

# PROCUREMENT STANDING ORDERS

## GLOSSARY OF TERMS

**Central Purchasing Body** means a contracting authority which:

- (a) acquires goods or services intended for one or more contracting authorities;
- (b) awards public contracts intended for one or more contracting authorities; or
- (c) concludes framework agreements for work, works, goods or services intended for one or more contracting authorities.

**Contract** – An agreement between the Council and any other party made by executing a Formal Agreement or issue of a Letter of Acceptance or Official Order for the procurement of all supplies, services or works by the Council, or carrying out works for the Council.

**Electronic Procurement Systems** – The process of tendering for goods and services via electronic media.

**European Union Public Procurement Rules** - The Public Contract Regulations specify a value threshold below which contracts are exempt. However, contracts are still bound by the general requirements of EU law including transparency and not to discriminate against contractors from other EU Member States. The Regulations also indicate how contract values should be estimated for these purposes. The thresholds are reviewed every two years.

**Framework Agreements** - A Framework Agreement is an agreement between one or more contracting authorities and one or more suppliers/contractors, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and where appropriate, the quantity envisaged (call offs).

**Invitation to Tender (ITT)** – the invitation issued by the Council to potential suppliers to submit a tender for a specific service, works or goods.

**Liquidated Damages** - When the parties to a contract agree to the payment of a certain sum as a fixed and agreed upon satisfaction for not doing certain things particularly mentioned in the agreement, the sum is called liquidated damages.

**Matrix** – an approach to appraisal of tenders or quotations which records stated criteria to assist in selection of the successful provider and which

where applicable indicates the weighting accorded to particular criteria. This usually takes the form of a table against which tenders are marked and the weighting of particular criteria applied.

**Open Tendering** – This method is used when it is considered cost effective and in the Council's interest to invite tenders from a wide range of potential contractors.

**Partnering** – A method of procurement. A relationship between two parties to a project in which they work openly and jointly to achieve common objectives, with defined performance targets. Partnering may be entered into as a one off project or a collection of projects.

**Partnership** – A Partnership is an agreement between two or more independent bodies to work collectively to achieve an objective.

**Performance Bonds** – Performance bonding is the process by which an Organisation requires a contractor to arrange for the provision of a bond, from a reputable finance institution, to provide the Council with financial compensation in the event of a contractor breaching its contractual obligations or going into receivership or liquidation.

**Pre-Qualification Questionnaire (or PQQ)** – the form of questionnaire approved by the Head of Procurement for completion by contractors who wish to receive an invitation to tender for a particular contract.

**Procurement** - The process of obtaining assets or services taking into account the life cycle of the assets or services.

**Procurement Strategy** – The Council has introduced a strategy that provides a framework for more effective procurement aligned with the requirements within the Constitution, namely Standing Orders Relating to Finance and Procurement Standing Orders.

**Quotation** – A request to a supplier for a price for goods or services.

**Special Select List** – A delegated Officer with responsibility for a particular contract may draw up a select list from an existing approved list (e.g. Constructionline). This may be used in a specialist contract and should include a list of criteria used as a basis for selection and how those criteria have been applied.

**Standard Select List** – This method should be used if there is no central or standing list or when those lists and the open method would not produce advantages to the Council. Public notice is given using newspaper or journals and the Procurement Web pages, informing potential contractors of the contract into which the Council wishes to enter and inviting those interested parties to apply for permission to tender.

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**Standing List** - Compiled and maintained by an authorised body, e.g., Executive Sub Board Committee for specific categories of works.

**Sub-contractor** – A supplier that provides work or services to a main contractor as part of the contract.

**Tender** - A document used to award the most appropriate contract to the most suitable contractor to the Authority, taking into account the principles of best value.

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## PROCUREMENT STANDING ORDERS

### PART 1: STANDING ORDERS WHICH APPLY TO ALL CONTRACTS

#### 1.1 **BASIC PRINCIPLES**

##### 1.1.1 **Introduction**

These Standing Orders apply to all contracts and are made under section 135 Local Government Act 1972.

For the purposes of these Standing Orders a contract is an agreement for:

- The carrying out of works for the Council
- The purchase, leasing, or hiring of goods or materials by the Council
- The supply of consultancy and other services to the Council

Arrangements involving hire purchase agreements, finance leases or operating leases shall only be entered into in accordance with arrangements approved by the Operational Director – Finance.

##### 1.1.2 **Legal Compliance**

All tendering procedures and contracts shall comply with all legal requirements and no officer or Committee or Board of the Council may seek to avoid them.

##### 1.1.3 **Public Contract Regulations 2006**

All contracts must comply fully with the requirements of Public Contract Regulations 2006.

##### 1.1.4 **Procurement Documentation**

All contracts and contractual processes shall comply with **the Procurement and E-Procurement Handbook, standard approved documentation**, the Council's Procurement Strategy and Procurement Policy.

##### 1.1.5 **Transparency and Non-discriminatory**

The award process and structure of all contracts shall be transparent and non-discriminatory and shall comply with the Council's duties in relation to equality and diversity.

**1.1.6 Transfer of Undertakings - Service Contracts**

- (a) All relevant service contracts and contractual processes shall give effect to the obligations of the Code of Practice on Workforce Matters in Local Authority Service Contracts (ODPM Circular 03/2003).
- (b) All relevant service contracts shall incorporate the Clauses required by the Code of Practice on Workforce Matters in Local Authority Service Contracts (ODPM Circular 03/2003, Annex D).

**1.1.7 Contracts where the Council act as Agent**

Where the Council acts as the Agent of any other Local Authority or Public Body or company these Standing Orders shall apply unless the Principal in question instructs otherwise in writing.

**1.1.8 Works or Services already subject to Competitive Tendering**

Tenders will not be invited from external contractors when a DLO/DSO of the Council has won, in competitive tender, the right to provide the works, goods or services in question, but tenders must be invited by the DLO/DSO when they propose to sub-contract any element of such work, goods or services.

**1.1.9 Grouping of Contracts**

Where during any financial year or term of contract which does not coincide with a financial year, it is likely that the value of works, goods or services will exceed the values stated in these Standing Orders, such works, goods or services must be grouped into a single contract. No officer or Committee or Board of the Council may seek to divide potential contracts in order to avoid the requirements of this Standing Order.

**1.1.10 Forfeiture in Case of Bribery or Corruption**

There shall be inserted in every contract 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 or having forborne to do any action in relation to the obtaining or execution of the contract or any person in relation to the contract or any other contract with the Council, or if the like acts shall have been done by any person employed by the contractor or acting on the contractor's

behalf (whether with or without the knowledge of the contractor), or if in relation to any contract with the Council the contractor or any person employed by the contractor or acting on the contractor's behalf shall have committed any offences under the Prevention of Corruption Acts, 1889 to 1916, or the Bribery Acts 2010, or shall have given any fee or reward, the receipt of which is an offence under Section 117 of the Local Government Act, 1972.

**1.2 OFFICER RESPONSIBILITIES**

**1.2.1 Adequate Budget Provision**

No Officer should seek to enter into a contract, or purport to enter into a contract, for the supply of works, goods or services unless there is adequate provision in the appropriate Capital Programme and/or Revenue Budgets.

1.2.1A The relevant Operational Director shall ensure that all candidates for a relevant contract are suitably assessed. The assessment process shall establish that the potential candidates have sound economic and financial standing and technical ability and capacity to fulfil the requirements of the Council.

1.2.1B The Council's form of Pre-Qualification Questionnaire shall be used for all contracts with a value of £50,000 and upwards.

**1.2.2 Corporate Contracts**

Before procuring goods or services, an Officer shall ascertain whether any corporate contract has been entered into in relation to those goods or services. Where such a corporate contract exists, the Officer may not enter into a separate contract except with the prior written approval of the Divisional Manager of the Procurement Centre of Excellence.

**1.2.3 Procurement website**

For all contracts having a value in excess of £50,000 the Operational Director responsible for that contract shall ensure that details of the goods, works or services are placed on the Due North website and the award decision reported to the Operational Director -Finance.

**1.2.4.1 Performance Bonds**



The relevant Operational Director shall in respect of **all** contracts consider the need for a performance bond after assessing the following factors:

- (i) potential risk in the absence of a bond;
- (ii) known technical difficulties associated with the project;
- (iii) the financial status of the contractor(s);
- (iv) the period of the contract; and
- (v) any costs associated with provision of the bond.

References to a Performance Bond in these Standing Orders shall be taken to include cash deposits, insurance or such other methods as the Operational Director - Finance may approve.

**1.2.5 Works Contracts – Delay and liquidated damages**

In the case of Works contracts where completion of the contract is delayed it shall be the duty of the relevant Officer under the contract to take appropriate action in respect of any claim for liquidated damages.

**1.2.6 Breach of Procurement Standing Orders**

Any breach or non-compliance with these Procurement Standing Orders must on discovery be reported immediately to the Chief Internal Auditor acting on behalf of the Operational Director - Finance. The Chief Internal Auditor shall decide whether each reported breach or non-compliance presents a significant risk of harm to the Council's interests and if satisfied that such risk exists shall undertake any necessary investigation and report the findings to the relevant Strategic Director, Operational Director - Finance, Operational Director and Monitoring Officer (Legal and Democratic Services) and Chief Executive, as appropriate.

**1.2.7 Acceptance of Tenders other than the Lowest**

It shall be clearly stated in all tender documents that the Council reserves the right:

- (a) to accept a tender other than the lowest
- (b) to decline to accept any tender

**1.3 COLLABORATIVE ARRANGEMENTS**

**1.3.1 Framework Agreements**

Procurement Standing Orders 2.2 to 2.6, 2.11 to 2.14, 3.1 to 3.7 and 4.1 will not apply where the works, products or services in question are to be procured by using a framework agreement which has itself been procured through compliance with these Standing Orders or from a Central Purchasing Body for the purposes of the Public Contracts Regulations 2006. Where a Central Purchasing Body's framework agreement is used the relevant Operational Director shall obtain copies of that Body's Contract and Award notices and from them shall verify the Body's compliance with the 2006 Regulations.

**1.3.2 Joint or Partnering Arrangements**

- (a) Joint or partnering arrangements between the Council and any other body or bodies shall be subject to the prior approval of the Operational Director and Monitoring Officer (Legal, and Democratic Services).
- (b) Where the Council is working in a joint or partnering arrangement with another body or bodies and, under that arrangement, is the commissioning body, Halton Borough Council's Standing Orders shall apply to contracts entered into under that arrangement.
- (c) Where the Council is working in a joint or partnering arrangement with another body or bodies and, under that arrangement, another body is the commissioning body, the Standing Orders of that other body shall apply to contracts entered into under the arrangement. Where the body has no such Standing Orders, the procedures applied by the other body shall comply with the principles and safeguards contained in Halton Borough Council's Standing Orders.
- (d) Where the Council is working in a joint or partnering arrangement with another body or bodies, the documentation for the arrangement shall include powers for the Council to have access to the records of that other body for the purposes of investigating or auditing compliance with the terms of the arrangement and with the relevant procurement rules.

**1.4 E-PROCUREMENT**

**1.4.1 Electronic Tendering**

Officers wishing to adopt electronic tendering shall use only The Chest - Due North system

**1.5 RECORDS**

**1.5.1 Use of Official Orders**

Contracts having a value not exceeding £5,000 may be placed using the Council's official order form or documented in such other manner as may be agreed by the Operational Director and Monitoring Officer (Legal and Democratic Services) and in such circumstances a formal contract may be dispensed with.

**1.5.2 Single Quote/Tender Contracts**

Where these Standing Orders provide(1.3.1, 1.3.2, 1.8, 4.1) for a contract to be entered into following direct invitation to only one contractor, a record of the arrangement shall be entered into the appropriate tender register as identified in these Standing Orders.

**1.6 AWARD OF CONTRACT AND DEBRIEFING OF CANDIDATES**

**1.6.1 Contract Award Basis**

Contracts shall in general be awarded on the basis of most economically advantageous tender (MEAT).

**1.7 CONTRACT PAYMENTS**

**1.7.1 Contract payments/settlements**

Contract payments/settlements shall be made in accordance with procedures referred to in the Standing Orders relating to Finance.

**1.7.2 Instalment Payments**

Where contracts provide for payment to be made by instalments the appropriate Operational Director shall maintain suitable records to show the state of account on each contract.

**1.7.3 Authorisation of Payments**

Payment to contractors shall be authorised by the Operational Director or, on their behalf, by an authorised certifying officer.

**1.7.4 Authorisation of Variations**

Variations to a contract shall be authorised in writing by the appropriate Operational Director or on their behalf by an authorised certifying officer.

**1.7.5 Works Contracts – Final Certificate control**

In the case of Works contracts a final certificate shall not be issued until the Chief Internal Auditor has, to the extent that it is felt necessary, examined all matters relating to the final account. This examination shall not remove or modify the responsibility of the appropriate officer under the contract.

**1.7.6 Payments before Completion of Formal Contract**

For contracts with a value in excess of £50,000 no payment shall be made by the Council to the contractor until formal Agreement has been duly signed by all parties unless specifically authorised by the Operational Director responsible for that contract.

**1.8 WAIVER OF PROCUREMENT STANDING ORDERS**

**1.8.1 Emergency Procedures**

Where urgent action becomes necessary as a result of some unforeseen emergency, the Chief Executive (or in the absence of the Chief Executive, the nominated deputy) may take such action and these Standing Orders shall be waived in respect of such action. Every use of this Standing Order shall be reported in writing to the next available meeting of the Executive Board Sub-Committee.

**1.8.2 Executive Board / Executive Board Sub-Committee/ Mersey Gateway Executive Board approval**

These Standing Orders may only be waived by the Executive Board/Executive Board Sub-Committee, and Mersey Gateway Executive Board for matters relating to the Mersey Gateway Project, in exceptional circumstances including, but not in any way limited by, the following:

- (a) where compliance with Standing Orders is not possible (e.g. due to there being only one possible contractor); or
- (b) where compliance with Standing Orders is not practicable for reasons of urgency which could not have reasonably been anticipated; or
- (c) where compliance with Standing Orders would result in a clear financial or commercial detriment to the Council; or
- (d) where compliance with Standing Orders would result in the Council having to forego a clear financial or commercial benefit; or
- (e) where compliance with Standing Orders is not practicable because the Council's requirements can only be delivered by a particular supplier; or
- (f) where compliance with Standing Orders would be inconsistent with partnership or special external funding arrangements.

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In any report seeking waiver of Standing Orders the relevant Officer shall indicate the particular Standing Orders proposed to be waived, set out the business case supporting the proposal to waive, indicate how value for money, transparency, propriety and accountability would be achieved despite the waiver and indicate the position of the contract under the Public Contracts Regulations 2006.

The waiver of Standing Orders and the reason(s) for waiver shall be clearly recorded in the minutes of the Executive Board/Executive Board Sub-Committee.

Where certain Standing Orders are waived the relevant Officer shall comply with the remaining Standing Orders.

In cases where formal tendering requirements are waived the relevant Officer shall as far as is practicable demonstrate that competition, security, propriety and value for money have been achieved.

**PART 2: STANDING ORDERS CONCERNING CONTRACTS EXCEEDING £1,000,000 IN VALUE**

(Part 2 shall apply to all contracts exceeding £1,000,000 in value)

2.0.1 Contracts with a value exceeding £1,000,000 SOs 2.1 2.2, 2.3, 2.4, 2.5, 2.6 shall apply and advertising of such contracts must include advertising using Due North.

2.0.2 Contracts for works exceeding £3,927,260 must also follow EU Public Procurement Regs 2006 and Part 6 of Procurement SOs

**2.1 Preliminary Estimate Report**

Before entering into a Contract likely to exceed £1,000,000 in value the Executive Board Sub-Committee shall receive from the appropriate Officer a written report on the proposed contract which shall include an estimate in writing of the probable expense of executing the works, goods or services in a suitable manner.

The written report shall specify:

- (a) The whole life cost of the project, e.g. ongoing revenue costs associated with the project.
- (b) Identification of potential project risks and controls;
- (c) How the project links with departmental and corporate objectives;
- (d) How the contractor is to be selected;
- (e) How the proposed method of procurement fits with the Authority's procurement Strategy.

Before entering into any contract hire arrangements exceeding 12 months the estimate shall also include details of any implications for the Capital Programme.

**2.2 Forms of Tendering**

There are four forms of tendering available where contracts covered by Part 6 of these Standing Orders do not apply:

- (a) Open Tendering
- (b) Standard Select Lists
- (c) Special Select Lists

(d) Standing Lists

Tendering shall be by such of the above methods as the relevant Operational Director shall determine unless the Executive Board Sub-Committee resolves otherwise.

As part of the process of drawing up any select or standing list the relevant Operational Director shall provide the Chief Internal Auditor with details of the contract, its estimated value, names of tenderers and where relevant details of tenders and in each case consult the Chief Internal Auditor on what if any financial checks should be carried out prior to selection of those tenderers to be placed on the select or standing list. This process shall not remove or modify the responsibility of the relevant Operational Director to take such steps as may be reasonably necessary to safeguard the Council's interest.

**2.3 Open Tendering**

- (a) This method should be used for contracts when it is in the Council's interest to invite tenders from a wide range of contractors. The Council shall give at least 10 days public notice of its intention to enter into such arrangements.
- (b) Such notice shall be placed in one or more local newspapers circulating in the district and it shall also be placed in one or more appropriate specialist journals and The-Chest Due North.
- (c) The notice shall state the nature and purpose of the proposed contract.
- (d) Every company or person who expresses an interest in response to the notice must be sent full details of the works, goods or services for which tenders are invited together with the closing date for tenders and the Council's requirements as to the form and procedures for submission of tenders.
- (e) Open tendering is not appropriate if:
  - (i) The works, goods or services to be executed/provided are so specialised that only a limited number of contractors are available to execute that type of work or provide that type of goods or services, but in such cases a reasonable number of those contractors shall be invited to submit tenders.
  - (ii) There would be no genuine competition.
  - (iii) The works are to be executed or goods or services are to be provided, as a matter of urgency, and consent has



been obtained of the Chief Executive, or any Officer designated by him for the purpose, to dispense with the requirements of public notice.

- (iv) The goods or materials to be supplied consist of parts of existing machinery or plant.
- (v) Purchases are to be made by auction or made at public fairs or markets.

#### **2.4 Standard Select Lists**

- (a) Public notice shall be given in one or more local newspapers circulating in the district and in one or more newspapers or journals circulating amongst such persons as undertake such contracts and on the The Chest - Due North site setting out particulars of the contract into which the Council wish to enter and inviting persons interested to apply for permission to tender within such period as may be specified in the notice (not being less than 10 days).
- (b) After the expiration of the period specified in the public notice, invitations to tender for the contract shall be sent to not less than 5 of the persons who:
  - (i) applied for permission to tender; and
  - (ii) who are not disqualified by virtue of Standing Order 2.16.

selected in the manner determined by the relevant Operational Director either generally or in relation to a particular contract or category of contracts or, if fewer than 5 persons have applied and are considered suitable, to all such persons.

#### **2.5 Special Select Lists**

- (a) In relation to individual contracts any Operational Director with responsibility for a contract the subject matter of which is relevant to a Constructionline list may draw up a standard select or standing list from the Constructionline approved lists:
- (b) Any Operational Director drawing up a select or standing list under Standing Order 2.5(a) shall, for each contract which is the subject of that list:
  - (i) draw up a list of criteria as the basis for selection and
  - (ii) record in writing how those criteria have been applied.
- (c) Lists operated by an organisation other than Constructionline may be used in accordance with this Standing Order provided

the organisation has been approved for the purposes of this Standing Order by the Operational Director - Finance.

## **2.6 Standing Lists**

- (a) This Standing Order shall have effect where the Executive Board Sub-Committee has determined that a list shall be kept of persons to be invited to tender for contracts for the execution of specified categories of works.
- (b) The said list shall:
  - (i) be compiled and maintained by the Executive Board Sub-Committee;
  - (ii) contain the names of all persons who wish to be included in it and are approved by the Executive Board Sub-Committee; and
  - (iii) indicate whether a person whose name is included in it is approved for contracts for all, or only some of the specified values or amounts or categories.
- (c) At least 4 weeks before the list is first compiled, notices inviting applications for inclusion in it shall be published on The Chest – Due North the Council's procurement webpage, in one or more local newspapers circulating in the district and in one or more newspapers or journals circulating among such persons as undertake contracts of the specified values or amounts or categories.
- (d) The said list shall be amended as required from time to time and shall be reviewed at least once in every three years. At least 4 weeks before each review each person whose name appears in the list shall be asked whether they wish their name to remain there and notices inviting applications for inclusion in the list shall be published in the manner provided by paragraph (c) of this Standing Order.
- (e) Where by virtue of a decision of the Executive Board Sub-Committee duly authorised in that behalf, invitation to tender for a contract is limited to persons whose names appear on the list maintained under this Standing Order, an invitation to tender for the contract shall be sent to at least 4 of those persons whose names appear in the said list as being approved for a contract for that value or amount or of that category and who are not disqualified by virtue of Standing Order 2.16 or, if there are fewer than 4 persons, to all such persons. If there are not less than 4 such persons, the persons to whom invitations are sent

shall be selected in the manner determined by the Executive Board Sub-Committee either generally or in relation to a particular contract or category of contracts.

## **2.7 Method of Tendering and Interim Custody of Tenders**

Where in pursuance of these Standing Orders invitation to tender is required every notice of such invitation shall state:

- (a) That no tender will be considered except in a sealed envelope or label (each to be provided by the Council) which bears the word 'Tender' followed by the subject matter to which it relates and the date, time and place specified for its return and which is addressed to the office of the Chief Executive.
- (b) That no tenders received at the specified place after the fixed date and appointed time shall be considered.
- (c) That tenderers shall not place or cause to be placed any mark on the envelope or package enclosing the tender identifying the tenderer and that no tender enclosed in an envelope or package bearing such a mark shall be opened or considered.

A register of tenders received in pursuance of these Standing Orders shall be maintained by the Chief Executive or an Officer designated by him for that purpose.

Tender envelopes shall remain in the custody of the Chief Executive or other Officer designated by him for the purpose until the time appointed for their opening.

For those choosing to use the E-Tendering facility The Chest - Due North, responses will be held within a secure online sealed tender box that is only accessible by the verifier (this would be in line with SO 2.9) after the specified fixed time and date.

## **2.8 Closing Date for Receipt of Tenders**

No tenders received at the specified place after the fixed date and appointed time shall be opened or considered.

## **2.9 Method of Opening Tenders**

Tenders shall be opened at one time and only in the presence of:-

- (a) The Executive Board Member holding the relevant portfolio and having the duty or delegated powers of dealing with the contract or such Member or Members of the Council specially designated for the purpose by the Council; and

- (b) The Chief Executive or an Officer of the Council designated by him.

For those choosing to use the E-Tendering facility The Chest – Due North, the designated officer (verifier) must have permission recorded on the system to open the online sealed vault.

## **2.10 Appraisal of Tenders**

- (a) Tenders shall be appraised on a basis to be determined and documented before tenders are invited.
- (b) Tenders shall be appraised on the basis of defined and documented criteria.
- (c) Where criteria are of different value then weightings shall be shown.
- (d) A matrix shall be prepared and completed prior to the invitation to Tenderers and this matrix shall list the criteria and show the weighting of each criterion. As part of the appraisal process, the mark achieved by each tenderer in relation to each criterion shall be recorded on the matrix.
- (e) Before tenders are opened, a marked, dated and signed copy of the matrix shall be promptly forwarded to the Principle Committee Services Officer to be kept with the Tender Register.

## **2.11 Method of Acceptance of Tender**

- (a) Tenders may be accepted by the relevant Operational Director provided that all of the following apply:-
  - (i) five or more tenders have been invited in accordance with standing orders;
  - (ii) the value of the tender proposed to be accepted does not exceed £5,000,000;
  - (iii) the tender proposed to be accepted is the lowest tender.

The Operational Director shall then report to the Executive Board Sub-Committee:

- (i) the fact that the tender has been accepted;
- (ii) the names of the various tenderers;

- (iii) the amount of the tender figures;
  - (iv) the amount of the corrected tender figure (if any).
- (b) In all other cases, including cases where the relevant Operational Director uses the discretion not to accept a tender, the Executive Board Sub-Committee shall decide whether or not to accept a tender.

The Executive Board Sub-Committee shall only accept a tender following a report which shall contain:

- (i) the names of the various tenderers
- (ii) the amount of the tender figures
- (iii) the amount of the corrected tender figure (if any)
- (iv) where a tender other than the lowest is proposed for acceptance, the reasons for the proposed acceptance.

## **2.12 Errors in Tenders**

If before the date of entry into a contract it is discovered that an error has been made in the tender it shall be dealt with as follows:-

- (a) Engineering Contracts – in accordance with the Guidance Notes produced by the ICE Conditions of Contract Standing Joint Committee.
- (b) Building Contracts – in accordance with the National Joint Consultative Committee for building, Alternative 2.
- (c) Non-Construction Contracts – the Tenderer should be given the opportunity of confirming the offer or of amending it to correct genuine and obvious errors. Should they elect to amend their offer and the revised tender is no longer the lowest, the offer of the firm now lowest should be examined on the basis of the same rules.

The above action by the relevant Council Officer shall take place before the date of entry into a contract.

## **2.13 Contracts to be in Writing**

- (a) Every contract shall be in writing and shall be the subject of a formal contract prepared or approved by the Operational

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Director and Monitoring Officer (Legal and Democratic Services)  
which shall specify:

- (i) the work, materials, matters, or things to be furnished, had or done;
  - (ii) the price to be paid, with a statement of discount or other deductions; and
  - (iii) the time or times within which the contract is to be performed.
- (b) The relevant Operational Director shall consider the need for a liquidated damages clause in each contract after considering the following factors:
- (i) potential risk;
  - (ii) known technical difficulties associated with the project;
  - (iii) the tendering procedure used.
  - (iv) the practicality of making a reasonable pre-estimate of loss.
  - (v) the financial status of the contractor(s); and
  - (vi) the period of the contract.
- (c) Every contract shall contain clauses (i) requiring the contractor to observe and perform in relation to the work to be carried out under the contract the requirements of the Health & Safety at Work etc. Act 1974 or of any Regulations or Codes of Practice made under the authority of that Act and to comply with any lawful requirements of the Health and Safety Executive in relation to such work; and there shall be reserved to any duly authorised Officer of the Council the right of access to the site for the purpose of ensuring compliance with the requirements of this Clause (ii) addressing equality and diversity and sustainability.
- (d) In every contract the contractor shall be required to indemnify the Council against:
- (i) any claim which may be made in respect of employers' liability against the Council or the contractor by any workmen employed by the contractor or any sub-contractor in the execution of the works or the provision of goods and services;

- (ii) any claim for bodily injury to or damage to property of third parties;
- (iii) any claim which may be made under the Health and Safety at Work etc. Act, 1974 against the Council or the contractor unless such claim is substantially due to the neglect of the Council or any of its Officers;

and the contractor shall when required by the Operational Director and Monitoring Officer (Legal and Democratic Services) produce satisfactory evidence that they are insured against any such claims.

- (e) Where an appropriate EU Standard is current at the date of the tender, every contract shall require that, as the case may be, all goods and materials used or supplied and all workmanship shall be in accordance with that Standard and in the absence of a relevant EU Standard the contract shall require the application of the relevant British Standard Specification or British Standard Code of Practice issued by the British Standards Institution current at the date of the tender and every contract shall require that, as the case may be, all goods and materials used or supplied and all workmanship shall be in accordance with the relevant Standard.

#### **2.14 Nominated Sub-Contractors and Suppliers**

Where a sub-contractor or supplier is to be nominated to a main contractor, the following provisions shall have effect:-

- (a) Where the estimated amount of the sub-contract or the estimated value of goods to be supplied by the nominated suppliers does not exceed £1,000,000 then unless the Operational Director concerned is of the opinion that it is not reasonably practicable to obtain competitive tenders:
  - (i) The Operational Director concerned shall invite not fewer than 5 tenders for the nomination. The terms of the invitation shall require an undertaking by the tenderer that if they are selected they will be willing to enter into a contract with the main contractor on terms which indemnify the main contractor against their own obligations under the main contract in relation to the work or goods included in the sub-contract;
  - (ii) the tenders shall be opened at one time and only in the presence of the Operational Director concerned or an Officer designated by the Operational Director and one other Officer;

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- (iii) the Operational Director concerned shall maintain a record of all such tenders received;
- (iv) the Operational Director concerned, or an Officer designated by him, shall nominate to the main contractor the person whose tender is, in the opinion of that Director or officer, the most satisfactory one.

Provided that, where the tender is other than the lowest received, or where fewer than 5 tenders have been received, the circumstances shall be reported to the next meeting of the Executive Board Sub-Committee.

- (b) Where the estimated amount of the sub-contract or the estimated value of goods to be supplied by a nominated supplier exceeds £1,000,000 then unless the Executive Board Sub-Committee determines that it is not reasonably practicable to obtain competitive tenders:
  - (i) tenders for the nomination shall be invited in accordance with the Open Tender, Standard Select List, Special Select List or Standing List Procedures as the case may be. The terms of the invitation shall require an undertaking by the tenderer that if selected they will be willing to enter into a contract with the main contractor on terms which indemnify the main contractor against obligations under the main contract in relation to the work or goods included in the sub-contract;
  - (ii) the tenders shall be opened at one time and only in the presence of the Executive Board Member of the appropriate portfolio and the Chief Executive or an Officer designated by the Chief Executive, or the Operational Director concerned, or an Officer designated by the Operational Director;
  - (iii) the Operational Director concerned shall maintain a record of all such tenders received;
  - (iv) the Operational Director concerned, or an Officer designated by the Operational Director shall nominate to the main contractor the person whose tender is considered the most satisfactory.

Provided that, where the tender is other than the lowest received, or where less than 3 tenders have been received, the circumstances shall be reported to the next meeting of the Executive Board Sub-Committee.



**2.15 Unsatisfactory progress**

If the Executive Board Sub-Committee is satisfied that a contractor has not carried out the contract in a satisfactory manner, such contractor shall not thereafter for a period of three years be invited to tender, nor be included in a select list, nor, if the said contractor submits a tender in response to public advertisement, shall such tender be considered.

Any such exclusion shall extend to all contracts involving the Council.

**PART 3 – CONTRACTS BETWEEN £156,442 AND £1,000,000 IN VALUE**

(Part 3 shall apply to all contracts between £156,442 and £1,000,000)

**3.1 Contracts exceeding £156,442 and not exceeding £1,000,000**

Where the estimated value or amount of a proposed contract does not exceed £1,000,000 the Operational Director concerned may enter into such contract with such persons as the Operational Director considers competent for the purpose provided that at least five competitive tenders shall have been invited in writing before entering into such contract and the contract awarded to one of the persons who has tendered. In determining the method of tendering the Operational Director shall have regard to the forms of tendering set out in SO 2.2 and shall require each potential tenderer to complete a Pre-Qualification Questionnaire.

Ten working days before the Operational Director invites such tenders he shall in respect of that contract place an invitation of expressions for interest on the The Chest - Due North and include any expressions of interest received

The Operational Director shall document the selection criteria to be applied in the award of the contract prior to the tender being issued.

The selection process shall be documented by the Operational Director and scorings must be available as feed-back to unsuccessful tenderers.

**3.2 Report to Executive Board Sub-Committee**

Where the actual contract price does exceed £1,000,000 or where a tender other than the lowest is accepted, or where fewer than five tenders have been received, the circumstances shall be reported to the Executive Board Sub-Committee for information.

Contracts for goods and services having a value of or exceeding £156,442 must follow the OJEU path unless exempt (Part B). For those contracts that are exempt the Operational Director must issue an award notice and feedback to tenderers both at selection and award stages.

**3.3 Method of Tendering and Interim Custody of Tenders**

The method of tendering except in relation to references to the Chief Executive shall be in accordance with the procedures set down in Standing Order 2.7 However, the register of tenders received shall in this case be maintained by the appropriate Operational Director concerned (or other Officer designated by him) and the Tender envelopes shall remain in the custody of the Operational Director until the time approved for opening

**3.4 Closing date for Receipt of Tenders**

No tenders received at the specified place after the fixed date and appointed time shall be opened or considered.

**3.5 Method of Opening Tenders**

Tenders shall be opened at one time and only in the presence of the Operational Director concerned (or an Officer designated by him) and one other Officer. For those choosing to use the E-Tendering facility (Due North), the designated officer (verifier) must have permission recorded on the system to open the online sealed vault.

**3.6 Errors in Tenders**

Any errors shall be dealt with in accordance with Standing Order 2.12

**3.7 Contracts to be in writing**

Every contract shall be in writing and shall include all other requirements contained in Standing Order 2.13.

**PART 4 - CONTRACTS LESS THAN £156,442 IN VALUE**

(Part 4 shall apply to all contracts up to but not exceeding £156,442 in value)

**4.1 Competition Requirements**

Where the estimated costs of any works, goods or services ordered on behalf of the Council is less than £156,442 then quotations shall be invited as outlined below:

more than £1000: three electronic invitations via The Chest – Due North, subject to a procurement risk assessment being carried out with the Procurement Division, which will determine the route to market of using either a Simple or Advance Request for Quotation:

- £1000 or less: three written quotations are advisable

**4.2 Value for Money**

Where the actual contract price accepted by the relevant Operational Director is other than the lowest the circumstances shall be reported to the Operational Director - Finance for information.

#### **4.3 Standing Orders relating to Finance**

Otherwise the arrangement for these contracts must be in accordance with Standing Orders relating to Finance.

### **PART 5 – CONTRACTS FOR THE SALE OF ASSETS**

#### **5.1 Disposal of Land**

These Standing Orders shall apply to any disposal of land or of any interest in land where:

- subsequent to presentation at the Asset Management Working Group, a decision of the Executive Board/Executive Board Sub-Committee or Officer exercising delegated powers on behalf of the Council so requires
- a rule of law obliges the Council to dispose of land at the best price reasonably obtainable
- ordinarily disposals shall be by sale on the open market. Any disposal that may be recommended for sale by negotiated agreement without open market testing shall be supported by a District Valuer's report (or other reputable Independent Valuer)

#### **5.2 Disposal of Assets – value not exceeding £50,000**

Sale of assets for less than £50,000 in value shall be dealt with in accordance with Standing Orders relating to Finance.

#### **5.3 Preliminary Estimates of the Price receivable by the Council**

- (a) Before entering into a contract for the disposal of any assets (which term includes scrap materials), the consideration for which is likely to exceed £100,000 the Executive Board/Executive Board Sub-Committee shall receive from the appropriate Officer a written report on the proposed disposal which shall include an estimate in writing of the probable consideration to be received by the Council.
- (b) Where the estimated value or amount of a proposed contract does not exceed £100,000, the Operational Director concerned shall receive the appropriate written report.

**5.4 Requirement of Public Advertisement**

- (a) Where the consideration for the disposal of any assets has been estimated at a figure exceeding £100,000 and less than the EC Public Procurement Values the Council shall, before entering into a formal contract, give at least 10 days public notice of its intention to enter into a contract.
- (b) Such notice shall be placed in one or more local newspapers circulating in the district and if the consideration to be received by the Council is likely to exceed £250,000 (it shall also be placed in one or more specified journals or publications circulating amongst such persons, firms or companies as deal in assets of the same type as those to be disposed of by the Council. If the consideration is less than £250,000 a notice may be placed in one or more specified journals if this is considered appropriate.
- (c) The notice shall state the nature and purpose of the proposed Contract; invite tenders for the purchase of the assets to be disposed of, and state the last date when tenders will be received.
- (d) Notice shall not be required if:
  - (i) The goods or materials to be disposed of are so specialised that only a limited number of potential buyers are available but in such cases a reasonable number of those potential buyers shall be invited to submit tenders;
  - (ii) There would be no genuine competition (for whatever reason);
  - (iii) Sales are to be by Auction.

**5.5 Method of Tendering and Interim Custody of Tenders**

The method and procedure to be followed is in accordance with Standing Orders 2.7 or 3.3.

**5.6 Closing Date for the Receipt of Tenders**

No tenders received at the specified place after the fixed date and appointed time shall be opened or considered

**5.7 Forfeiture in cases of bribery etc.**

There shall be inserted in every written contract 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 or forborne to do any action in relation to the obtaining or execution of the contract or any other contract with the Council, or for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Council, or if the like acts shall have been done by any person employed by the contractor or acting on the contractor's behalf (whether with or without the knowledge of the contractor), or if in relation to any contract with the Council the contractor or any person employed by the contractor him or acting on the contractor's behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010, or shall have given any fee or reward, the receipt of which is an offence under Section 117 of the Local Government Act, 1972.

**5.8 Method of Opening Tenders**

Tenders shall be opened in accordance with Standing Orders 2.9 or 3.5.

**5.9 Method of Acceptance of Tenders**

The method of acceptance of tenders shall be in accordance with Standing Order 2.11 except that the words 'highest tender' shall be substituted for the words 'lowest tender'.

**5.10 Acceptance of Tenders other than the highest**

It shall be clearly stated in all tender documents that the Council reserves the right:

- (a) to accept a tender other than the highest
- (b) to decline to accept any tender

**5.11 Errors in Tenders**

If before the date of entry into a contract it is discovered that an error has been made in the tender:-

- (a) mathematical errors (e.g. of extension or summation) apparent on the face of the tender shall be corrected by the relevant Council Officer and the tenderer shall be given the opportunity of confirming or withdrawing the tender on the basis of the corrected figures.
- (b) such other errors (e.g. in rates) as may come to the attention of the relevant Council Officer shall be notified to the tenderer who shall be given the opportunity of confirming or withdrawing the

tender on the basis of the uncorrected figures stated in the tender.

Where the tenderer elects to withdraw the tender under either (a) or (b) above the next highest tender shall be considered and the same rules shall be applied in considering that tender.

The above action by the relevant Council Officer shall take place before the date of entry into a contract.

### **5.12 Contracts to be in Writing**

Unless the assets to be disposed of are such that the title passes on delivery, every contract shall be in writing in accordance with Standing Order 2.14.

## **PART 6 - EUROPEAN UNION PUBLIC PROCUREMENT RULES**

### **6.1 General Approach**

The general approach to EU procurement-related Directives is set out at Standing Order 1.1.2.

The following Standing Orders provide guidance to the EU procurement regime as at 31 January 2006 but officers should always check with Legal Services to ensure they are complying with the latest European rules.

### **6.2 EU Directives**

Relevant EU Directives have been translated into Domestic Law and these deal with Works, Supplies and Services which exceed the relevant thresholds. These are the Public Contracts Regulations 2006 (SI 2006/5) as amended.

### **6.3 Precedence of EU Rules**

The Table below sets out a summary of the more important Regulations dealing with Works, Supplies and Services but is not a substitute for the actual text of the Regulations. The Table is designed to give an overview of the rules applicable to the **restricted procedure** (which is the most commonly used in practice). The relevant regulation is identified in brackets.

### **6.4 EC Procurement Thresholds**

The Regulations apply where the estimated contract values exceed thresholds which are fixed for two year periods. From 1 January 2010 until 31 December 2011 the EC Public Procurement Thresholds are:

<b>Supplies</b>	<b>£156,442</b>
<b>Services</b>	<b>£156,442</b>
<b>Works</b>	<b>£3,927,260</b>

The thresholds relate to the total expenditure to be incurred during the full term of the contract including any optional extension period and not to individual contracts or years of the contract. *N.B. The European Commission reviews the thresholds bi-annually. Contact Head of Procurement for an update on the new thresholds post-December 2011* (Reg.8)

### **6.5 Technical Specifications**

European standards must be used whenever available (Reg. 9).

### **6.6 Prior Information Notice**

Required for Works as soon as decision made approving the planning of the Works BUT for Suppliers and Services required after the commencement of each financial year (Reg. 11).

### **6.7 Restricted Procedure**

- (1) Advert in Official Journal (Reg.16 (2)).
- (2) Period for receipt of request to be selected to tender - not less than 37 days (Reg.16(3)).
- (3) Number of tenderers – not less than five– otherwise sufficient number to ensure genuine competition (Reg.16 (6), (7)).
- (4) Prescribed information must be sent with the tender invitations (Reg. 16(15)).
- (5) Period for receipt of tenders – not less than 40 days (plus inspection period if necessary) (Reg.16(16)).
- (6) For Works and Services (but NOT for Supplies) if a Prior Information Notice has been published the period for receipt of tenders may be reduced from 40 days to between 36 and 22 days (Reg.16(18)).



- (7) Information requested by tenderers must be supplied provided the request is received not less than 4 days before date for receipt of tenders. (Reg.16(20)).
- (8) Following the selection of the tender notice shall be given to all tenderers of the Council's provisional intention to award the contract to the successful tenderer and the contract shall not be finally awarded until 10 days have passed after the giving of that notice electronically and 15 days if physically posted.

## **6.8 Other Award Processes**

Officers should note the existence of other competitive processes under the Public Contract Regulations 2006. These alternative processes include:

**(1) Competitive Dialogue** – This is available where the Council is unable to provide a precise specification and where there is scope to negotiate different ways of providing a solution. The Council may select several suitable providers and enter into a dialogue with them all to help determine the final model of provision. The Council will then agree its specification and allow the providers to bid based on the agreed solution. (Reg 18);

**(2) Dynamic Purchasing** – This is a completely electronic system, that adopts the principles of the Open Procedure. It is most likely to be considered for commonly used goods works and services. It is essentially designed to cover regular “off the shelf” purchases. (Reg 20);

**(3) Electronic auctions** - Once a shortlist has been determined in the usual way an electronic auction can be set up to get the best price, providing that this was specified in the original notice and tender documents. It will be necessary to specify requirements with precision. (Reg 21);

**(4) Central Purchasing Bodies** – These are public bodies that let contracts/framework agreements in such a way as to enable other qualifying bodies to join the contract at a later date. Care must be taken to ensure that the Council is able to join the contract/agreement, that the arrangement is still current and that the terms are those secured directly through the advertised process. (Reg 22).

## **6.9 Award Criteria**

The award criteria are to be either lowest price or most economically advantageous (Reg. 20).

**6.10 Contract Award Notice**

The Contract Award Notice must be sent to the Official Journal no later than 48 days after the award of the Contract (Reg.21).

**6.11 Information to Unsuccessful Contractors**

Information to unsuccessful contractors must be given, with reasons, within 15 days of receiving request (Reg.22(1)).

**6.12 Contract Records**

Contract records containing prescribed information must be maintained, copies of which may be demanded by the Commission (Reg.22 (2), (3)).

**6.13 Non-award Notices**

Decisions not to award a contract must be advertised in the Official Journal (Reg.22(4)).

**6.14 Statistical Reports**

Statistical reports must be prepared by 31st July in every alternate (odd numbered) year in respect of contracts awarded in the previous year (Reg.28).

**6.15 Part-exempt Services**

The following are examples of services that are exempt from **most** of the above requirements even if the contract is above the financial threshold:

- Hotel and restaurant services
- Transport by rail
- Transport by water
- Supporting and auxiliary transport services
- Legal services
- Personnel placement and supply services
- Investigation and security services, other than armoured car services
- Education and vocational health services
- Health and social services
- Recreational, cultural and sporting services