

Procedures for Tenders and Contracts

1.0 General

- 1.1 These procedures apply to all contracts, including arrangements for the carrying out of works, the supply of goods and services and the acquisition and disposal of assets. These procedures must be read in conjunction with the Statement of Minimum Standards and any procurement guidance notes issued by the Head of Business Strategy & Support Services.
- 1.2 Codes of Conduct dealing with Interests of Members and Officers apply to all contracts.
- 1.3 The Schools' Fair Funding Scheme (Scheme of Delegation) governs the management by each school of its delegated and devolved budget as determined in Section 48 of the School Standards and Framework Act 1998.

2.0 Quotation and Tendering Procedures

- 2.1 Apart from particular types of contract specified in section 3, the minimum required numbers of tenders or quotations from appropriate contractors for a given estimated value of contract are:

- Above £1,000 and up to £2,500 two oral quotations;
- Above £2,500 (£5,000 for works) and up to £10,000, three written quotations;
- Above £10,000 and up to £50,000, three formal quotations to be submitted in writing by a specified date and time and based on a written specification and evaluation criteria;
- Above £50,000 and up to EU thresholds, four tenders;
- Over EU thresholds, five tenders.

The values are for single items or groups of items, which must not be disaggregated artificially.

The sterling equivalents of EU thresholds (net of VAT) are £156,442 from 1/1/10 for supplies and Part A services and £3,927,260 from 1/1/10 for works. The sterling equivalents are changed on 1 January of each even-dated year, and notified to the Chief Executive. The Head of Business Strategy & Support Services will advise Heads of Service of these changes.

- 2.2 Where quotations apply, they should be sought from contractors selected from a standing list where it exists but if not from suitable contractors or through open competition.
- 2.3 Where tenders are required, Heads of Service have a choice of tendering procedures. For Part B services and for contracts up to EU thresholds, contractors may be selected from a standing list. Where there is no standing list, and for contracts over EU thresholds, appropriate advertisement must be undertaken inviting suitable contractors to express an interest in tendering. Tenders may then be invited from either all who respond expressing such an interest (open competitive tendering) or from a selection of suitable contractors who have expressed an interest (selective tendering). For selective tendering, a maximum of eight tenders may be obtained.
- 2.4 If selection is to be from standing lists, arrangements for standing list compilation, maintenance, review and use must be approved in advance by the County Solicitor.

Procurement Notification Process

- 2.5 Staff planning to carry out any procurement exercise with a value of £10,000 or more must submit an electronic procurement notification form to the Head of Business Strategy & Support Services. This will be used to create an initial entry in the Contracts Database.

Appropriate Advertising

- 2.6 All tenders will be advertised on the Council e-tendering system, but not before any European Union requirements for OJEU notice where an OJEU notice is required.
- 2.7 For tenders expected to exceed EU thresholds, advertisements must also be placed in OJEU (the Official Journal of the European Union) and must follow EU procurement requirements with particular regard to be given to the timescale for such tenders.
- 2.8 Any quotation following the open competition procedure will be advertised on the Council e-tendering system. In the case of such quotations, the Head of Service will determine, if further advertising in relevant local newspapers and trade publications is required.
- 2.9 The Head of Business Strategy & Support Services and Heads of Service will jointly ensure that the e-tendering system website address is publicised and potential contractors are aware of the Council's contracts opportunities advertising policy.

Selective Tendering

- 2.10 After the end of the period specified in the advertisement, invitations shall be sent to at least the minimum number of applicants. Heads of Service shall select the relevant tenderers, and the Service Cabinet Member shall approve the tenderers for contracts estimated to exceed £250,000. If fewer than the minimum number have applied and are considered suitable, invitations shall be sent to all such applicants.

Invitation to Tender

- 2.11 Every invitation to tender must specify that the Council e-tendering system will be used to issue and receive tender documentation. The invitation must state the date and time by which the tender must be received by the e-tendering system and that the tender will be held in the secure area of the e-tendering system and cannot be accessed until after the deadline. Adequate time must be allowed for the preparation and return of tenders ensuring compliance where appropriate with EU requirements. Any exceptions to using the e-tendering system must be approved by the Head of Business Strategy & Support Services.
- 2.12 In the case of formal quotations (i.e. above £10,000 and up to £50,000) the e-tendering system may be used. If paper processes are used, the Invitation must state the place, date and time by which the quotation must be returned. Adequate time must be allowed for their preparation and return.

Certification notice by Tenderers

- 2.13 Tenderers shall certify and give undertakings that:
- the tender is genuine and intended to be competitive;

- they have not fixed or adjusted the amount of the tender by or under or in accordance with any agreement or arrangement with any other person*;
- they have not done and will not do, at any time before the time and date specified for the return of the tender, any of the following:
 - inform any person* the amount or approximate amount of the proposed tender, except where the confidential disclosure of the approximate amount of the tender was necessary to obtain insurance premium or other quotations necessary for tender preparation;
 - enter into any agreement or arrangement with any other person* with the aim of preventing tenders being made or as to the amount of another tender or the conditions on which the tender is made;
 - offer to pay or give or agree to pay or give any sum of money or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender for the Council any of the actions specified and described in this section;
 - cause or induce any person to do any of these things.

*outside the consortium if a consortium tenderer, or outside the group.

Receipt, Custody and Opening of Tenders and Formal Quotations

- 2.14 The Council e-tendering system will record the date and time of receipt of all tenders. All formal quotations must be marked with the date and time of receipt and the initials of the receiving officer, and recorded. Any tender or formal quotation received after the specified time shall be recorded as such but must not be considered.
- 2.15 Tenders shall be opened at one time and in the presence of at least two officers who shall be independent of each other and shall sign a complete record of all tenders opened, showing the date and time of opening and the value of each tender.

Use of e-auction functionality

- 2.16 An e-auction process may form part of the overall tender process. The Head of Business Strategy & Support Services must approve any proposal to use this process, and such approval will include consideration of all software, systems and procedures to be used. The invitation to tender must state that an e-auction will form part of the tender process.

Acceptance of Single Quotation or Tender Received

- 2.17 This section deals with situations where either a single quotation of tender is received. For contracts up to £10,000 the Service Director will determine whether or not to accept the quotation. For contracts over £10,000, the Head of Business Strategy & Support Services and the Head of Service shall jointly consider whether or not, in their professional judgement, best value would be obtained. If in their view it would, where the estimated value of the contract is over £50,000, the matter must be referred to the Service Cabinet Member for consideration: otherwise, the Head of Service may accept the tender. If in their view value for money would not be obtained, or if there is any doubt, the tendering exercise should be repeated or referred to the Service Cabinet Member for consideration.

Financial Provision for Contracts

- 2.18 Where tenders or quotations received vary from the approved estimate, the Head of Service must identify funding for any increase. Where the increase exceeds the greater of 5% or £25,000, the funding must be approved by the Chief Finance Officer before awarding the contract. Approval of the Cabinet Member whose remit includes Finance or Resources must also be obtained before awarding the contract where the variation exceeds either:

- (a) £100,000; or
- (b) both 5% of the estimate and £25,000.

Maintaining the Contracts Database

- 2.19 Upon the award of a contract with a value of £10,000 or more, the Heads of Service will update and complete the entry in the Contracts Database.

Exemption from the Tendering Process

- 2.20 Where the subject matter of a contract is of a specialised nature with only a limited number of possible contractors, the Service Director shall submit a written report requesting an exemption from normal tendering rules to the Head of Business Strategy & Support Services who, following consultation with the Cabinet Member whose remit includes Procurement, may determine such requests in line with the provisions of Part III of this Constitution. This exemption does not apply to tenders subject to the European Procurement Regulations.

3.0 Particular Types of Contract Acquisition of Property

- 3.1 In order to ensure compliance with capital rules, Heads of Service must obtain approval of the Cabinet Member whose remit includes Finance or Resources before giving instructions for property acquisition to NPS (SW Ltd). The arrangement and terms of all contracts for the acquisition of land or buildings and for property leases must be in line with the Property Transaction process approved by the Council's Executive on 15 January 2008.

Social Care Contracts

- 3.2 The purchasing of community, residential or nursing care or other contracts for personal care of individuals may be treated as specialised contracts in which case the Quotation and Tendering Procedures described above may not apply. All such contracts must be in compliance with the Code of Practice for Social Care Contracts. For these contracts a tender or quotation obtained from a single contractor may be accepted subject to approval as outlined below:

- below £100,000 - approval as outlined in the Code of Practice for Social Care Contracts;
- above £100,000 and up to £250,000 - approval by the Strategic Director and the Chief Finance Officer;
- above £250,000 – Service Cabinet Member and Cabinet Member whose remit includes Finance or Resources.

NB: A copy of the Code of Practice for Social Care Contracts appended to these rules.

Framework and Joint Procurement Arrangements

- 3.3 Framework Agreements will be established in accordance with these Standing Orders. Framework Agreements set up by government offices may be used after

consultation with the Head of Business Strategy & Support Services. The relevant Head of Service is responsible for the performance management of the framework agreements.

- 3.4 Joint procurement arrangements with other Local authorities or public bodies may take place where it represents Best Value. The Head of Business Strategy & Support Services must be notified at the start of the procurement of all such proposed arrangements irrespective of whether the County Council is acting as the lead authority.

Nominated Sub-Contractors and Suppliers

- 3.5 Unless a sub-contractor is subject to an existing County Council framework contract or the sub-contract type is covered elsewhere in this section, where a sub-contractor or supplier is to be nominated to a main contractor, tenders shall be invited from the minimum number of tenderers or all such persons if fewer than the minimum number of sub-contractors or suppliers are considered suitable. Tenders need not be invited if, in the opinion of the Head of Service, it is not reasonably practicable to obtain competitive tenders and the opinion is recorded on the contract file.

- 3.6 All invitations to tender shall require an undertaking by the tenderer that if selected he/she will 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 works, goods or services included in the sub-contract.

- 3.7 The Head of Service shall nominate to the main contractor the person whose tender in his opinion provides the best value; provided that where the tender is other than the lowest received the circumstances shall be reported to the Service Cabinet Member.

Disposal of Assets

- 3.8 All vehicles, plant, furniture, equipment or other goods shall be disposed of in a manner agreed by the Head of Procurement Services. Advertisement will be arranged for items with estimated values exceeding £1,000.

- 3.9 Disposals of surplus property will follow procedures set out in the separate Code of Practice for the Disposal of Surplus Property. This includes a requirement for the local County Councillor to be made aware of any proposal to dispose of land or premises in his/her Division. Land and premises shall be disposed of by the Chief Executive. The method of disposal shall ensure fairness and propriety. Except for special categories or cases approved by the Cabinet Member whose remit includes Finance or Resources, the Chief Executive will arrange advertising for:

- (a) land with an estimated value over £20,000, or
- (b) leases for over seven years, or
- (c) rentals of over £5,000 p.a. (excluding business rates or Council Tax).

3.10 Payments to Secure Local Bus Services

- 3.10.1 De minimis provisions may be used for:

(i) existing and new community-based transport schemes developed in partnership with the County Council;

(ii) experimental local bus services up to a maximum of 12 months;

(iii) experimental local bus services where there is a quantifiable shared capital or revenue risk by the County Council and the operator (revenue risk must be demonstrated by, for example, declining support payments or calculated difference between payments and estimated revenue shortfall, based on contractually binding calculations with clawbacks in the event of early termination);

(iv) extending and enhancing existing services by way of frequency enhancements, route alterations, extensions or diversions of services and investment in buses which have been registered commercially - including Kickstart schemes based on joint investment with the operator - subject to the scale of the supported section, in vehicle resource terms, not exceeding that of the commercial core.

3.10.2 That any Quality Bus Partnerships with operators per se should not bring any special exemption from the tendering process or best value assessment, but that within the Quality Bus Partnership framework circumstances may arise which, judged on their merits using the above guidelines, may justify a de minimis arrangement.

3.10.3 The award of de minimis contracts for 50,000 or more per year will need to be approved by the Cabinet Member with responsibility for transportation matters.

4.0 **Contracts** **Contents of Contract**

4.1 Heads of Service shall obtain the advice of the County Solicitor on the contract terms to be agreed, including the Authority's terms and conditions of contract.

4.2 Every contract shall be in writing or confirmed in writing and shall specify:

- (a) the work, materials, supplies or services to be provided;
- (b) the quality standards and or service specification to be adhered to;
- (c) the price to be paid, with a statement of discounts or other deductions;
- (d) the time or times within which the contract is to be performed; and
- (e) the procedures for variations, termination, or penalties for non-compliance, or security for the due performance of any contract including liquidated damages where works are not completed in the time specified.
- (f) invoicing and payment arrangements as specified by the Chief Finance Officer
- (g) such other terms and conditions as are deemed necessary by the Service Director having taken advice from the County Solicitor.

Cancellation of Contracts

4.3 All written contracts shall contain a clause enabling the Council to cancel the contract and recover from the contractor the amount of any resulting loss if:

(a) the contractor has offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for:

- (i) doing or not doing, or for having done or not done, any action in relation to the obtaining or execution of the contract or any other contract with the Council;

(ii) showing or not showing favour or disfavour to any person in relation to the contract or any other contract with the Council.

(b) the same things have been done by any person employed by the contractor or acting on his behalf (whether with or without the knowledge of the contractor);

(c) in relation to any contract with the Council the contractor or any person employed by him or acting on his behalf has:

(i) committed any offence under the Prevention of Corruption Acts 1889 to 1916;

(ii) given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

Variation of Contracts

4.4 All orders given to a contractor directing him to vary in any respect the subject of the contract must be in writing, signed by the supervising officer and quote an agreed value (if any). The written agreement of the Head of Service must be obtained before variation orders are issued if the total value of the accepted tender will be exceeded by more than £5,000, or if the value of specified elements within the tender total will be exceeded by more than £5,000. Written agreement will not be required for:

- (a) price fluctuations in respect of wages, plant and materials;
- (b) variations resulting from statutory obligations;
- (c) agent authority works subject to equivalent external controls;
- (d) urgent constructional arrangements;

but supervising officers must inform Service Directors in advance of all significant cost increases so that they can ensure that their budgets are not exceeded without appropriate approvals.

Payment for Contracts for Building or Civil Engineering Work

4.5 Each certificate for payment must show:

- (a) contract sum (usually tender total);
- (b) value of work to date;
- (c) total amount of certificates previously paid;
- (d) amount of the certificate;
- (e) retention amount (if any);
- (f) value of price fluctuations;
- (g) Value Added Tax (if any).

Monitoring of Contracts

4.6 Heads of Service must monitor all contracts and report to Service Cabinet Members any significant exceptions to normal progress exceeding £100,000. Significant exceptions include delay or advance in expenditure by more than £100,000 compared with expectations within a financial year, and critical delay in meeting target completion dates.