repeat purchases and/or purchases of a similar type in a specified period. Responsible Officers should therefore seek advice from the Procurement Manager on the application of the PCR2015 Rules where they envisage that they may require repeat purchases and/or purchases of a similar type.

10. **Principles Underlying Tendering Processes and Tender Evaluation**

10.1 All tendering procedures (including obtaining quotes), from planning to contract award and signature, shall be undertaken in a manner so as to ensure:

10.1.1 Sufficient time is given to plan and run the process

10.1.2 Equal opportunity and equal treatment

10.1.3 Openness and transparency

10.1.4 Probity

10.1.5 Outcomes which deliver sustainability, efficiency and cost savings (where appropriate).

11. Submission and Opening of Tenders

11.1 An Invitation to Tender shall be issued by the Council for all contracts over £100,000 via the Councils e-tendering system and tenders shall be submitted in accordance with the requirements of the Invitation to Tender Document.

11.2 Any tenders received shall be kept secure electronically and unopened until the time and date specified for the opening

11.3 No tender received after the time and date specified for its opening shall be accepted or considered by the Council unless agreed by the Monitoring Officer in exceptional circumstances.

11.4 Tenders shall be opened, certified and recorded electronically by an Officer appointed by the Monitoring Officer via the Councils e-tendering system.

12. Evaluation of Quotes and Tenders

12.1 All quotes and tenders shall be evaluated in accordance with evaluation criteria notified in advance to those submitting quotes/tenderers.

12.2 Tenders subject to the PCR2015 Rules shall be evaluated in accordance with the PCR2015 Rules.

12.3 Save in exceptional circumstances approved in advance by the Monitoring Officer all contracts shall be awarded on the basis of the quote or tender which represents best value for money to the Council and not on the basis of lowest price.

13. Waivers

13.1 The requirement for the Council to conduct a competitive purchasing process for contracts in excess of £15,000 may be waived in the following circumstances.

13.1.1 For contracts which are not subject to the PCR2015 Rules, the work, supply or service or grant of service concession is required as a matter of urgency and a delay would be likely to lead to financial loss, personal injury or damage to property; or

13.1.2 the circumstances set out in the Public Contract Regulations 2015 Regulation 32 apply or

13.1.3 if the goods or materials to be purchased are available from only one manufacturer; or

- 13.1.4 where the supply is for parts for existing machinery, or where the terms of supply of equipment require that maintenance be undertaken by a specified provider; or
 - 13.1.5 where the Work is of a specialist nature, the skill of the contractor is of primary importance, and the supply market has been tested and found to be limited; or
 - 13.1.6 where the supply is for maintenance to existing IT equipment or software, including enhancements to current software, which can only be performed by the licensed developer or owner of the system; or
 - 13.1.7 at the discretion of the relevant Head of Service who may proceed in a manner most expedient to the efficient management of the service/Council with reasons recorded in writing.
- 13.2 A Responsible Officer who seeks a waiver of Contract Standing Orders, shall do so only in advance and only in exceptional circumstances. Further guidance on what may constitute exceptional circumstances permitting waiver of these Contract Standing Orders is set out in the Council's Procurement Guide.
- 13.3 All waivers from these Contract Standing Orders must be:
- 13.3.1 Fully documented
 - 13.3.2 Subject to a written report in an approved format to be submitted in advance to the Monitoring Officer (or his nominee) or Section 151 Officer (or his nominee), which shall include reasons for the waiver which demonstrate that the waiver is genuinely required
 - 13.3.3 Subject to approval in advance by the Monitoring Officer (or his nominee) or Section 151 Officer (or his nominee) who shall record that they have considered the reasons for the waiver and that they are satisfied that the circumstances justifying the waiver are genuinely exceptional.
- 13.4 All decisions on waivers must take into account:
- 13.4.1 Probity
 - 13.4.2 Best value/value for money principles.
- 13.5 For contracts subject to the PCR2015 Rules, any waiver from the requirement for competition must meet the conditions set out in the PCR2015 Rules in addition to the general requirements above.
- 13.6 A waiver shall not be applied for reasons of poor contract planning.

14. Extensions and Other Variations to Existing Contracts

- 14.1 Where extensions or other variations to existing contracts are made the extensions must be determined in accordance with the contract terms, for a specified period and made in accordance with the principles set out in the Council's Procurement Guide.
- 14.2 Any extension or other significant variation must be:
 - 14.2.1 Fully documented
 - 14.2.2 Subject to a written report in an approved format to be submitted to the Monitoring Officer (or his nominee) and Section 151 Officer (or his nominee); which shall include reasons for the extension or other variation which demonstrate that the need for the extension or other significant variation is genuinely exceptional or provisions are made for extension in the existing contract.
 - 14.2.3 Subject to approval by the Monitoring Officer (or his nominee) and Section 151 Officer (or his nominee), who shall record that they have considered the reasons for the extension or other significant variation and that they are satisfied that the circumstances justifying the extension are genuinely exceptional or provisions are made for extension in the existing contract.
- 14.3 Any extension or other variation must take into account:
 - 14.3.1 Probity
 - 14.3.2 Best value/value for money principles.
- 14.4 For contracts subject to PCR2015 Rules, any extension must meet the conditions set out in the PCR2015 Rules in addition to the more general requirements set out above.

15. **Purchasing Schemes**

- 15.1 A Responsible Officer may use Purchasing Schemes subject to the following conditions and the Council's Procurement Guide.
- 15.2 Responsible Officers must check in advance with the Procurement Manager to ensure that
 - 15.2.1 The Council is legally entitled to use the Purchasing Scheme
 - 15.2.2 The purchases to be made do properly fall within the coverage of the Purchasing Scheme
 - 15.2.3 The establishment and operation of each Purchasing Scheme is in compliance with the PCR2015 Rules (where they apply) and meets the Council's own requirements.
- 15.3 A "Purchasing Scheme" may include:
 - 15.3.1 Contractor prequalification lists/select lists

- 15.3.2 Framework arrangements (including those set up by The Crown Commercial Service)
 - 15.3.3 Purchasing arrangements set up by central purchasing bodies and commercial organisations
 - 15.3.4 Consortium purchasing
 - 15.3.5 Collaborative working arrangements
 - 15.3.6 Formal agency arrangements
 - 15.3.7 E-procurement/purchasing schemes and methods
 - 15.3.8 Other similar arrangements such as the Government eMarketplace
- 15.4 Where a Purchasing Scheme is used then there shall be a whole or partial exemption from the obligations under these Contract Standing Orders in respect of the choice and conduct of procedures to the extent permitted and indicated in the Council's Procurement Guide.

16. Review and Changes to these Contract Standing Orders

- 16.1 These Contract Standing Orders shall be reviewed and updated on a regular basis. Save in the case of revisions to the PCR2015 Thresholds in Contract Standing Order 7, amended Contract Standing Orders shall be recommended by the Monitoring Officer and shall be agreed and adopted by the Council after consideration by the Governance Committee. The Solicitor to the Council will make revisions to the PCR2015 Thresholds as and when they occur.

17. Suspension of these Contract Standing Orders

- 17.1 These Contract Standing Orders may be suspended in accordance with Article 16 of the Constitution.