

CONTRACT STANDING ORDERS

SECTION 1 Interpretation, Compliance & Public Notice

This section contains a list of definitions and expressions used within Contract Standing Orders ("CSOs") to help you understand the terminology at the outset. The Contract Standing Orders ("CSOs") in this section cover compliance with the CSOs themselves and relevant legislation, the requirements for placing public notices (advertisements) and possible exemptions from having to do so

CSO 1 (SO 78) Definitions and Interpretations

Definitions

1.1 "**best value**" means the duty of the Council to make arrangements to secure continuous improvement in the way in which its functions are exercised, having a regard to a combination of economy, efficiency and effectiveness.

1.2 "**contract**" means a binding agreement made between two or more parties for the supply of goods or materials or for the execution of any works or the provision of any services which is intended to be enforceable at law.

1.3 "**consortium**" means two or more local authorities or public bodies acting jointly for the purpose of the purchase of goods, services or works.

1.4 "**Director of Law**" means the Director of Law and Performance Management.

1.5 "**EU procurement regulations**" means regulations in relation to public procurement made pursuant to the European Communities Act 1972, from time to time.

1.6 "**framework agreement**" means an agreement for a defined range of supplies, services or works, the terms of which are agreed through an initial competitive tendering exercise, and under which the contractor undertakes to enter into contracts for requirements called off as and when required.

1.7 "**joint commissioning**" means where the Council jointly with one or more local authorities or public bodies enters into a contract.

1.8 "**lowest cost**" in relation to a tender means the lowest price if payment is to be made by the Council and the highest price if payment is to be made to the Council and, in either case, refers to a tender which conforms to the Council's tendering requirements.

1.9 "**most economically advantageous tender**" means the most economically advantageous tender to the Council determined by criteria which may include price, quality, delivery, technical capacity etc.

1.10 "**person**" The expression "person" or "persons" shall include a firm, partnership, company or public authority

1.11 "**quotation**" means a formal offer to supply or purchase goods, or materials, execute works or provide services including consultancy at a stated price based on terms and conditions agreed with the supplier.

1.12 "**select list**" (sometimes also known as an approved list) means a list of suitable prospective contractors approved for the purposes of the supply of goods or services or the execution of works in accordance with the provisions of Contract Standing Order 4.

1.13 "**tender**" means a formal offer to supply or purchase goods, or materials, execute works or provide services including consultancy, at a stated price based on the County Council's terms and conditions

1.14 "**works**" means a contract involving building or civil engineering activities whether in the form of a specific service or in the form of a series of services leading to the completion of a work that has an economic or technical function

Interpretation

1.15 "**unavailability of Lead Cabinet Member**"- where there is a reference to a Lead Cabinet Member and the relevant Lead Cabinet Member is not available, another Lead Cabinet Member may act.

1.16 "**the cost of a contract**" - for the purpose of calculating the thresholds under these Standing Orders, the cost of a contract is the estimated total value payable by the Council to the contractor over the term of the contract, including allowable extensions. In the case of indefinite contract periods, the term of the contract is assumed to be 4 years.

1.17 **interpretation** - any dispute or difference as to the interpretation of Contract Standing Orders shall be determined by the Director of Law.

CSO 2 (SO 67) Compliance with Contract Standing Orders

2.1 Subject to Standing Order 2.2 below, Chief Officers **must** comply with these Contract Standing Orders every time they intend to enter into a contract on behalf of the Council. Chief Officers **must** also have regard to any related Codes of Practice including Procurement Codes as set out in supporting documents to these Contract Standing Orders.

Exceptions to Contract Standing Orders

2.2 As an exception to these Standing Orders, Chief Officers, after consultation with the relevant Lead Cabinet Member, may, on behalf of the Council set up, enter into or participate in:

2.2.1 a national, regional or local consortium;

2.2.2 a Government, Government agency or local authority framework agreement, or;

2.2.3 a joint commissioning arrangement with a local authority, or health agency.

Subject in all cases covered by Standing Order 2.2.1-2.2.3, to the Directors of Law and Corporate Resources being satisfied that:

(a) the arrangements are properly set up or constituted;

(b) any necessary legal provisions and risk assessments have been complied with, and;

(c) the terms and conditions of such an arrangement are those most economically advantageous to the Council.

Waiver of Contract Standing Orders

2.3 Proposals to waive the provisions of one or more Contract Standing Orders **must** be approved by the relevant Lead Cabinet Member after consultation with the Director of Law and the Director of CRD.

Legislation

2.4 Where there is a difference between the two, national and/or European Union legislation governing contract procedures override these Contract Standing Orders and must be complied with.

Compliance

2.5 These Contract Standing Orders **must** be adopted by any external contractors empowered to form contracts on behalf of the Council, and by any person (who is not an officer of the Council) required to supervise, or manage a contract on the Council's behalf.

Aggregation and valuation

2.6 Contracts **must** not be artificially separated either in structure or duration so as to avoid any Contract Standing Orders applying.

Supporting documents

- *Code of conduct for Employees;*
- *Financial Regulations;*

- *Tendering & Contracting Codes;*
- *Consultancy Code;*
- *ESCC Purchasing Manual.*

CSO 3 (SO 69 & 71) Public Notice

3.1 Subject to Standing Order 3.2 below, the Council **must** give public notice of its intention to enter into a contract and inviting applications from persons interested in tendering. The notice **must** give applicants a minimum of ten days in which to respond and **must** appear:

- a) in one local newspaper, or more if considered appropriate by the Chief officer; and
- b) in at least one relevant trade newspaper or journal*; and
- c) if required, in the Official Journal of the European Community.

**NB This requirement is satisfied by the use of any official subscription to an electronic public notice service.*

3.2 Tenders **must** normally be invited from all persons who have indicated a wish to tender. If it is not proposed to invite all to tender, the list of persons to be invited to tender shall be settled by the Chief Officer responsible for the contract, in consultation with the relevant Lead Cabinet Member.

3.3 Public notice is **not** required where:

- a) the estimated cost of a contract as defined under CSO1.17 is less than £50,000 (£100,000 in the case of a contract for works);
- b) a Select List is in place;
- c) in the opinion of the Chief Officer responsible for the contract and relevant Lead Cabinet Member, the goods or services to be supplied or the execution of works are of a specialist nature, and only a limited number of suitable persons who can supply are available;
- d) in the opinion of the Chief Officer and relevant Lead Cabinet Member, there is only one company who can properly supply the goods or services or execute the works;
- e) goods, services or works are obtained from a consortium or framework agreement of which the Council is a member or to which it has access;
- f) the goods, services or works required are exempt from the requirement for giving notice under the EU procurement regulations;

g) in the opinion of the Chief Officer and relevant Lead Cabinet Member, full tendering is inappropriate because of the developmental or trial nature of the goods, services or works to be provided.

Supporting documents:

- *Tendering & Contracting codes;*
- *ESCC Purchasing manual.*

SECTION 2 WORKING WITHIN SELECT LISTS

This section contains the rules for working within select lists. These are particularly lists of approved contractors who carry out building and construction works. They also cover providers of various services for the social services department. The section also indicates that use of framework agreements can be considered as an alternative to select lists.

CSO 4 (SO 70) Select Lists

4.1 Where the Chief Officer responsible for the contract in consultation with the relevant Lead Cabinet Member decides that a select list of approved contractors shall be maintained, at least four weeks before the list is compiled or reviewed notices inviting applications for inclusion on the list **must** be published in accordance with the requirements set out in Standing Order 3.1 (a) and (b) above. In addition, each person already included on any relevant list shall be asked whether they wish to remain on it.

4.2 Each list **must** be re-advertised at least every five years. Any necessary amendments including additions and deletions may be made in between where approved by the appropriate Chief Officer.

4.3 When the Council is entering into a contract for goods or for the execution of any works or the provision of any services in an area where a select list of approved contractors is maintained, the appropriate Chief Officer **must** send a written invitation to at least three persons from the list for that class of work to submit a tender. If less than three firms are invited to tender, then the appropriate Chief Officer **must** keep a record of the reasons for this with the project file.

4.4 The Chief Officer responsible for the contract may after consultation with the relevant Lead Cabinet Member, subscribe to and use an external vetted electronic supplier database as an alternative to the Council maintaining its own select list, subject to protocols issued from time to time by the Director of Law.

4.5 In the case of a select list of residential care homes or nursing homes registered under the Care Standards Act 2000 and regulated by the National Care Standards Commission, the Director of Social Services is not be required to invite tenders provided that:

- a) ordinarily the payments to be made under the contracts for the provision of such services do not exceed the maximum weekly amounts for the different client groups/type of care as agreed from time to time by the relevant Lead Cabinet Member, including individuals or groups with specialist care needs;
- b) in entering into such contracts the Director of Social Services shall so far as practicable having regard to client/carer wishes, locality, availability of places/services, spreading of business between Registered Providers, and such other factors that he may consider expedient, endeavour to contract with the Registered Provider providing such services at the lowest cost;
- c) where (i) the Director of Social Services is reasonably satisfied that there is only one approved supplier of such services due to the specialist care required or (ii) there is more than one provider of such specialist care and quotations have been received from at least two of them, he may authorise a contract in excess of the maximum weekly amount set in accordance with Standing Order 4.5.(a).

4.6 In the case of a select list of approved providers of home (domiciliary) care services, the Director of Social Services is not required to invite tenders in accordance with Standing Order 4.3, provided that:

- a) the payments to be made under the contracts for the provision of such services do not ordinarily exceed the maximum weekly amounts for the different client groups for residential care as agreed from time to time by the relevant Lead Cabinet Member;
- b) except where there is only one Approved Provider, the Director of Social Services obtains quotations from at least two of the approved providers of such services and contracts with the Approved Provider providing the services required at the lowest cost;
- c) where the Director of Social Services is reasonably satisfied that there is only one Approved Provider of such services due to the specialist care required, he may authorise a contract in excess of the maximum weekly amounts set in accordance with Standing Order 4.6 (a) above, and without having to obtain quotations.

4.7 A Chief Officer responsible for a select list, may after consultation with the relevant Lead Cabinet Member, discontinue the use of a select list where best value to the Council can be demonstrated, and replace this, using an appropriate tender procedure, with a framework agreement.

Supporting documents:

- *Tendering & Contracting Codes.*

SECTION 3 REQUIREMENT TO OBTAIN TENDERS

This section sets out clearly the various financial thresholds above and below which competitive quotations or tenders are normally required. It sets different thresholds for works in recognition of the need for more flexibility in that area:

CSO 5 Contracts not exceeding £5,000 (or £15,000 in the case of contracts for works) total value:

5.1 For contracts for works, supplies or service (including consultancy) with an estimated cost not exceeding £5,000 (£15,000 for contracts for works), the appropriate Chief Officer **must** obtain a single written quotation (or more than one where practicable) or place an order with a contractor under a framework agreement or use a consortium, where such arrangements have been put in place by the Council. Where a select list exists the quotation must be obtained from an approved contractor on the select list.

CSO 6 Contracts Exceeding £5,000 and NOT exceeding £50,000 [£100,000 for contracts for works] total value:

6.1 In the case of contracts with an estimated cost greater than £5,000 and not exceeding £50,000 (£100,000 in the case of contracts for works) the appropriate Chief Officer **must** obtain at least 3 written quotations, or place an order with a contractor under a Framework Agreement or Consortia, where such arrangements have been put in place by the Council. If 3 quotations cannot be obtained due to lack of suitable persons prepared to quote, the Chief Officer **must** keep a record of the reasons for this with the project file. Where a select list exists, the quotations must be obtained from approved contractors on the select list.

CSO 7 Contracts Exceeding £50,000 [£100,000 in the case of a contract for works] total value:

7.1 Contracts with an estimated value exceeding £50,000 (£100,000 in the case of a contract for works) **must** be let by competitive tender, using one of the procedures set out under CSO 8 below (save for the exemptions provided under CSO 3);

7.2 Where the estimated value of the Contract is in excess of the relevant EU threshold, the procedures under the EU procurement regulations **must** be followed;

7.3 The Council thresholds set out under Contract "CSOs" 5-7 above are reviewed annually by the Director of Corporate Resources who may vary them approximately in line with inflation.

Note Until 1 January 2004, the EU threshold for goods and services is £154,000 and for works is £3.8 million (goods, services and works being as defined by the EU procurement regulations).

Supporting document for CSOs 5-7:

- *Competitive Process Thresholds;*
- *Tendering & Contracting Codes;*
- *External Consultancy Code;*
- *Purchasing Manual;*
- *EU Procedures;*
- *Formal quotation & tendering documents-Procurement Library.*

SECTION 4 TENDERING PROCESS

This section describes the choice of three tendering procedures available—an Open procedure, a Restricted procedure or a Negotiated procedure and advises how to make that choice. It also sets out the procedure for delivery, opening and recording of tenders, and the choice of two methods for evaluation of tenders.

CSO 8 Choice of Tendering procedure

Where there is a requirement to competitively tender, there is a choice of 3 procedures as set out below:

8.1 Open Procedure

This may be used where there is no easily identifiable and stable marketplace. Public notice is required in accordance with Contract Standing Order 3, unless an exemption applies. Tenders are issued to all those expressing interest. Post-tender negotiation is only allowable as under Contract Standing Order 15.

8.2 Restricted Procedure

This may be used where there is an established marketplace and many competing companies. Public notice is required in accordance with Contract Standing Order 3, unless an exemption applies. A pre-qualification questionnaire is normally issued to all those expressing interest. An invitation to tender is issued to only those successful after pre-qualification. A minimum of 3 persons expressing interest **must** be invited to tender or if there are less than 3 suitable persons, the Chief Officer **must** keep a record of the reasons for this with the project file. Post-tender negotiation is only allowable as under Contract Standing Order 15.

8.3 Negotiated Procedure

This maybe used in cases where the Open or Restricted Procedures are not considered appropriate. The procedure is most likely to be used in cases where the requirement is difficult to fully specify, where there are only a small number of identified companies that can supply, or where best value is likely to be achieved. In any of those circumstances, a Chief Officer may use the Negotiated procedure in consultation with the Lead Cabinet member, and the Director of Law being satisfied that the process is appropriate. Public notice is required as under Contract Standing Order 3 unless an exemption applies. A pre-qualification questionnaire is

normally issued to all those expressing interest. An Invitation to Negotiate is only issued to those successful after pre-qualification.

Supporting documents:

- *Contracting & Tendering Codes.*

CSO 9 (SO 72 & 73) Delivery, opening and recording of tenders

9.1 Every invitation to tender **must** state:

- a) that all tenders with a pre-tender valuation of over £50,000 (£100,000 in the case of a contract for works) will be delivered in a sealed, plain envelope addressed to the Director of Law and bearing the words "Tender for " and the title of the contract, but without any name or mark indicating the sender; and
- b) that the Council does not bind itself to accept the most economically advantageous tender or lowest cost tender, or indeed, any tender.

9.2 Tender envelopes will remain unopened in the custody of the Director of Law until the time appointed for their opening.

9.3 All tenders will be opened together after the end of the time for tendering by one senior officer nominated by the Director of Law, and another officer. Such officers will be independent from the department tendering the contract.

9.4 All tenders received will be recorded.

9.5 Any tenders received after the end of the time for tendering or which contravene any provision of these Contract Standing Orders or any applicable tendering conditions or instructions will only be opened with the authority of the Director of Law after consultation with the relevant Lead Cabinet Member.

9.6 Any tender documentation, including Invitations to Tender/Negotiate and all tender responses may be transmitted and received electronically provided that the process conforms with any protocols issued from time to time by the Director of Law.

9.7 Quotations and tenders with a pre-valuation of under £50,000 (£100,000 in the case of a contract for works) may be delivered to and opened by the Chief Officer responsible for the contract, two people being present.

9.8 Contracts Registers

9.8.1 A manual or electronic register of all Contracts resulting from a tender entered into by the Council **must** be kept in each department by each Chief Officer. Such a register shall specify for each contract:

- the name of the contractor
- separately record whether the contracts is for goods, services or works
- a summary of the works to be executed or the supplies and services supplied
- the contract duration, the value or estimated value and where relevant, all payments against it.
- Include details of any capital retentions.

9.8.2 The registers **must** be open for inspection by any Member of the Council and to the public for information.

Supporting documents:

- *Tendering & Contracting Codes*

CSO 10 Evaluation

10.1 Where written quotations are invited for contracts valued below £50,000 (or £100,000 in the case of a contract for works), if there are no clear selection criteria in the documents used to invite tenders, then the bidder submitting the lowest price **must** be awarded any resulting contract.

10.2 For contracts valued over £50,000 (£100,000 in the case of contracts for works) and for all contracts governed by EU procurement regulations, a tender evaluation procedure based on the identification of the most economically advantageous tender ("MEAT") should be used, unless the Chief Officer responsible for the contract determines that a tender evaluation based on lowest cost is more appropriate.

Supporting documents:

- *Tendering & Contracting Codes.*

SECTION 5 REQUIREMENTS FOR CONTRACTS

This section covers acceptance of tenders, financial control of contracts and award of contracts. It also clarifies the position regarding use of essential contract conditions to lessen risk, post-tender negotiation when using the pen or Restricted procedure (see CSO 4), and the use of sub-contractors.

CSO 11 (SO 74) Acceptance of Tenders

11.1 Subject to the provisions of this Contract Standing Order, the relevant Chief Officer is empowered to accept the most economically advantageous tender, or the lowest cost tender, where such a contract award criterion is being used.

11.2 The Director of Law will maintain a record of tenders accepted and amendments agreed by Chief Officers under the powers given to them by these Contract standing Orders.

11.3 On being provided with details of errors of arithmetic discovered in his or her tender, a tenderer will be allowed, with the approval of the Director of Law, after the date fixed for receipt of tenders, and before acceptance of tenders only:

(a) to confirm without amendments or withdraw his or her offer before any tender for that contract is accepted; or

(b) to confirm or amend his or her offer in order to correct those errors.

Supporting documents:

- *Tendering & Contracting Codes.*

CSO 12 (SO 74) Control of contracts

12.1 Capital budgets

In the case of contracts to be financed from capital, authority to accept a tender is subject to any necessary Government approvals and borrowing authorisations having been received and the relevant Chief Officer being satisfied that the tender is within the department's capital programme budget. Significant variations **must** be reported to the relevant Chief Officer. In the case of building works, before accepting the tender the Chief Officer **must** take appropriate professional advice in accordance with guidelines which may be laid down from time to time, including requirements to comply with corporate property requirements.

12.2 Revenue budgets

In the case of works or services or the supply of goods or materials to be financed from revenue, all contracts and agreements **must** be covered by an approved revenue budget at the date of award. When contracts have a duration of more than one financial year, Chief Officers must ensure that the costs stemming from such arrangements can be accommodated within the estimates for the current and future years.

12.3 Financial Company Appraisals

Prior to the letting of a contract above £50,000 (£100,000 in the case of contracts for works), Chief Officers **must** ensure that an adequate technical and financial appraisal of the supplier has been undertaken in consultation with the Director of Corporate Resources, except where a select list is in operation.

12.4 Extensions to Contracts

Extensions to the contract period of a contract, other than those already provided for within the original public notice or contract, may be approved by the Chief Officer responsible for the contract, in consultation with the relevant Lead Cabinet Member, where best value to the Council has been demonstrated and subject to the Director of Law being satisfied that any

legal requirements have been complied with. This requirement does not apply to contracts under £50,000 (£100,000 in the case of contracts for works).

12.5 Performance Monitoring

Chief Officers responsible for relevant contracts **must** ensure that for all contracts over £50,000 (£100,000 for Works), appropriate management and performance monitoring mechanisms are in place.

Supporting document:

- *Financial Regulations for control of contract;*
- *Tendering & Contracting Codes.*

CSO 13 (SO 75) Contract Award

13.1 Every contract shall be in writing.

13.2 Every contract for more than £50,000 (£100,000 in the case of contracts for works) in value **must** be in a form approved by the Director of Law and will either be:

- a) sealed with the common seal of the Council; or
- b) signed on behalf of the Council by the Director of Law and another officer authorised in writing by him or two such officers authorised in writing by the Director of Law.

13.3 For contracts under £50,000 (£100,000 in the case of contracts for works) the relevant Chief Officers sign, or delegate authority to officers within their departments to do so.

Supporting documents:

- *Formal contract documentation Procurement Library.*

CSO 14 Risk management/Essential Contract Conditions

14.1 Each contract over £50,000 (£100,000 in the case of contracts for works) **must** contain mandatory contract conditions as specified by the Director of Law, unless exempted from doing so by that Director.

Supporting documents:

- *Standard/Mandatory Contract Conditions Procurement Library.*

CSO 15 (SO 74) Post-tender Negotiation

15.1 Following receipt of tenders, the relevant Chief Officer may wish to clarify or negotiate with the preferred bidder, that is, the one submitting the most economically advantageous tender (or where applicable the lowest cost tender if that award criterion is being used), or in the case of a single

tender, the only bidder. These clarifications or negotiations are to obtain improvements in terms of price, delivery or content and are subject to the following requirements:

- a) any such clarifications or negotiations **must** not alter the original specification except where the relevant Chief Officer considers that special circumstances exist that can be substantiated and recorded; and
- b) any such clarifications or negotiations after receipt of formal tenders and before the letting of a contract **must** have the authorisation of the appropriate Chief Officer and be undertaken in accordance with arrangements approved by the Director of Law and Director of Corporate Resources. Amendments, once agreed, **must** be put in writing by the tenderer and shall be signed by the tenderer.

15.2 The provisions set out in 15.1 above will not apply where the use of the negotiated procedure under the EU procurement regulations, or the Council's Negotiated Procedure as set out under Contract Standing Order 8.3 have been approved.

Supporting documents:

- *Tendering & Contracting Code.*

CSO 16 (SO 76) Nominated Sub-Contractors and Suppliers

16.1 This Contract Standing Order only applies where a sub-contractor is nominated to a main contractor.

16.2 Where the estimated cost of the sub-contract or of the goods or services to be supplied by the nominated supplier are £50,000 (£100,000 in the case of a contract for Works) or more, tenders will be invited unless the appropriate Chief Officer decides that it is not reasonably practicable to do so.

16.3 The Chief Officer **must** invite at least three tenders for the nomination. The terms of the invitation shall require an undertaking by the tenderer that if selected the sub-contractor will be willing to indemnify the main contractor against the sub-contractor's own obligations under the main contract in relation to the work or goods or services included in the sub-contract.

16.4 The Chief Officer, or a duly authorised officer, **must** nominate to the main contractor the person whose tender or quotation is successful.

Supporting documents:

- *Bespoke documentation from Property CRD or Contract Management Team, Transport and Environment.*