

# Appendix 2

## CONTRACT STANDING ORDERS

### 82. Definitions

The following definitions shall apply throughout these Contract Standing Orders (in alphabetical order):

<b>Approved List</b>	A list of contractors that meet the Council's minimum financial and technical criteria for specified types of services, supplies or works contracts.
<b>Chief Officer</b>	The Chief Executive, <del>Chief Operating Officer</del> and Strategic Directors .
<b>Collaborative Procurement</b>	Any arrangement between the Council and any other body under which the other body undertakes a procurement process with or on behalf of the Council.
<b><u>Contracts Finder</u></b>	<u>A web based facility operated by or on behalf of the Cabinet Office for advertising tenders.</u>
<b>Contracts Register</b> <del>Officer</del>	The <u>electronic register of contracts awarded by the Council and overseen by the Corporate Procurement Centre.</u> <del>officer appointed to maintain the contract register.</del>
<b>Contract Value or Estimated Value</b>	The contract's value or estimated value for the contract term excluding VAT.
<b>E-Auction Facility</b>	A web-based facility approved by the <del>Chief Legal Officer Director of Legal and Procurement</del> which enables the electronic submission of prices for a Tender.
<b>Electronic Tender Facility</b>	A web-based facility approved by the <del>Chief Legal Officer Director of Legal and Procurement</del> which enables the electronic despatch and receipt of Tender documents.
<b>Electronic Tender Time Box</b>	The feature within an Electronic Tender Facility which stores received Tenders and prevents viewing of them until after the appointed closing date and time.
<b>European Procurement Legislation</b>	The relevant EU Directives and corresponding UK Regulations <u>as amended or replaced from time to time</u> including the <u>Public Contracts Regulations 2015 and the Public Contracts Regulations 2006</u> <del>as amended or replaced from time to time.</del>

<p><b><u>EU Thresholds</u></b></p>	<p><u>The current EU thresholds under European Procurement Legislation for the following types of contracts are:</u></p> <ul style="list-style-type: none"> <li>• <u>in the case of contracts for public works, £4,322,012</u></li> <li>• <u>in the case of contracts for services or supplies, £172,514</u></li> <li>• <u>in the case of contracts for Schedule 3 Services, £625,050</u></li> <li>• <u>in the case of contracts for public works concession contracts, £4,322,012</u></li> </ul>
<p><b>Framework Agreement</b></p>	<p>An agreement for a specified term under which contracts for the provision of particular services, supplies or works can be entered into ("called off") on agreed terms.</p>
<p><b>High Value Contract</b></p>	<p>Any contract that exceeds the values stated for Medium Value Contracts (under which different thresholds apply for services / supplies and construction / works).</p>
<p><b>Low Value Contract</b></p>	<p>In the case of contracts for services (<u>including Schedule 3 Services</u>) or supplies: a contract with an estimated value over the life of the contract (including any period of extension(s) anticipated by the contract) of <u>between £20,000+5,000</u> and up to the amount which is the current <u>EU Threshold for services and supplies contracts under the European Procurement Rules</u> (which is currently £172,514).</p> <p>In the case of a contract for construction or works: a contract with an estimated value over the life of the contract (including any period of extension(s) anticipated by the contract) of <u>between £20,000+5,000 and</u> up to £250,000, provided that the contract is classified as a contract for works and not services by the European Procurement <u>Rules Legislation</u>.</p>
<p><b>Local Brent Provider</b></p>	<p>A party that provides services, supplies or works and that is based or has a local office situate in a postcode area falling within the London Borough of Brent.</p>
<p><b>Medium Value Contract</b></p>	<p>In the case of contracts for services (<u>including Schedule 3 Services</u>) or supplies:  a contract with an estimated value over the life of the contract (including any period of extension(s) anticipated by the contract) of between the amount which is the relevant <u>EU Threshold for services or supplies contracts under the European Procurement Legislation</u> (which is currently £172,514) and £250,000.</p> <p>In the case of a contract for construction or works, a</p>

	contract with an estimated value of between £250,000 and £500,000, provided that the contract is classified as a contract for works and not services by <del>the</del> European Procurement <a href="#">Rules Legislation</a> .
<b>Member</b>	An elected member of Brent Council.
<b>Monitoring Officer</b>	<del>Chief Legal Officer The Director of Legal and Procurement.</del>
<b>Official Order</b>	An order for services, supplies or works to the Council issued by an authorised officer using the Council's official order form.
<b>OJEU</b>	The Official Journal of the European Union.
<b>Online Market Place</b>	A web-based facility approved by the <del>Chief Legal Officer Director of Legal and Procurement</del> which enables the procurement of specified types of services, supplies or works contracts.
<b><a href="#">Schedule 3 Services</a></b>	<a href="#">Those social and other specific services listed in Schedule 3 of the Public Contracts Regulations 2015.</a>
<b>Tender</b>	An offer or bid or tender from a party to provide services, supplies or works to the Council including any offer, bid or tender which is subject to negotiation.
<b>Tender Acceptance</b>	An acceptance in writing of a Tender.
<b>Very Low Value Contract</b>	A contract or commitment with a value from £0 to <del>£250</del> ,000.

### 83. Contracts exempt from Contract Standing Orders

The following contracts are exempt from Contract Standing Orders:-

- (a) individual agency contracts for the provision of temporary staff (although it is mandatory to place such contracts through the Council's corporate agency staff arrangements, currently with Reed Specialist Recruitment Limited);
- (b) employment contracts;
- (c) contracts relating to an interest in land.

**84. General Requirements**

- (a) Every contract entered into by the Council shall be entered into pursuant to or in connection with the Council's functions AND shall be procured in accordance with all relevant domestic and European legislation and unless for good operational and/or financial reasons the Executive Cabinet (or, if appropriate, the General purposes Committee) agrees otherwise, with these Contract Standing Orders and the Council's Financial Regulations.
- (b) In addition to the powers of the Cabinet in paragraph 84(a) to grant an exemption from the requirement to procure in accordance with these Contract Standing Orders, the Chief Finance Officer is also able to grant such exemptions:
- (i) on grounds of extreme urgency
  - (ii) where the exemption sought is in relation to the requirement to obtain 3 written quotes under Standing Order 86(b).

The Chief Finance Officer shall only exercise his / her authority under this paragraph (i) following legal advice that there is no breach of domestic or EU law or the Council's own procedures in the exercise of the authority (ii) where there are good operational and / or financial reasons for doing so.

- (c) Chief Officers shall ensure in undertaking any contract procurement that:-
- (i) fair, transparent and auditable processes are followed at all stages;
  - (ii) tender exercises are conducted appropriate to the nature of the contract being procured;
  - (iii) all tenderers are treated equally and fairly;
  - (iv) these Contract Standing Orders are complied with; ~~and~~
  - (vi) ~~(v)~~ — the Contracts Database Register is kept updated at all times as set out in Standing Order 110; ~~and~~.
  - ~~(v)~~ (vii) Appropriate steps are taken to prevent, identify and remedy any conflicts of interest
- (d) Contract tendering procedures are contained in the Council's Contract Procurement and Management Guidelines which shall be updated and amended from time to time to comply with these Contract Standing Orders. Advice on any of the requirements of these Contract Standing Orders shall be sought from the Chief Legal Officer Director of Legal and Procurement or Chief Finance Officer as appropriate.
- (e) For the avoidance of doubt these Contract Standing Orders apply to:-
- (i) the appointment of consultants; and
  - (ii) the establishment of Framework Agreements.
- (f) Subject to paragraph (a) and (b) above, Standing Order 97 (mandatory Approved List and Online Market Place), all medium and high value contracts shall be entered into and procured in accordance with the formal tendering procedures set out in these Standing Orders.

**85. Partnership Arrangements and Collaborative Procurement**

- (a) No Partnership Arrangements may be entered into unless they are approved by the Chief Finance Officer and a formal agreement covering the arrangements is signed by the parties.
- (b) Any Partnership Arrangement or Collaborative Procurement which includes delegation of powers shall be approved by the Cabinet (or where relevant, Full Council).
- (c) Any Collaborative Procurement shall comply with these Standing Orders and Financial Regulations unless;
  - (i) agreed otherwise in writing by the Chief Finance Officer and the ~~Director of Legal and Procurement~~ Chief Legal Officer; or
  - (ii) in the case of a High Value Contract, the agreement of the Cabinet is obtained under Standing Order 84(a).

For the purposes of this Standing Order the contract value shall be calculated on the estimated value of the Council's part of the contract only.

- (d) Any agreement between the Council and one or more other body which includes any payment by the Council in respect of the costs of carrying out a Collaborative Procurement shall comply with these Standing Orders unless agreed otherwise in writing by the Chief Finance Officer and the ~~Director of Legal and Procurement~~ Chief Legal Officer.

**86. Contracts not subject to full tendering requirements**

- (a) Certain contracts as set out in this Standing Order listed below, are not subject to the full tendering requirements of these Contract Standing Orders but are subject to any other relevant parts thereof.
- (~~aab~~) No formal procurement procedures apply to Very Low Value Contracts apart from a requirement to secure best value. For Very Low Value Contracts, the best way to demonstrate best value is by seeking three quotes or using an Approved List (where one exists) or the Online Market Place, however this is not mandatory and it is open to a duly authorised officer to approve another procurement route. As with all Council procurement, there is a mandatory requirement to keep an auditable record to demonstrate compliance and value for money.
- (~~cb~~) Save where required by European Procurement Legislation, n No formal tendering procedures apply to Low Value Contracts ~~(as defined in Standing Order 82 above with different thresholds applying for works contracts as opposed to supplies and services contracts)~~ except that at least three written quotes must be sought and the quotes sought and/or obtained shall be recorded or alternatively the contract is procured through the Online Market Place. Where quotes are sought, advice must be sought from the Council's procurement officers about how to select the three organisations to be invited to quote and how to structure the quotation process. Unless the Council's procurement officers advise that it is not necessary or appropriate, all quotes shall be sought using the Electronic Tender Facility and at least one of the quotes shall be sought from a Local Brent Provider. In the case of Low Value Works Contracts valued at above the relevant EU T threshold for supplies or services contracts ~~under the European Procurement Rules~~ (currently £172,514), approval of the ~~Director of Legal and Procurement~~ Chief Legal Officer

is required to use a quotation process; if approval is not given then ~~such a contract requires the following of~~ a tender process under Standing Order 96 below ~~is required for such contract~~. Low Value Contracts do however require formal approval for award according to Standing Order 88(a) from a duly authorised officer within the relevant Council department.

- (de) Contracts which are procured using an Approved List or the Online Market Place in accordance with the rules prescribed pursuant to Standing Order 97, are not subject to full tendering requirements.
- (ed) Subject to the proviso below, no formal tendering procedures apply where contracts are called off under:
  - (i) a Framework Agreement established pursuant to these Standing Orders; or
  - (ii) a Framework Agreement established by another contracting authority, where call off under the Framework Agreement is approved by the relevant Chief Officer to include confirmation that there is budgetary provision for the proposed call-off contract PROVIDED that the ~~Director of Legal and Procurement~~ Chief Legal Officer has advised that participation in the Framework Agreement is legally permissible. Advice from the ~~Director of Legal and Procurement~~ Chief Legal Officer must be obtained each and every time a call off under another contracting authority's Framework Agreement is recommended by the relevant Chief Officer.
  - (iii) the Online Market Place (as detailed in Standing Order 97), where the call off is approved by the relevant Chief Officer to include confirmation that there is budgetary provision for the proposed call-off contract.

SAVE THAT any high value contract may only be awarded on the approval of the Cabinet as required by paragraph 2.5 of Part 4 of the Constitution.

- (fe) Subject to complying with any relevant parts of the European Procurement Legislation, Tenders need not be invited nor quotes sought:
  - (i) where for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the services, supplies or works may only be provided by a particular provider or where there is only one provider who would be able to provide the services, supplies or works required PROVIDED that advice is sought from the ~~Director of Legal and Procurement~~ Chief Legal Officer and in the case of High Value Contracts, approval is sought from the Cabinet (or, if appropriate, the General Purposes Committee); or
  - (ii) in cases of extreme urgency where there is an immediate danger to life or limb or property and only to the extent necessary to procure services, supplies or works necessary to deal with the immediate urgent situation PROVIDED that advice is sought from the ~~Director of Legal and Procurement~~ Chief Legal Officer; or
  - (iii) for contracts providing individual personal services such as individual care arrangements or individual special educational needs provision and for the avoidance of doubt this exemption does not apply to any framework agreements or call off contracts that will facilitate the award of individual contracts providing such personal services.

## 87. Provision of goods, services and works by the Council

- (a) The Local Authorities (Goods and Services) Act 1970 ("the 1970 Act") provides that local authorities may enter into contracts to provide goods and services to public bodies defined as such by the 1970 Act. Section 96 of the Local Government Act 2003 provides that local authorities may do for a commercial purpose anything which they are authorised to do for the purpose of carrying on any of their ordinary functions provided this power is exercised through a company within the meaning of Part 5 of the Local Government Act 1989. The general power of competence in the Localism Act 2011 may also authorise the provision of goods, works and services by the Council.
- (b) Before entering into arrangements under any of these provisions, officers must comply with the relevant requirements of Financial Regulation in Part 6 of the Constitution.
- (c) Authority to enter into arrangements under any of these provisions must be agreed by the Cabinet (or if appropriate the General Purposes Committee) where:
- (i) the contract value would exceed £150,000 per annum; or
  - (ii) the gross cost to the Council of providing the relevant goods, services or works under the contract is estimated to exceed £150,000 per annum calculating the full costs over the term of the contract (including any period of extension(s) anticipated by the contract);
  - (iii) where a company is to be set up for the purposes of the arrangements.
- (d) In all cases advice shall be sought from the [Director of Legal and Procurement Chief Legal Officer](#) and the Chief Finance Officer prior to entering into any such arrangement and/or prior to seeking approval by the Cabinet.

#### **88. Authority to go out to tender and enter into contracts**

- (a) Chief Officers have delegated to them power to invite expressions of interest, agree shortlists, invite Tenders, negotiate, award, and terminate contracts in accordance with paragraph 2.5, of Part 4 of this Constitution. No individual Member may enter into a contract on the Council's behalf.
- (b) Where approval to invite expressions of interest is required from the Cabinet (or if appropriate the General Purposes Committee or Pension Fund Sub-Committee) the Cabinet, the General Purposes Committee, or the Pension Fund Sub-Committee as the case may be, shall receive and consider a report setting out the pre-tender considerations specified in Standing Order 89 and shall give such approval or approvals as it considers necessary.
- (c) Where approval to award, or terminate a contract is required to be obtained or is in any event sought from the [Cabinet](#) (or the General Purposes Committee or Pension Fund Sub-Committee), the Cabinet, the General Purposes Committee or the Pension Fund Sub-Committee as the case may be, shall receive and consider a report setting out all relevant information necessary to enable it to give such approval or approvals as it considers necessary.
- (d) Chief Officers are responsible for ensuring that the relevant category manager in the Corporate Procurement Centre is notified of all proposed procurements [of or](#) exceeding [£205,000](#) in value. The role of the category manager under this



Standing Order 88 is to advise on appropriate procurement routes, ensuring that the service department takes legal advice as necessary.

#### 89. Pre-Tender Considerations

In procuring any contract, Chief Officers (or the Cabinet for High Value contracts) shall, where appropriate, consider the following matters prior to inviting Tenders:

- (i) the nature of the services, supplies or works contract to be tendered;
- (ii) the estimated value;
- (iii) the contract term and any period of extension(s) anticipated by the contract;
- (iv) the tender procedure to be adopted including whether any part the procedure will be conducted otherwise than by electronic means and whether there will be an e-auction;
- (v) the procurement timetable;
- (vi) the evaluation criteria and process;
- (vii) any business risks associated with entering the contract;
- (viii) the Council's Best Value duties;
- (ix) The Council's duty under the Public Services (Social Value) Act 2012 (duty applies only to Medium and High Value Contracts for services but should be considered for all contracts);
- (x) any staffing implications including TUPE and pensions; and
- (xi) the relevant financial, legal and other considerations.

#### 90. Estimated contract value

Chief Officers shall ensure that an estimated contract value is prepared and recorded prior to commencement of a tender exercise. Such estimate shall be calculated on the basis of the value of the contract over the life of the contract including any period of extension(s) anticipated by the contract whether or not a one off service, supply or work. Where a contract has no fixed term the value of the contract shall be calculated as if the term of that contract was 48 months.

#### 91. ~~Small Lots~~

~~Chief Officers shall consider whether a contract should be subdivided into lots and if a decision is decided not to subdivide into lots, shall record the reason for such decision in writing. Contracts must not however be subdivided into lots to avoid competitive tendering. The estimated value of contracts split into lots shall be calculated using the total value of all lots. Contracts must not be split into lots to avoid competitive tendering.~~

#### 92. Procurement by consultants

Where consultants are appointed to undertake tendering on the Council's behalf they shall be instructed to comply with Contract Standing Orders and to refer to the Contract Procurement and Management Guidelines as appropriate. No consultant shall make a decision as to whom to award a contract nor enter into contracts on the Council's behalf. Appropriate arrangements shall be implemented to monitor any procurement managed by consultants.

#### 93. Appointment to the Evaluation Panel

For High Value Contracts the ~~Director of Legal and Procurement~~ Chief Legal Officer and the Chief Finance Officer shall, if he/she considers it appropriate, be part of or appoint a representative to the evaluation panel or shall advise the panel as he/she sees fit.

#### 94. Prior Information Notice

Chief Officers should ensure that a Prior Information Notice is published in OJEU as soon as possible after the commencement of each financial year detailing the intended total procurement for the year for services, supplies and works contracts to be tendered which are subject to European Procurement Legislation.

#### 95. Inviting Tenders for Contracts at or over ~~Subject to Full~~ EU Rules ~~Thresholds~~

(a) Where a services ~~(Part A services)~~, supplies or works contract has an estimated value is above in excess of the EU threshold, then Tenders shall be invited in accordance with European Procurement Legislation using the open, restricted, ~~negotiated competitive procedure with negotiation, or~~ competitive dialogue, innovative partnership or negotiated (applicable to concession contracts only) procedure by placing a notice in OJEU no later than any other advertisement placed in any other publication. An advertisement for such Tender will also be placed on Contracts Finder following the placing of the notice on OJEU.

(b) Where a contract for Schedule 3 Services has an estimated value in excess of the EU Threshold, then Tenders may be invited using procedures outlined in paragraph (a) above or such additional procedures as are consistent with European Procurement Legislation.

#### 96. Inviting Tenders for Contracts for Part B Services and Contracts not Subject to below EU Rules ~~Thresholds~~

(a) Where a contract is ~~for a Part B service or is~~ below the EU threshold, then Tenders shall be invited in accordance with:-

(i) any requirements in the European Procurement Legislation relating to Part B Services below EU Threshold contracts, if appropriate;

(ii) these Contract Standing Orders; and

(iii) the requirements of either (b) or (c) below:-

#### (b) Single Stage Tender

(i) Tenders shall be invited by way of public notice published on the London Tenders Portal and by such other additional means as is considered appropriate, stating the nature of the contract being tendered and stating the last date when Tenders will be accepted, which shall not normally be less than 21 days after the date that the notice was first published. The estimated value of the contract may also be included. Information about the tender shall also be placed on Contracts Finder.

(ii) Where relevant to the subject matter of the procurement and proportionate, suitability assessment questions may be asked in order to ensure that the person or body meets the Council's requirements or minimum standards of suitability, capability, legal status or financial standing.

#### (c) Two-Stage Tender

For Medium Value Contracts and High Value Contracts for works or Schedule 3 Services that are below EU Thresholds, in addition to a Single Stage Tender process, tenders may also be invited as follows:

- (i) Expressions of interest shall be invited by public notice published on the London Tenders Portal and by such other additional means as is considered appropriate, stating the nature of the contract being tendered stating the last date when expressions of interest will be accepted which shall not normally be less than 21 days after the date that the notice was first published. Information about the tender shall also be placed on Contracts Finder.
- (ii) Persons or bodies wishing to express an interest shall be sent a pre-qualification questionnaire to be completed and returned to the Council by the date specified in the notice.
- (iii) The response to the pre-qualification questionnaire shall be used to evaluate whether the person or body meets the Council's minimum technical capacity and financial standing requirements and has relevant experience, and whether they should be included in a shortlist.
- (iv) Tenders shall be invited from those persons or bodies who have been included in the shortlist.

#### **97. Approved Lists and Online Market Place**

- (a) The Council has agreed the use of a corporate Approved List. The Director of Legal and Procurement Chief Legal Officer in consultation with the Chief Finance Officer may prescribe the rules on how the Corporate Approved List shall be compiled, used, monitored and reviewed and may amend such rules periodically.
- (b) The use of the corporate Approved List shall be mandatory for all Low Value Contracts for services and supplies and for all Low and Medium Value contracts for works where a relevant corporate Approved List category exists, unless an exemption is granted pursuant to the rules prescribed under (a) above.
- (c) The Council has agreed the use of a Small Works and Services Approved List. The Director of Legal and Procurement Chief Legal Officer in consultation with the Chief Finance Officer may prescribe the rules on how the Small Works and Services Approved List shall be compiled, used, monitored and reviewed and may amend such rules periodically.
- (d) The use of the Small Works and Services Approved List shall be mandatory for all Low Value Contracts for services supplies and works where a relevant Small Works and Services Approved List category exists, unless an exemption is granted pursuant to the rules prescribed under (c) above.
- (e) The Council has agreed the use of an Online Market Place. The Director of Legal and Procurement Chief Legal Officer in consultation with the Chief Finance Officer may prescribe the internal rules on how the Online Market Place shall be used, monitored and reviewed and may amend such rules periodically.
- (f) The Online Market Place shall consist of:
  - (i) a contract or Framework Agreement established pursuant to these Standing Orders; or

- (ii) a Framework Agreement established by another contracting authority, PROVIDED that the ~~Director of Legal and Procurement~~ Chief Legal Officer has advised that participation in the Framework Agreement and inclusion on the Online Market Place is legally permissible.

#### 98. The Invitation to Tender

- (a) The invitation to tender shall include the following details:-
  - (i) a description of the services, supplies or works being procured;
  - (ii) whether the Council is of the view that TUPE will apply;
  - (iii) the tender timetable including the tender return date and time, which must allow a reasonable period for applicants to prepare their Tenders;
  - (iv) a specification and instructions on whether any variants are permissible;
  - (v) the Council's terms and conditions of contract;
  - (vi) the evaluation criteria including either weightings or the order of importance;
  - (vii) pricing schedules, if appropriate, and instructions for completion;
  - (viii) whether the tenderer is required to price separately if the tenderer were required to offer a ~~comparable~~ appropriate pension provision and/or parent company guarantee and/or a performance bond;
  - (ix) form and contents of method statements, if any, to be provided;
  - (x) ~~whether or not confirmation~~ Tenders are to be submitted electronically unless not possible or appropriate;
  - (xi) the rules and method for submitting Tenders;
  - (xii) where Tenders are to be received electronically via the Electronic Tender Facility, a requirement that tenderers submit a signed hard copy of the form of tender, undertakings and any other original documentation upon request;
  - (xiii) whether or not an e-auction will be conducted; and
  - (xiv) any further information which will inform or assist applicants in preparing their Tenders.
- (b) Except in the case of electronic tendering the invitation to tender shall state that no Tender will be considered unless contained in a plain sealed envelope and endorsed "Tender" followed by the subject to which it relates. In all cases the invitation to tender shall specify whether and, if so, to what extent, the terms of the contract or any part specified will be subject to negotiation between the parties.

#### 99. Form of Tender

- (a) All Tenders shall be required to be submitted on the Council's form of tender which shall include the following details:

- (i) a statement that the Council will not be bound to accept any Tender;
  - (ii) a section where the tenderer shall state whether their Tender is priced on the basis of TUPE applying or not;
  - (iii) except where permitted by European Procurement Legislation~~in the case of the negotiated contracts~~, a statement that formal acceptance of the Tender by the Council will, until such time as a written contract can be executed, bind the parties into a contractual relationship; and
  - (iv) except in the case of an e-auction, the price and whether this would be different if the tenderer were to offer a comparable pension and/or a parent company guarantee and/or a performance bond.
- (b) Except in the case of electronic tendering, no Tender shall be considered unless it is contained in a plain sealed envelope and endorsed "Tender" followed by the subject to which it relates. In the case of electronic tendering, Tenders must be submitted and opened in accordance with the requirements of Standing Order 101.

#### **100. Receipt and Opening of Tenders**

Except in the case of electronic tendering via an Electronic Tendering Facility for which the rules in Standing Order 101 shall apply, the receipt and openings of Tenders shall be conducted as follows:

- (a) All High Value Contract Tenders shall be addressed to the Council's Democratic Services Manager and the Tender shall remain in the custody of the Democratic Services Manager until the time appointed for its opening.
- (b) High Value Contract Tenders shall be opened and Tender details recorded by an authorised representative of the Democratic Services Manager and at least one other officer.
- (c) Medium Value Contract Tenders shall be addressed to the relevant Chief Officer and the Tender shall remain in the custody of the Chief Officer until the time appointed for its opening.
- (d) Chief Officers and the Head of Executive and Member Services shall make appropriate arrangements for the receipt, storage and opening of Tenders by an officer of appropriate seniority which ensures that each tenderer is treated fairly and equally and ensures probity.

#### **101. E-Tendering and E-Auctions**

The following rules apply to the use of an Electronic Tender Facility and/or an E-Auction Facility regardless of the value of the contract being procured:

- (a) Invitations to tender may be despatched and Tenders received by electronic means via an Electronic Tender Facility. Except in the case of e-auctions no other form of electronic tendering shall be permissible. All e-tendering must comply with European Procurement Legislation where applicable.
- (b) Tenders received electronically via the Electronic Tender Facility must be held in an Electronic Tender Time-Box until after the appointed closing

date and time.

- (c) Tenders held in an Electronic Tender Time Box must all be opened at the same time by an authorised officer in the Corporate Procurement Unit after the appointed closing date and time for the Electronic Tender Time Box has passed and the Tender details recorded.
- (d) Where any original Tender documentation is to be submitted in hard copy instead of electronically as part of the tender process using an Electronic Tender Facility, such documentation shall be addressed to the Head of the Corporate Procurement Unit and the Tender documentation shall remain in the custody of the Head of the Corporate Procurement Unit until the time appointed for its opening. At the time appointed for the opening of Tenders held in the Electronic Tender Time Box, the hard copy Tender documentation shall be opened and the details recorded by an authorised representative of the Head of the Corporate Procurement Unit and at least one other officer.
- (e) In appropriate cases the submission of prices or values of quantifiable elements for a Tender may be conducted by e-auction using an E-Auction Facility. An E-Auction Facility may be used in conjunction with an Electronic Tender Facility.
- (f) Tenders conducted by e-auction must comply with any specific European Procurement Legislation where applicable and unless used in conjunction with an Electronic Tender Facility, must follow the usual process for the invitation, submission and evaluation of Tenders (including Standing Order 100) except that the submission of prices and/or values may occur via an online auction.
- (g) Except with the prior written approval of the Chief Finance Officer, electronic tendering may only be undertaken using the Council's Electronic Tender Facility or E-Auction Facility operated by the Corporate Procurement Unit.
- (h) Where tendering has been conducted by electronic means, Chief Officers shall ensure that signed hard copies of the form of tender, and where appropriate, the parent company guarantee undertakings and performance bond undertakings are obtained from the successful tenderer prior to award of contract.

## 102. Late Tenders

- (a) Late Tenders shall not be considered except in special circumstances and only then if no other Tenders have been opened and only with the prior written approval of the Chief Executive or the Monitoring Officer on receipt of a written request specifying the special circumstances and why acceptance of a late Tender is justified. A record of any such approval shall be kept with the record of Tenders received.
- (b) Where a late Tender is received in paper form, or partly in paper form, it will be opened for the sole purpose of identifying the applicant and will be returned to them immediately save where the late tender is accepted in accordance with Standing Order 102(a) above
- (c) If Tenders are received electronically via an Electronic Tender Facility or by an E-Auction Facility, then if the Facility will still accept the submission of tenders after

the appointed closing date and time for the submission of Tenders it will automatically flag late Tenders as "late". Late Tenders flagged as such may only be accepted in accordance with Standing Order 102(a) above. However once other tenders have been opened on the Facility then no late Tenders can be accepted.

### 103. Record of Tenders and Contracts

- (a) The relevant Service Area Director shall maintain a record of all Tenders invited and received by them, of all contracts entered into and Framework Agreements concluded on behalf of the Council and shall record the reasons for awarding the contract to or concluding a Framework Agreement with a tenderer and the reasons for non-acceptance of a Tender or the rejection of a contractor who has not been included in a Tender short list or Approved List.
- (b) For contract award procedures conducted by electronic means, appropriate information shall be kept to document the progress of the procedure.

### 104. Tender Evaluation

- (a) Tenders subject to European Procurement Legislation shall be evaluated in accordance with the relevant regulations and the instructions to tender. All other Tenders shall be evaluated in accordance with the criteria and procedures set out in the invitation to tender. In both cases Tenders shall be evaluated in accordance with these Standing Orders save where there is a conflict with any European Procurement Legislation in which case that legislation shall prevail.
- (b) Tenders for all contracts ~~(except for works, supplies or energy supply contracts where lowest price was pre-determined to be the appropriate basis)~~ shall be evaluated and awarded on the basis of the most economically advantageous offer to the Council. The most economically advantageous offer to the Council will be determined using a combination of both quality and price evaluation criteria (except for works, supplies or energy supply contracts where price alone may be the sole evaluation criterion).

### 105. Departure from Tender Documents

- (a) Subject to paragraph (b) below where the Council has included non-negotiable terms and conditions with its instructions to tenderers then Tenders may only be accepted on those terms unless any revisions are notified to all tenderers prior to the tender return date.
- (b) Where contract terms and conditions are non-negotiable then no variations to them may be made after Tenders are received without the prior written approval of the Director of Legal and Procurement Chief Legal Officer.
- (c) Post-tender negotiations are only permissible where the instructions to tender specified the areas to be subject to negotiation and where this is permitted by in the case of contracts which are subject to European Procurement Legislation only where the contract was advertised pursuant to the EU negotiated procedure. In all other cases only clarification points or ambiguities may be raised with tenderers.

### 106. Bonds and Guarantees

Chief Officers shall ensure that sufficient security for the due performance of High Value Contracts is taken and for other contracts where such security is considered be in the best interests of the Council.

#### 107. Notification of Tender Decision, Standstill Period, Debriefing and Acceptance

- (a) Subject to the specific exceptions in the European Procurement Legislation, where the Contract is subject to the full application of the European Procurement Legislation (being a ~~Part A~~ Services contract, public works contract, public supplies contract or Framework Agreement above the relevant EU Threshold) a mandatory standstill period of at least 10 calendar days must be observed between notifying all tenderers in writing of the award decision and the actual award of contract. The standstill period shall commence on the day after the written award notification is sent to all tenderers and the written notification must comply with the requirements of the European Procurement Legislation. If an unsuccessful tenderer requests further information, such information must be provided in accordance with the European Procurement Legislation.
- (b) If a legal challenge to the procurement process or award decision is brought during a mandatory standstill period, the contract must not be awarded and tender acceptance must not be communicated to the successful tenderer without the prior written approval of the ~~Director of Legal and Procurement~~ Chief Legal Officer.
- (c) Tender acceptance must not be communicated to the successful tenderer until after the expiry of any mandatory standstill period. Where Standing Order 107(a) does not apply, tender acceptance shall be communicated to the successful tenderer as soon as possible ~~and where possible within 5 working days of the decision being made but subject to any relevant call-in provisions.~~ Tender acceptance must be in writing and as a minimum must detail the date of the decision and the decision-maker.

#### 108. Contract Award Notice

Chief Officers shall ensure that a contract award notice is published in OJEU within 4830 days of the award of any contract where required by European Procurement Legislation or alternatively in the case of dynamic purchasing systems, ensure that grouped notices are sent within 30 days of the end of each quarter.

#### 109. Letters of Intent

Letters of intent shall only be used as follows:

- (a) where the Council's form of tender has not included a statement that until such time as a formal contract is executed the Council's written acceptance of a Tender shall bind the parties into a contractual relationship; or
- (b) exceptionally where a contractor is required to provide services, supplies or works prior to written acceptance by the Council and only then with the prior written approval of the Monitoring Officer.

#### 110. Contracts Register

- (a) Chief Officers shall ensure that A register of all contracts placed awarded by the Council to the value of £205,000 or more over the term of the contract shall be entered on the Contracts Register maintained by the



~~Contract Database Officer within the Corporate Procurement Centre. Such~~ The Contracts Register shall for each contract specify the name of the relevant Council's Service Unit, the contractor, the services, supplies or works to be provided, the contract value and contract term and where relevant any provisions for extension. Details of all such contracts awarded must be entered on the Contracts Register ~~reported to the Contract Database Officer~~ within two weeks of award and in the required format.

- (b) Chief Officers shall also ensure that for all contracts on the ~~database~~ Contracts Register, all contract extensions and variations, early terminations, assignments and novations are entered on the Contracts Register and notified ~~to the Contract Database Officer and~~ to the relevant category manager in the Corporate Procurement Centre.

### 111. Contract Terms and Conditions

Chief Officers shall ensure that contracts are drafted as appropriate to the nature of the services, supplies or works to be provided and contain provisions to protect the Council's overall interest. Advice shall be sought from the Chief Legal Officer ~~Director of Legal and Procurement~~ as appropriate.

### 112. Extension and Variation of Contract

- (a) Contracts subject to European Procurement Legislation may be extended in compliance with relevant legislative provisions. Contracts may be extended in accordance with the provisions for extension contained in the contract if the parties agree and if the relevant Chief Officer is satisfied that the extension will achieve best value and is reasonable in all the circumstances. Any such extension that will last for more than one year shall be notified to the Chief Legal Officer ~~Director of Legal and Procurement~~ and the Chief Finance Officer. All extensions (of any duration) shall be notified to the Contracts Register Officer.
- (b) Retendering of contracts shall be timetabled to ensure handovers can be effected at the end of the contract term. Where any retendering is delayed or is unsuccessful then temporary arrangements may be agreed by the relevant Chief Officer.
- (c) Any temporary contractual arrangements necessary to cover periods between a contract expiring and a new contract commencing shall be kept to a minimum term possible and retendering shall be commenced or re-commenced as soon as is reasonably possible.
- (d) Chief Officers have delegated to them power to extend, vary or renegotiate contracts in accordance with paragraph 2.5 of Part 4 of this Constitution. Where approval to extend, vary or renegotiate a contract is required to be obtained or is in any event sought from the Cabinet (or the General Purposes Committee or Pension Fund Sub-Committee) the ~~Executive Cabinet~~, the General Purposes Committee or the Pension Fund Sub-Committee as the case may be shall receive and consider a report setting out all relevant information necessary to give such approval or approvals as it considers necessary.

### 113. Early Termination of Contract

High Value Contracts may only be terminated by the ~~Cabinet~~, the General Purposes Committee or the Pension Fund Sub-Committee as appropriate. Medium Value Contracts may only be terminated:

- (a) by agreement between the Council and the Contractor; or
- (b) in accordance with the termination conditions of the contract

and provided that in either case the financial and legal implications or other relevant circumstances have been taken into account.

#### **114 Assignment and Novation of Contract**

- (a) Contracts may be novated or assigned provided that the novation or assignment would not breach European Procurement Legislation. Chief Officers have delegated to them the power to novate or assign contracts pursuant paragraph 2.5, of Part 4 of this Constitution provided that the novation or assignment does not substantially alter the terms and conditions of the contract and provided that the relevant Chief Officer is satisfied that the new contractor meets certain standards
- (b) Where approval to novate or assign a contract is required to be obtained or is in any event sought from the Cabinet (or the General Purposes Committee or Pension Fund Sub-Committee) the Cabinet, the General Purposes Committee or Pension Fund Sub-Committee as the case may be shall receive and consider a report setting out all relevant information necessary to give such approval or approvals as it considers necessary.