

PART 13 - CONTRACT REGULATIONS

STANDING ORDERS RELATING TO CONTRACTS

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1. COMPLIANCE WITH STANDING ORDERS, EU DIRECTIVES AND PUBLIC PROCUREMENT REGULATIONS

1.1 These Standing Orders are made pursuant to s135 of the Local Government Act 1972.

1.2 Save as is set out herein, every contract made by or on behalf of the Council shall:

1.2.1 Comply with these Standing Orders;

1.2.2 Comply with all those requirements of National or European Law for the time being having effect in the United Kingdom and, in particular, with the provisions contained in:

- Part I of the Local Government Act 1999 (Best Value);
- Part II of the Local Government Act 1988 (Non-Commercial Considerations);
- The Public Works Contracts Regulations 1991;
- The Public Services Contracts Regulations 1993;
- The Public Supply Contracts Regulations 1995;
- The Local Government (Contracts) Act 1997;
- Sections 70 to 71 (inclusive) of The Deregulation and Contracting Out Act 1994;
- Any relevant European Union Directive;
- The Local Government Best Value (Exclusion of Non-Commercial Considerations) Order 2001 (2001 No 909).
- Any relevant legislation or European Union Directive coming into force after the date these Standing Orders come into force, copies, extracts or details of which may be set out in Schedule I by the Council from time to time;

1.2.3 Demonstrate compliance with the following legislation so far as is required by law:-

- The Race Relations Act 1976, as amended by the Race Relations (Amendment) Regulations 2003

- The Race Relations Code of Practice 2006 to prevent unlawful racial discrimination and equality of opportunity in employment
- Sex Discrimination (Gender Reassignment) Regulations 1999
- Disability Discrimination Act 1995
- Disability Discrimination Act (Amendment) Regulations 2003
- Equal Pay Act 1970 (Amendment) Regulations 2003
- Employment Equality (Religion or Belief) Regulations 2003
- Employment Equality (Sexual Orientation) Regulations 2003
- Employment Equality (Sex Discrimination) Regulations 2005
- Employment Equality (Age) Regulations 2006

1.2.4 Any relevant provisions set out in any Council contract procedure manual (“Council’s Procurement Toolkit”);

1.2.4.1 it shall be a condition of any Agreement between the Council and any person (not being an Officer of the Council) who is required to supervise a contract between the Council and a third party on the Council’s behalf that, in relation to such contract, he/she shall comply with the requirements of these Standing Orders as if he/she were an Officer of the Council.

2. BEST VALUE

2.1 In all areas of tendering, negotiating, letting or renewing, performing, reviewing, amending, discharging or terminating any contract to which the Council is either a party or of which it is a beneficiary, regard shall be had to the requirements of economy, efficiency and effectiveness specified in section 3 of the Local Government Act 1999 (“the Act”) and, in particular to any performance indicators or performance standards specified by the Secretary of State under section 4 of the Act.

2.2 In relation to any contract to which the Council is a party, it shall be an express term of any invitation to tender or treat and of any contract which may result, that any other party to the contract and any subcontractors or agent of any other party to the contract appointed in respect of the contract shall be, throughout the duration of the contract, under a continuing duty to the Council:

- 2.2.1 to make arrangements to secure continuous improvement in the performance of its obligations to the Council having regard to a combination of economy, efficiency and effectiveness and, in particular to any performance indicators or performance standards specified by the Secretary of State under section 4 of the Act and to the provisions of any Best Value Performance Plan promulgated by the Council under section 6 of the Act;
- 2.2.2 to supply such information as the Council may from time to time reasonably request relating to the contract and/or to the performance by that party of its obligations to the Council under that contract;
- 2.2.3 to co-operate fully with the Council in discharging the Council's duty under section 3 of the Act including, as and where appropriate;
- Setting benchmarks by which to measure performance under the contract
 - Incorporating into the contract any applicable performance indicators or performance standards specified by the Secretary of State, whether prior to or during the course of the contract
 - Establishing performance plans for the contract either alone or together with other similar or related contracts
 - Undertaking regular periodic reviews of the performance of the contract

3. STANDING ORDERS RELATING TO SPECIALISED OR STANDARDISED WORK OR SPECIAL CIRCUMSTANCES

- 3.1 Notwithstanding the provisions of these Standing Orders and subject only to the requirements of statute or Regulation:
- 3.1.1 The Council acting through any individual Officer, Committee or Sub-Committee appropriately identified from time to time in Schedule II may authorise the invitation of a tender or tenders (on being satisfied that works, goods or materials of a specialised or standardised type are necessary) from the manufacturers or suppliers of such work, goods or materials or contractors who undertake such specialised works or such group of manufacturers, suppliers or contractors as shall appear to the Council to be appropriate in the circumstances.

- 3.1.2 Exemption from any of the provisions of these Standing Orders may be granted by the Cabinet Executive or any Committee, Sub-Committee or Officer specified in Schedule II, upon it being shown to their satisfaction that there are **special circumstances** justifying such exemption.
- 3.1.3 The Cabinet Executive shall be informed retrospectively of the exercise of any authority pursuant to this Standing Order if this is so specified in Schedule II.
- 3.1.4 Where the Council is procuring through the Welland Procurement Unit there is no requirement to seek alternative quotes and tenders. The Contract Procedure Rules of the Lead Authority will be applied by the Welland Procurement Unit.
- 3.1.5 Where a framework arrangement is let by another contracting authority such that it may legitimately be used by the Council, then there is no need to seek alternative quotes or tenders beyond those required under the terms of that framework arrangement (such as mini-competitions).

4. TENDERS

Preamble

Tendering is the process by which suppliers of goods and services set out for the Council the terms upon which they are willing to supply those goods or services. It will be preceded by invitations from the Council to submit a tender and will conclude with the Council's consideration of the tenders submitted and the selection of a contractor for the goods or services concerned.

In organising and administering the tendering process regard must be had to:

- particular legal requirements relating to contracts which apply by virtue of the legislation and Regulations set out in Standing Order No. 1
- these Standing Orders

Definitions relating to the Standing Orders concerning Tenders

- 4.1 In these Standing Orders the expression "Public Procurement Regulations" shall mean, the Public Contracts Regulations 2006 and any modification, amendment or variation of any of those Regulations. Any word or expression defined in any of the Public Procurement Regulations shall have the same meaning in these Standing Orders.
- 4.2 Any contract specifications are to be prepared in accordance with any rules or Regulations for the time being contained in such of the Public Procurement Regulations as are applicable to a contract of that type or which would be so

applicable if the Value of the contract were in excess of the threshold specified in the Public Procurement Regulations.

- 4.3 In relation to any contract for the supply of goods, materials or services to or for the execution of works for the Council the functions described in Section 17(4) of the Local Government Act 1988 shall be exercised without any reference to any of those matters set out in section 17(5) of that Act.

Procedures for determining if and when Tenders must be invited

- 4.4 VAT shall be disregarded for the purpose of calculating value.
- 4.5 As soon as is practically possible after deciding to seek offers in relation to a proposed contract any individual Officer appropriately identified from time to time in Schedule II shall estimate the value at that time (net of any value added tax) of the consideration that the Council expects to give under the contract (referred to in these Standing Orders as (“the Value”). The Value shall be calculated in accordance with any rules or Regulations for the time being contained in such of the Public Procurement Regulations as are applicable to a contract of that type or which would be so applicable if the Value of the contract were in excess of the threshold specified in the Public Procurement Regulations.
- 4.6 Tenders need not be invited in respect of:
- 4.6.1 Any single contract, not related to or part of any larger procurement whose estimated value is between £1501 and £5000. There should be at least two written independent quotations invited and recorded on file for audit purposes. (Below £1501 consideration must be given as to the appropriate approach for obtaining prices or quotations).
NOTE: These thresholds relate to the length of the Agreement and not the annual spend.
- 4.6.2 Any contract whose value is £5001 or more but less than £50,000. In such a case no contracts shall be made unless at least three written independent quotations have been invited and recorded on file for audit purposes.
- 4.6.3 The request for quotations whose value is £5001 or more but less than £50,000 must include standard Terms and Conditions specified by the Authority.
- 4.6.3.1 in selecting contractors who are to be requested to provide a written quotation, Officers responsible for seeking tenders shall ensure that the selection process they are using is fair and equitable, and that no favouritism is shown to any one contractor. They shall keep a record, in a form to be agreed by the Deputy Chief Executive of:

- (i) all those contractors that were requested to provide a quotation;
- (ii) the reasons why those particular contractors were selected to provide a quotation;
- (iii) if applicable, the reasons why less than three contractors were selected to provide a quotation, and
- (iv) the reason for accepting other than the lowest quotation.

4.7 Where the Value of a proposed contract is £50,000 or more (and in any other case mentioned in Schedule III Part (i) to these Standing Orders) tenders shall be invited in accordance with whichever of Standing Orders 4.8 and 4.9 shall apply.

4.8 Where the Value of a proposed contract is in excess of any threshold prescribed in any of the Public Procurement Regulations applicable to a contract of that type, then the award of that contract shall be carried out in all respects in accordance with such Regulations. The provisions of these Standing Orders shall continue to apply to such a contract only to the extent that they do not conflict with the provisions of the Public Procurement Regulations.

4.8.1 The various EU procurement thresholds referred to in these Contract Regulations are not specified by actual amount in the Constitution. Details of the current thresholds are contained in the Council's Procurement Toolkit and revised when EU legislation changes.

Where a procurement may exceed the EU threshold, the Welland Procurement Unit should be consulted for advice and support.

4.9 Types of Tender

(a) Restricted Tendering

This Standing Order shall apply to those contracts identified in Schedule III Part (ii) being contracts in respect of which the Council has decided that invitations to tender for such contracts are to be made to some or all of those persons or bodies who have replied to a public notice seeking requests to be selected to tender.

4.9.1 For the purposes of this Standing Order, public notice shall be given:

- (a) Where the value of the contract is £50,000 or less, in at least two of the following:

- A local newspaper circulating in the district
- Websites recognised for offering contract opportunities
- Appropriate national press
- Appropriate trade journal

Two versions of the same medium are acceptable (e.g. two websites). OJEU may be used on a voluntary basis.

or

- (b) Where the Value of the contract exceeds £50,000, in at least two of the media listed in 4.9.1(a), of which one shall be an appropriate trade journal.

4.9.2 The public notice shall:

- (a) Specify details of the contract into which the Council wishes to enter.
- (b) Invite persons or bodies to express an interest in the contract within a period of not less than 14 calendar days.
- (c) Send each person or body expressing an interest a Pre-Qualification Questionnaire (PQQ), with a return date of not less than 28 calendar days from the date of publication of the public notice, and
- (d) Evaluate and score each of the PQQs through the use of consistent criteria.

4.9.3 Having evaluated and scored the PQQs, the tender for the contract shall be sent to:

- (a) Not less than four (see note) of the persons or bodies who applied for permission to tender, selected by an Officer of the Council duly authorised in that behalf, or
- (b) Where fewer than four (see note) persons or bodies have applied or are considered suitable, those persons or bodies, which an Officer of the Council duly authorised in that behalf, consider(s) suitable.

NOTE: *The Restricted Procedure set out in this clause 4 relates only to the Restricted Procedure adopted by the Council under these Standing Orders and NOT to the Restricted Procedure adopted under the Public Procurement Regulations for procurements over the European threshold.*

In particular, it should be noted that under the Public Procurement Regulations where the Restricted Procedure is adopted, invitation to tender must be sent to no fewer than FIVE persons or bodies who have applied to tender, and are competent to undertake the work. (i.e. over the current EU Threshold)

The restricted procedure is essentially one in which a short list is arrived at through a two stage process, the first stage being a Pre-Qualification Questionnaire which enables objective criteria to be scored and a short list arrived at.

(b) Open Tendering

4.9.4 This Standing Order: -

4.9.5 Shall not apply to any contract which is subject to any of the Public Procurement Regulations which deals, in particular, with the EU Regulations and associated criteria - (refer to clause 4.8).

4.9.6 Shall apply to those contracts for the time being identified in Schedule III Part (iii) to these Standing Orders being contracts in respect of which the Council, or any Committee or Sub-Committee appropriately identified from time to time in Schedule II have decided that tenders for a contract are to be obtained by open competition.

4.9.7 (a) Where the value of the contract is £50,000 or less, in at least two of the following:

- A local newspaper circulating in the district
- Websites recognised for offering contract opportunities
- Appropriate national press
- Appropriate trade journal

Two versions of the same medium are acceptable (e.g. two websites). OJEU may be used on a voluntary basis.

or

(b) Where the Value of the contract exceeds £50,000, in at least two of the media listed in 4.10.3(a), of which one shall be an appropriate trade journal, and

(c) The notice shall express the nature and purpose of the contract, state where further details may be obtained, invite tenders for its execution and state the last date and time when tenders will be received.

(c) Standing Approved List

- 4.9.8 This Standing Order: -
- 4.9.9 Shall not apply to any contract which is subject to any of the Public Procurement Regulations which deals, in particular, with the EU Regulations and associated criteria - (refer to clause 4.8).
- 4.9.10 Shall apply to those contracts for the time being identified in Schedule III Part (iv) to these Standing Orders being contracts in respect of which the Council, or any Committee or Sub-Committee appropriately identified from time to time in Schedule II have decided that invitations to tender for a contract are to be limited to those persons or bodies whose names shall be included in a list compiled and maintained for that purpose.
- 4.9.11 The list shall:
- (a) Be compiled and maintained by the Council,
 - (b) Contain the names of all persons or bodies who have been selected by the application of objective criteria to appear on the list, and indicate in respect of a person or body whose name is so included the categories of contracts and the values or amounts in respect of those categories for which pre-qualification was obtained.
- 4.9.12 At least 28 days before a list is first compiled, notices inviting applications for inclusion in it shall be published:
- (a) Public notices inviting inclusion in a standing list shall be published in at least:
 - One local newspaper, and
 - One appropriate trade journal

Inviting persons or bodies to express an interest in the contract within a period of not less than 14 calendar days.
 - (b) Send each person or body expressing an interest a Pre-Qualification Questionnaire (PQQ), with a return date of not less than 28 calendar days from the date of publication of the public notice.
 - (c) Evaluate and score each of the PQQs through the use of consistent criteria, and

- (d) Select approved contractors on the basis of the highest scores achieved.
- 4.9.13 The lists shall be reviewed at regular intervals of not more than three years through the consistent application of the same criteria as used in establishing the list.
- 4.9.14 Invitations to tender for a contract may be issued to contractors on a pre-qualified standing list and shall be sent to:
- 4.9.15 Not less than four of those persons or bodies selected by any individual Officer, Committee or Sub-Committee appropriately identified from time to time in Schedule II from among those approved for a contract of the relevant category, amount or value, or
- 4.9.16 Where fewer than four persons or bodies are approved for a contract of the relevant category, amount or value, all those persons or bodies.

4.10 Submission of Tenders

Where in pursuance of these Standing Orders an invitation to tender is made, every invitation shall state:

- 4.10.1 That no tender will be considered unless it is enclosed in a plain sealed envelope which shall bear the word "Tender" followed by the subject to which it relates but no other name or mark indicating the sender.
- 4.10.2 That the Council is not bound to accept any tender.
- 4.10.3 Any other matters directed by these Standing Orders to be included.
- 4.10.4 The tenders shall be addressed to and be kept in the custody of the individual Officer appropriately identified from time to time in Schedule II until the time and date specified for their opening.
- 4.10.5 No tender received after the time and date specified in the invitation shall be accepted or considered unless there is clear evidence of it having been posted by first class post at least the day before tenders were due to be opened and those tenders already received have not been opened.

4.11 Errors in or relating to invitations to Tender

- 4.11.1 If an error is identified before the closing date for the return of tenders, all tenderers shall be appraised of the error and invited to adjust their tenders.
- 4.11.2 If an error in the specification is identified after the closing date for the return of tenders all tenderers shall be given details of the error and afforded the opportunity of withdrawing the offer or submitting an amended tender.

4.12 Opening and acceptance of Tenders

Tenders received under these Standing Orders shall be opened at one time in the presence of at least two persons, one of whom is not responsible for originating the tender.

- 4.12.1 Prior to acceptance of a tender, the necessary documents forwarded to the Council by each tenderer should be examined and if errors or discrepancies are revealed (including the question of whether or not allowance had been made by the tenderer to specific requirements of the detailed specification) the tenderer should be given the opportunity of confirming or withdrawing its offer.
- 4.12.2 The individual Officer appropriately identified from time to time in Schedule II shall prepare and maintain or shall cause to be prepared and maintained a register of tenders received and shall record in that register the following particulars:
 - 4.12.3 the last date and time for the receipt of tenders
 - 4.12.4 the date upon which the tender was actually received
 - 4.12.5 the name of the tenderer and the amount of the tender
 - 4.12.6 the date upon which tenders were opened
 - 4.12.7 the signature of the Officer to whom the tenders were handed after opening
 - 4.12.8 Tenders will be assessed and selected by reference to:
 - 4.12.9 considerations of economy, efficiency and effectiveness specified in section 3 of the Local Government Act 1999 (“the Act”) and, in particular to any performance indicators or performance standards specified by the Secretary of State under section 4 of the Act and,

4.12.10 where applicable any criteria for the award of a contract contained in any of the Public Procurement Regulations.

4.12.11 No tender relating to a contract to which the Local Government (Contracts) Act 1997 ss 2-9 apply shall be accepted without proper certification by any individual Officer, Committee or Sub-Committee appropriately identified from time to time in Schedule II.

4.12.12 Tenderers shall be notified of the acceptance or rejection of their tenders as provided in any Council's Procurement Toolkit.

5. COUNCIL NOMINATED SUB-CONTRACTORS AND SUPPLIERS

5.1 Where the Council requires direct control over the appointment of a sub-contractor or supplier to a main contractor, the following provisions shall have effect:

5.1.1 The procurement of such sub-contractor or supplier shall be undertaken in accordance with Standing Orders 4.6, 4.7, 4.8.

5.1.2 The terms of tenders both for the main contractor and for the nominated sub-contractor or supplier shall require undertakings by both parties submitting tenders (or, where appropriate, quotations) that if selected they will be willing to enter into a contract with the other.

5.1.3 The sub-contractor or supplier shall be required to indemnify the main contractor against its own obligations under the main contract in relation to the work or goods included in the sub-contract.

5.1.4 The provisions of Standing Order No 4 shall apply to tenders received under this Standing Order 5.1.

5.2 The provisions of Standing Order 5.1 shall not apply where the main contractor is to be responsible for the appointment of sub-contractors and suppliers.

6. CONTRACT CONDITIONS

6.1 Every contract shall:

6.1.1 Have due regard to and contain the provisions mentioned in Standing Order 2.

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- 6.1.2 Have due regard to any relevant provisions set out in any Council's Procurement Toolkit.
 - 6.1.3 A contract must be signed by at least two Officers of the Council duly authorised in that behalf if the contract sum is £150,000 and less than £200,000.
 - 6.1.4 A contract must be made under seal if for a contract sum of £200,000 and over.
 - 6.1.5 All contracts shall be appropriately recorded.
 - 6.1.6 Be in the form of any relevant standard form contract or incorporate any relevant standard form Terms and Conditions duly adopted by the Council.
 - 6.1.7 Specify the goods materials or services to be supplied and the work to be executed; the price to be paid together with a statement as to the amount of any discount(s) or other deduction(s); the period(s) within which the contract is to be performed and such other conditions and terms as may be agreed between the parties.
 - 6.1.8 Where appropriate a contract may need to provide for the payment of liquidated damages by the contractor where it fails to complete the contract within the time specified, and at the discretion of any individual Officer appropriately identified from time to time in Schedule II a similar provision may be made in contracts (see Council's Contract Procurement Toolkit).
 - 6.1.9 The Council will also require a contractor to give sufficient security for the due performance of any contract where the contract exceeds £200,000 in amount or value and at the discretion of any individual Officer appropriately identified from time to time in Schedule II may require a similar provision in contracts in amount or value of £200,000 or less.
- 6.2 In every contract for the supply of goods or materials which is in the sum of £25,000 or over in value or amount a clause shall be inserted to secure that, should the contractor fail to deliver the goods or materials or any portion thereof within the time or times specified in the contract, the Council, without prejudice to any other remedy for breach of contract, shall be at liberty to determine the contract either wholly or to the extent of such default and to purchase other goods, or materials, as the case may be of the same or similar description to make good (a) such default, or (b) in the event of the contract being wholly determined the goods or materials remaining to be delivered. The clause shall further secure that the amount by which the cost of so purchasing other goods or materials exceeds the amount which would have been payable to the contractor in respect of the goods or materials, as the

case may be, replaced by such purchase if they had been delivered in accordance with the contract shall be recoverable from the contractor.

6.3 Where an appropriate British Standard Specification or British Standard Code of Practice issued by the British Standards Institution is current at the date of the tender, the Council may require that any relevant contract shall require that all goods and materials used or supplied and all the workmanship shall be at least of the standard required by the appropriate British Standards Specification or Code of Practice.

6.4 There shall be inserted in every written contract under seal a clause empowering the Council to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation, if the contractor shall have:

- offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done
- forborne to do any action in relation to the obtaining or execution of the contract or any other contract with the Council
- showed or forbore to show favour or disfavour to any person in relation to the contract or any other contract with the Council
- permitted or allowed like acts to have been done by any person employed by it or acting on its behalf (whether with or without the knowledge of the contractor)
- in relation to any contract with the Council the contractor or any person employed by it or acting on its behalf shall have committed any offence under the Prevention of Corruption Acts, 1889 to 1916
- given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act, 1972.

SCHEDULE I

Legislation and directives coming into force after the adoption of the Standing Orders (S.O. 1.2.2).

None.

SCHEDULE II

Individual Officer, Committee or Sub-Committee authorised to carry out any responsibility or undertake any duty prescribed pursuant to the Contract Regulations detailed below.

Contract Regulations conferring relevant duty/responsibility:	Individual Officer, Committee, or Sub-Committee authorised to undertake relevant duty/responsibility:
3.1.1	Any Officer with such delegated authority.
3.1.2	Monitoring Officer or Cabinet Executive
	Exercise of authority by Monitoring Officer
4.5	Any Officer with such delegated authority.
4.9.3	Any Officer with such delegated authority.
4.10.4	Democratic Services Manager
4.12.2	Any Officer with such delegated authority.
4.14	Democratic Services Manager
4.21	Democratic Services Manager
4.23	Monitoring Officer
6.1.8	Chief Executive, Deputy Chief Executive
6.1.9	Chief Executive or Deputy Chief Executive or Director

SCHEDULE III

Part (i)

Where the Value of a proposed contract is £50,000 or more (and in any other case mentioned in Schedule III Part (i) to these Standing Orders) tenders shall be invited in accordance with whichever of Standing Orders 4.8, 4.9 and 4.10 shall apply, pursuant to Contract Regulation 4.7.

None.

SCHEDULE III

Part (ii)

Contracts subject to Restricted Tendering pursuant to Contract Regulation (a) 4.9.

None.

SCHEDULE III

Part (iii)

Contracts subject to Open Tendering pursuant to Contract Regulation (b) 4.10.

None.

SCHEDULE III

Part (iv)

Contracts for which invitations to tender shall be made only to those persons/bodies included in the Standing Approved List (S.O. 4.11 (c)).

None.

