

## **STANDING ORDERS FOR CONTRACTS (September 2018)**

### **1. GENERAL**

- 1.1 The following Standing Orders were adopted by Council on 20<sup>th</sup> September 2018 and replace the previous version of 20<sup>th</sup> April 2017. They set out the procedures by which the Council will enter into contracts for the provision of goods, services, materials and work. Every contract made by or on behalf of the Council shall comply with these procedure rules and no exception from any of the provisions shall be made otherwise than by direction of the Council or under Standing Order. These Standing Orders should be read in conjunction with the Council's Procurement Policy applying at the time.
- 1.2 The Orders do not apply to contracts for the sale or purchase of land or buildings other than as set out in this Order. **Every contract relating to the sale or purchase of any land or buildings** shall be in writing and be signed on behalf of the Council by the Proper Officer. Purchases of land should not be above the current market value as determined by the Council's appointed valuer and sales of land should not be below the current market value as determined by the Council's appointed valuer. Where this is not the case a report should be made to Council setting out the reasons for such variation, which may take into account any community benefits or justification on the grounds that it helps fulfil a wider objective of the Council.
- 1.3 Subject to Rule 1.2 every contract made by or on behalf of the Council shall comply with
  - 1.3.1 these Standing Orders
  - 1.3.2 the Council's Financial Regulations
  - 1.3.3 the Council's Standing Orders
  - 1.3.4 all relevant statutory provisions including any relevant E.U. directive
  - 1.3.5 any direction by the Council, committees, sub-committees having appropriate delegated authority.
- 1.4 These Contract Procedure Rules shall not apply or may be varied where or to the extent that:
  - 1.4.1 the Council so resolves
  - 1.4.2 statute or subordinate legislation prescribes otherwise

### **2 DELEGATED AUTHORITY TO ENTER INTO CONTRACTS**

- 2.1 The Town Clerk shall have power to accept tenders (where required) and to enter into contracts on behalf of the Council, when the decision and budget have been approved by Council.
- 2.2 The Town Clerk or Responsible Financial Officer (RFO), if different, have authority to issue official orders or letters for work, goods and services as set out in the Financial Regulations.

### **3. ORDERS FOR WORK, GOODS & SERVICES UPTO £2000**

- 3.1 Orders for work, goods and services up to the value of £2000 are not subject to the Standing Orders for Contracts, nor are formal quotations required but orders must comply with the Council's Financial Regulations.
- 3.2 Orders for work, goods and services which would normally be considered as one transaction shall not be divided into different orders so that the Standing Orders for Contracts are deemed not to apply.

### **4 CONTRACTS OF UP TO £25,000**

- 4.1 Tenders need not be invited for contracts estimated to have a value of £25,000 or less but 3 quotations shall be obtained in accordance with the Council's Financial Regulations. The Council's Procurement Policy states that in all contracts for goods, materials or services over £25,000, an evaluation model encompassing both price and quality, will be developed in advance against which best value can be judged.

- 4.2 Three quotations need not be invited in circumstances set out in regulation 11 the Financial Regulations, or in cases where genuine competition is not available because of the specialist nature of the work or goods, all subject to a resolution of Council which embodies the reason for not doing so.
- 5 **FINANCIAL CONTROLS AND PROCUREMENT**
- 5.1 Subject to the exceptions in Rule 5.2 below, tenders shall be invited where the contract sum is estimated to be above £25,000.
- 5.2 Tenders need not be invited in circumstances set out in 11.1 of the Financial Regulations, subject to a resolution of Council which embodies the reason for not doing so.
- 5.3 **A public contract regulated by the Public Contracts Regulations 2015 with an estimated value in excess of £25,000 but less than the relevant thresholds in standing order 18(f) is subject to Regulations 109-114 of the Public Contracts Regulations 2015 which include a requirement on the Council to advertise the contract opportunity on the Contracts Finder website regardless of what other means it uses to advertise the opportunity.**
- 5.4 Subject to additional requirements in the financial regulations of the Council, the tender process for contracts for the supply of goods, materials, services or the execution of works shall include, as a minimum, the following steps:
- i. a specification for the goods, materials, services or the execution of works shall be drawn up;
  - ii. an invitation to tender shall be drawn up to confirm (i) the Council's specification (ii) the time, date and address for the submission of tenders (iii) the date of the Council's written response to the tender and (iv) the prohibition on prospective contractors contacting councillors or staff to encourage or support their tender outside the prescribed process;
  - iii. the invitation to tender shall be advertised in a local newspaper and in any other manner that is appropriate;
  - iv. tenders are to be submitted in writing in a sealed marked envelope addressed to the Proper Officer;
  - v. tenders shall be opened by the Proper Officer in the presence of at least one councillor after the deadline for submission of tenders has passed;
  - vi. tenders are to be reported to and considered by the appropriate meeting of the Council or a committee or sub-committee with delegated responsibility.
- 5.5 Neither the Council, nor a committee or a sub-committee with delegated responsibility for considering tenders, is bound to accept the lowest value tender.
- 5.6 A public contract regulated by the Public Contracts Regulations 2015 with an estimated value in excess of £181,302 for a public service or supply contract or in excess of £4,551,413 for a public works contract (or other thresholds determined by the European Commission every two years and published in the Official Journal of the European Union (OJEU)) shall comply with the relevant procurement procedures and other requirements in the Public Contracts Regulations 2015 which include advertising the contract opportunity on the Contracts Finder website and in OJEU. See also Financial Regulations 11.1 b, c and d.

5.7 A public contract in connection with the supply of gas, heat, electricity, drinking water, transport services, or postal services to the public; or the provision of a port or airport; or the exploration for or extraction of gas, oil or solid fuel with an estimated value in excess of £363,424 for a supply, services or design contract; or in excess of £4,551,413 for a works contract; or £820,370 for a social and other specific services contract (or other thresholds determined by the European Commission every two years and published in OJEU) shall comply with the relevant procurement procedures and other requirements in the Utilities Contracts Regulations 2016.

5.8 Where tenders are required, one of the following methods shall be used:

- 5.4.1 Open competitive tender (Rule 5)
- 5.4.2 Ad hoc approved list (Rule 6)
- 5.4.3 Standing approved list (Rule 7)
- 5.4.4 Approved list of another Council (Rule 8)
- 5.4.5 Established procurement specialist (Rule 9)

## 6 **OPEN COMPETITIVE TENDERS**

Tenders shall be invited after giving at least 14 days public notice in at least one local newspaper circulating in the area of the Authority and in such trade journals as the Town Clerk has considered appropriate stating the nature and purpose of the contract, inviting tenders and stating the last date when tenders will be accepted. Any notice issued shall contain a Statement of the effect of Standing Orders Nos. 36a and 36b.

## 7 **AD HOC APPROVED LIST**

7.1 Tenders shall be invited after giving notice in the manner set out in Rule 5 seeking applications to be placed on a list from which selected contractors will be invited to submit tenders.

## 8 **STANDING APPROVED LIST**

8.1 Tenders shall be invited from persons included in a list approved by the Council for the supply of goods or materials of specified categories values or amounts or for the carrying out of specified categories of work

8.2 The list shall be compiled in the following manner:

- 8.2.1 Notices inviting applications for inclusion in the list shall be published not less than 28 days before the list is compiled in at least one local newspaper and one trade journal.
- 8.2.2 No person shall be included in the list unless, at the time of compilation of the list, the Responsible Financial Officer is satisfied as to his or her financial status and suitability.
- 8.2.3 The approved list may be amended as required from time to time by the Council and shall be reviewed at intervals not exceeding two years.

## 9. **APPROVED LIST OF ANOTHER AUTHORITY**

9.1 Tenders shall be invited from persons included in a list approved by the Principal Council for the supply of goods or materials of specified categories values or amounts or for the carrying out of specified categories of work

## 10 **ESTABLISHED PROCUREMENT SPECIALIST**

10.1 Where large, high value tender exercises take place, in areas in which the Council have limited expertise, it may be necessary to engage the use of established procurement specialists. These specialists will undertake the tender process on behalf of the Council, subject to compliance with Financial Regulations for the opening of tenders.

## 11 **SELECTION OF TENDERERS OR INVITEES**

11.1 The selection of persons from whom tenders shall be invited shall be delegated to the Town Clerk in consultation with the Chairman of Finance and Resources.

11.2 In inviting applications for inclusion in a list of approved tenderers or in selecting persons from whom tenders are to be invited, steps shall be taken to ensure fair competition. It may be

necessary to supplement approved lists in cases where the specialist nature of the work or goods indicates that completion will be limited, subject to a resolution of Council which embodies the reason for doing so.

Where a contract will involve a design element, or in the case of other construction works, the chosen process may be varied minimally to ensure that the quality of the design is properly taken in to account. Construction processes which are taking forward the Government Construction Strategy may also be used.

## 12 **FORM OF INVITATION TO TENDER AND SUBMISSION OF TENDERS**

- 12.1 All tenders shall be required to be submitted on a Form of Tender approved by the Town Clerk. This Form shall include a statement that the Council will not be bound to accept any tender and reserves the right to accept a tender other than the one which is the lowest price or not to accept any tender at all.
- 12.2 The invitations to tender shall state that no tender will be considered unless contained in a unmarked plain sealed envelope and endorsed "Tender" followed by the subject to which it relates.
- 12.3 Every tender shall be addressed to the Town Clerk and the tender shall remain in his/her custody, or that of his nominated representative, until the time appointed for its opening. (See also 10.1)

## 13 **EXTENSION OF TIME**

- 13.1 Where the Town Clerk considers it to be in the best interests of the Council the time within which tenders must be received may be extended after giving notice of such extension of time in the following manner: -
  - 13.1.1 **Open competitive tenders** - in accordance with Standing Order 6.
  - 13.1.2 **Ad hoc approved list / Established procurement specialist** - by giving 14 days written notice to each of the selected contractors.
  - 13.1.3 **Standing approved list** - by giving 14 days written notice to each of the relevant persons on the list.

## 14 **OPENING OF TENDERS**

- 14.1 All tenders for a contract shall be opened at the same time and as soon as possible after the closing time for the acceptance of tenders. The tenders will be opened by the Town Clerk or other nominated officer in the presence of two Members of Council. (See also 10.1)
- 14.2 The Town Clerk shall prepare and maintain a register of tenders received and shall record in that register the following particulars:
  - 13.2.1 the last date and time for the receipt of tenders
  - 13.2.2 the date and time the tender was actually received
  - 13.2.3 the name of the tenderer and the amount of the tender
  - 13.2.4 the date and time they were opened and by whom.
  - 13.2.5 the signature of the officer to whom the tenders were handed after opening.
- 14.3 All persons required to be present at the opening of tenders shall immediately sign against the relevant particulars in the register and shall also sign each page of the tender as evidence of such tenders having been opened by them or in their presence.
- 14.4 Following the opening of tenders invited the Town Clerk shall write to all persons who were invited to tender but who failed to tender to ascertain the reasons for that failure.

## 15 **LATE TENDERS**

- 15.1 Any tender received late will be returned promptly to the tenderer by the Town Clerk. A late tender which has been received may be opened in the presence of the two Members to ascertain the name and address of the tenderer but no details of the tender shall be disclosed.

## 16 **ALTERATIONS TO TENDERS**

16.1 Where the tender reveals errors or discrepancies, which would affect the tender figure in an otherwise successful tender, the tenderer shall be told of the errors and discrepancies and given an opportunity of confirming, correcting or withdrawing the offer.

## 17 **ACCEPTANCE OF TENDERS**

17.1 In accepting a tender, consideration will be given to price and quality. A suitable pre-determined price-quality model (Evaluation Model) will be devised by the Town Clerk or representative in accordance with the Council's Procurement Policy. Selection of the best tender will be based on this evaluation.

17.2 If no tenders are received or if all tenders are identical, the Council may make such arrangements for procuring the goods or materials or executing the works as it thinks fit.

## 18 **CONTRACTS TO BE IN WRITING**

18.1 Every contract which exceeds £2000 shall be in writing in a form approved by the Town Clerk.

18.2 Every contract shall specify, amongst other things:

18.2.1 the goods, materials, works, matters, or things, to be furnished, supplied or done (including any appropriate technical specifications)

18.2.2 the price to be paid with a statement of discount or other deductions

18.2.3 where applicable, the time or times that the contract is to be performed

18.2.4 how the contractor will be accountable for performance, and any information or reports that he will be required to submit.

18.3 The Town Clerk shall sign every contract not required to be made under seal on behalf of the Council.

18.4 The Town Clerk or his nominated representative shall seal every contract required or intended to be made under seal on behalf of the Council, in accordance with Standing Orders.

18.5 Every contract for which provision has been made in the approved annual estimates and/or approved by the appropriate committee or sub-committee of the Council pursuant to Standing Orders and being in value of amount less than £2,000 shall be entered into on behalf of the Council by the Town Clerk by issuing an official order only.

## 19 **ASSIGNMENT**

19.1 In every written contract for the execution of work or the supply of goods or materials, the following clause shall be inserted:

"The contractor shall be prohibited from transferring or assigning directly or indirectly, to any person or persons whatever, any portion of the contract without the written permission of the Council. Sub-letting of any part(s) of the work, except to the extent permitted in writing by the officer concerned, shall be prohibited"

## 20 **LIQUIDATED DAMAGES**

20.1 Every contract that exceeds £50,000 shall, where considered appropriate by the Town Clerk, provide for liquidated damages to be paid by the contractor in case the terms of the contract are not duly performed.

## 21 **PERFORMANCE BONDS**

21.1 Where a contract is estimated to exceed £150,000 in value and is for the execution of the works, or for the supply of goods or materials by a particular date or series of dates, the Finance & Resourced Committee shall consider whether the Council should require security for its due performance and shall either certify that no such security is necessary or shall specify in the conditions of tender the nature and amount of any security to be given. In the latter event, the Council shall require and will take a bond or other sufficient security for the due performance of the contract.

22 **RETENTION**

- 22.1 Works contracts, which are estimated to exceed £50,000 in value, will be subject to a defects period. The Council will retain a percentage of the monies due to the contractor for a period that the Town Clerk deems appropriate, having regard to the current practice in the relevant industry and to the circumstances of the contract.

23 **CANCELLATION**

- 23.1 Every contract will include a clause allowing the Council to cancel the contract and to recover costs if the contractor has offered, or given, any gift or consideration whatsoever as an inducement or reward to obtain the contract, or any other contract with the Council.

24 **NOMINATED SUB-CONTRACTORS**

- 24.1 Where a sub-contractor or supplier is to be nominated to a main contractor the following provisions shall have effect.
- 24.2 Where the estimated amount of a sub-contract exceeds £25,000 then, unless the Town Clerk certifies that it is not reasonably practicable to obtain competitive tenders, tenders for the nomination shall be invited and dealt with in accordance with these Contract Procedure Rules as if they were for a contract with the Council.
- 24.3 A nominated sub-contractor must be willing to enter into a contract with the main contractor on terms which indemnify the main contractor against his own obligations under the main contract in relation to the work or goods included in the sub-contract.

25 **ENGAGEMENT OF CONSULTANTS**

- 25.1 In the event of the Council engaging the services of consultants, these Contract Procedure Rules will apply where relevant, and subject to approved exemptions set out in the Financial Regulations.

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