

(F) STANDING ORDERS AS TO CONTRACTS

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SUMMARY OF CATEGORIES

Estimated Value

Up to £1,000	No significant requirements other than achieving Best Value at all times.
£1,001 - £2,500	3 quotations required (subject to exemptions in Standing Order 2 with the consent of the Director concerned) but these may be by telephone if fully recorded.
£2,501 - £10,000	3 quotations required (subject to exemptions in Standing Order 2) and Director concerned can make decisions on exemptions and other discretions.
£10,001 - £50,000	3 quotations required (subject to exemptions in Standing Order 2) but Director concerned must agree any decisions on exemptions and other discretions with the Head of Resources in writing.
Over £50,000	Full tendering procedures apply.

Best Value and achieving value for money principles must underpin all procurement.

STANDING ORDERS AS TO CONTRACTS

- 1 **Application of and compliance with Standing Orders.**
 - (a) All procedures followed in connection with and every contract made by the Council shall comply with the EC Treaty and with any relevant Directives of the EC for the time being in force in the United Kingdom (including all relevant regulations made pursuant thereto), all relevant national legislation applicable from time to time and, so far as they are compatible therewith, these Standing Orders (except as hereinafter provided).

- (b) Subject to (a) above these Standing Orders shall apply to all contracts made by or on behalf of the Council and to the procedures leading thereto except as otherwise provided for herein and with the general exception of contracts agreed by the Managing Director or a Director or his/her authorised representatives for works or the supply of goods or services where the estimated cost thereof does not exceed £1,000 (but see 1(h) below).
- (c) Any contract between the Council and any person (other than an officer of the Council) who is required to supervise a contract on behalf of the Council shall include a condition that such person shall comply with the requirements of these Standing Orders and the Council's Financial Regulations where appropriate as if he/she were an officer of the Council.
- (d) Exemption from any of these Standing Orders may be made by resolution of the Council, the Executive or by decision of an officer of the Council provided they are duly authorised by the Council to do that (including by these Standing Orders) where they are satisfied that the exemption is justified in special circumstances. The resolution making an exemption shall record the special circumstances justifying it.
- (e) In these Standing Orders the term "tender" includes any written statement or bid submitted by any in-house organisation insofar as these Standing Orders are properly applicable thereto;
- (f) Where the Council proposes to make a contract on behalf of and wholly or mainly at the expense of another public authority (including under any statutory agency) and that authority has a code or Standing Orders governing the obtaining and acceptance of tenders and requests the council to observe that code or those Standing Orders, then dealing with the matter in compliance with that code or those Standing Orders shall obviate the need to comply with these Standing Orders.
- (g) In any case where the cost of the quotation proposed to be accepted by the Managing Director or Director concerned exceeds the appropriate budget provided by the Council (as amended in accordance with any virement under Financial Regulations) then a quotation or tender may not be accepted unless the Council or the Executive shall have approved such acceptance.
- (h) In making decisions in accordance with these Standing Orders (including for ordering goods and services with a value up to £1,000) considerations of best value shall apply, including the need wherever practicable and cost-effective to seek competitive tenders or quotations to achieve value for money for the Council and to ensure that the appropriate quality is achieved. Where evaluations based partly on quality are carried out the scoring system must be determined prior to receipt of tenders or quotations.
- (i) The contract values specified in these Standing Orders are the total amounts expected to be paid, or received, over the life of a contract. Limits in these regulations shall not be avoided by means of splitting the value of works, goods and services to be obtained, unless it can be demonstrated that no one supplier can fulfil the requirements and splitting the works provides good value for money.
- (j) When seeking tenders or quotations any supplementary guidance issued by the Head of Resources shall be observed e.g. at the time these regulations are approved the need to include provisions related to European Monetary Union.

2 Exemptions from Standing Orders related to contracts

- (a) Subject to the agreement of the Head of Resources where the value exceeds £10,000, nothing in these Standing Orders shall require three or more competitive tenders or quotations to be invited in accordance with the succeeding Standing Orders if the Managing Director or Director concerned or his/her representative authorised in writing is satisfied that this course of action would represent best value and that one of the following conditions apply:
- (i) The goods or materials are sold at a fixed price and no satisfactory alternative is available;
 - (ii) The nature of the goods, materials or services is so specialised that only one supplier or two suppliers can be found e.g. servicing existing specialist plant, computer software or equipment or where each supplier is different and rigorous evaluation has been undertaken to ensure value for money e.g. specialist consultants;
 - (iii) Purchase or sales by auction, at markets, or purchase or sale of works of art;
 - (iv) The work is to be carried out by statutory undertakers;
 - (v) The prices of the goods, services or materials are controlled by trade organisations or the government;
 - (vi) The goods, materials, services or works are required due to an emergency.
 - (vii) There are good reasons to believe that the cost of obtaining tenders or quotations would exceed any expected benefit from obtaining such quotations.
 - (viii) For other reasons, there would be no genuine competition.
 - (ix) That another body or authority has already obtained competitive tenders or quotations for the provision of goods or services which the Managing Director or Director concerned, having considered the robustness of the contract procedures of that body or authority, is satisfied would provide better value for money than obtaining quotations under these standing orders.

In such cases, with the agreement of the Head of Resources where the value exceeds £10,000, the Managing Director or Director (or his/her representative authorised in writing) may obtain a single or two or three written tenders or quotations and accept the most appropriate taking into account price and quality (except in the case of an emergency situation, e.g. civil emergency or disaster where verbal tenders or quotations may be accepted) and the reasons for applying this Standing Order shall be recorded in the relevant tender/quotations book. Where the value of the contract exceeds £50,000 and there is more than one tender received acceptance shall be in accordance with Standing Order 12.

- (b) The Head of Resources and Managing Director or Director (acting jointly) may exceptionally exempt any contract for the supply or hire of goods, materials plant or services where they are satisfied and so certify that such exemption is necessary for the efficient operation of services and is most likely to achieve best value for the Council;
- (c) Where the Managing Director or Director consider it is in the best interests of the Council he/she may (with assistance from external consultants where appropriate), after consultation with the Head of Resources, negotiate with contractors or suppliers as to the tenders or quotations submitted on the basis of rules formulated in consultation with the Head of Resources/Audit Manager which ensure their proper and responsible conduct and recording.

3 Contracts for the execution of works or supply of goods or services for a sum exceeding £1,000 but not exceeding £50,000.

- (a) Where the execution of works or supply of goods or services is estimated to cost more than £1,000 but not more than £50,000 in total then the Managing Director or Director concerned or his/her representative authorised in writing, having invited not fewer than three quotations, may enter into a written contract for such works, goods or services with the body or person providing the lowest quotation. When deciding which organisations to invite to quote the Managing Director or Director shall give proper consideration as to whether it is appropriate to place a public notice following the same or similar procedures to Contracts Standing Order 6. Where, in the view of the Managing Director or Director concerned, it is not appropriate to enter into a contract with the body or person providing the lowest quotation the Managing Director or Director concerned, or his/her representative authorised in writing, (with the agreement of the Head of Resources where the value exceeds £10,000) may enter into a written contract with a body or person not providing the lowest quotation, subject to the Managing Director or Director concerned being satisfied that value for money is being obtained by the Council;
- (b) Quotations sought pursuant to this Standing Order shall be required to be returned by a stipulated date and time to the Service concerned in sealed envelopes endorsed with the name of the subject to which they relate and shall thereafter be opened at the same time and place in the presence of the Managing Director or Director concerned or an officer designated by him/her.
- (c) The service concerned shall keep a record of all quotations obtained pursuant to this Standing Order which shall be initialled by the person in whose presence they were opened and of any circumstance where the Managing Director or Director, or his/her representative authorised in writing, concerned accepts other than the lowest quotation, including the Managing Director or Director's statement, or that of his/her representative authorised in writing, as to the value for money obtained by the Council. Such record shall be open to inspection by the Head of Resources or his/her duly authorised representative.
- (d) All quotations received shall be kept by the Managing Director or Director concerned and will not be disposed of without the agreement of the Head of Resources.
- (e) For amounts between £1,000 and £2,500 quotations obtained by telephone shall be acceptable provided that full details are recorded by the Managing Director or Director concerned, or his/her representative authorised in writing, and such details are retained for at least two years.

(NB: Standing Orders 9,13, 14, 17, 18 and 20 will also apply)

4 Contracts for the execution of works or supply of goods or services for a sum exceeding £50,000.

Where the execution of works or supply of goods or services is estimated to cost more than £50,000 in total then tenders shall normally be sought in accordance with the procedures set out in either Standing Orders 5 or 6 and in accordance with the following considerations:

- (i) where the Council shall have compiled in accordance with Standing Order 5 a list of bodies or persons from whom tenders may be sought in respect of the execution of particular types of works or the supply of particular types of goods or services then Standing Order 5 shall apply;
- (ii) in a case where no such list shall have been compiled then Standing Order 6 shall apply.

5 **Compilation of lists and seeking of tenders there from.**

- (a) Lists of bodies or persons from whom tenders may be sought for the execution of particular types of work or the supply of particular types of goods or services shall be compiled and maintained by the Managing Director or appropriate Director.
- (b) Such lists shall contain the names of all bodies or persons who wish to be included and who are approved by the Managing Director or appropriate Director who shall, prior to giving such approval, consider any recommendations made by the officers on the basis of financial and technical references and the quality of the Health and Safety Policy. Such lists shall indicate, if appropriate, in respect of a body or person whose name is so included, the categories of contract and the value or amounts in respect of those categories for which approval has been given;
- (c) At least four weeks before a list is first compiled, notices inviting applications for inclusion in it shall be published in at least one local newspaper, and in at least one newspaper or journal circulating among such bodies or persons as undertake such contracts (or as otherwise agreed by the Head of Resources);
- (d) Such lists shall be reviewed at intervals of not more than four years. On any such review the same procedure as is set out in para. (c) above shall be observed;
- (e) In compiling or reviewing such lists officers shall have regard to all appropriate legislation regarding competition;
- (f) Invitations to tender for a contract which may be undertaken by the bodies or persons on any of the lists compiled and maintained as aforesaid shall be sent to:
 - (i) not less than four of those bodies or persons, selected by an officer of the Council duly authorised for that purpose, from among those approved on a list for a contract of the relevant category and amount or value, or;
 - (ii) where fewer than four bodies or persons are so approved, all those bodies or persons.

(NB. Standing Orders 8 – 18 and 20 will also apply)

6 **Tenders following Public Notice**

- (a) Where the Council has not compiled a list of bodies or persons from whom tenders may be sought for the execution of particular types of works or the supply of particular types of goods or services, invitations to tender for a contract for such works, goods or services shall be sent to all or some of those bodies or persons who have replied to a public notice given in accordance with this Standing Order and whose financial and technical references and Health and Safety Policy are acceptable;
- (b) Such public notice shall be given in at least one local newspaper and in at least one newspaper or journal circulating among such bodies or persons who undertake such contracts;
- (c) The public notice shall:
 - (i) specify details of the contract in question;
 - (ii) invite bodies or persons interested to apply for an invitation to tender, and;
 - (iii) specify a time limit, being not less than 14 days, within which such applications are to be submitted to a named officer of the Council;

- (d) If in the opinion of the Managing Director or Director concerned it is not necessary or desirable to give public notice because of the specialised nature of the work or for other good reason the Managing Director or Director shall agree in writing with the Head of Resources the advertising or other steps to be taken to identify the bodies or persons to be invited to tender.
- (e) After the expiry of the specified period invitations to tender for the contract shall be sent to:
 - (i) not less than four of those bodies or persons who applied for an invitation to tender or;
 - (ii) where fewer than four persons or bodies have applied or are considered suitable (having regard to financial or technical references, the Health and Safety Policy or to any other legislative matter) those bodies or persons considered suitable (having regard to the aforementioned matters).

(NB. Standing Orders 8 – 18 and 20 will also apply)

7 Negotiated Contracts for the execution of works or supply of goods or services for a sum exceeding £50,000.

Where the execution of works or supply of goods or services is estimated to cost more than £50,000 and the Managing Director or Director concerned in consultation with the Head of Resources is satisfied that because of special urgency or for some other good and substantial reason it is in the Council's interests that a contract should be negotiated with one or more bodies or persons without competitive tenders being invited, he/she may with the agreement of the Head of Resources (or the Executive where the cost is more than £100,000) and provided that the cost of the contract is within the appropriate budget provision negotiate a contract in accordance with guidance issued by the Head of Resources.

(NB. Standing Orders 13, 14, 15, 16, 17,18 and 20 will also apply)

8 Receipt and custody of Tenders

Where an invitation to tender is required every invitation notice shall state that to be accepted the tender must be sent in a plain sealed envelope bearing the word 'tender' followed by the subject to which it relates but bearing no other name or mark indicating the sender and be addressed to the Democratic Services Manager in whose custody it will remain unopened until the time appointed for opening.

9 Opening of Tenders

- (a) All tenders under these Standing Orders for the same contract shall be opened at the same time and place and there shall be present at the opening:
 - (i) two members of the Council;
 - (ii) the Solicitor to the Council or an officer authorised by him;
 - (iii) (if he/she wishes to be present) the Managing Director;
 - (iv) (if he/she wishes to be present or represented) the Head of Resources or an officer authorised by him.

No other person shall be present at the opening;

- (b) The Solicitor to the Council shall maintain a book for the purpose of recording all tenders opened in accordance with paragraph (a) of this Standing Order the names of the persons

tendering and the amounts of their tenders. The tenders and entries in the book shall be signed and initialled by the persons in whose presence the tenders were opened.

- (c) If any quotation or tender is opened otherwise than in accordance with these Standing Orders a written statement of the reasons for the breach of Standing Orders must be provided to Internal Audit, who shall decide (in consultation with the Head of Resources where necessary) how the quotations or tenders shall be dealt with.

10 **Late Tenders**

Any tender submitted in competition received after the specified time shall be returned promptly to the tenderer by the Democratic Services Manager. The tender envelope may be opened to obtain the name of the tenderer but no details of the tender shall be disclosed.

11 **Discrepancies in Tender figures**

- (a) Except as provided under clause (b) of this Standing Order, where examination of tenders reveals errors or discrepancies which would affect the tender figure(s) in an otherwise successful tender, the tenderer is to be given details of such errors and discrepancies by the Group concerned and afforded an opportunity of confirming or withdrawing the offer. If the tenderer withdraws the next tender in competitive order shall be examined and dealt with in the same way. The Group concerned shall keep a record of the giving of such details which shall be open to inspection by the Head of Resources or his/her authorised representative.
- (b) Where tenders are based on conditions of contract which require re-measurement of the works, all tenders shall be scrutinised. Errors or discrepancies shall be notified to the respective tenderers and the tenders amended accordingly.
- (c) Any exceptions to these procedures may be authorised by the Executive after consideration of a report by the Managing Director or Director.

12 **Acceptance of Tenders**

- (a) A tender which is properly sought and received in accordance with these Standing Orders may, if it is the lowest received (where payments are to be made by the Council) or if it is the highest received (where payments are to be made to the Council) and within the appropriate budget provision, be accepted by the Managing Director or Director concerned;
- (b) Before any tender is accepted under (a) above: financial references satisfactory to the Head of Resources shall be sought in respect of the lowest/highest tenderer (as appropriate) in all cases, and technical references and a Health and Safety Policy satisfactory to the Managing Director or Director concerned sought in respect of the lowest/highest tenderer (as appropriate) except one selected from any list compiled and maintained by the Council in pursuance of Standing Order 5;
- (c) In any case where either the references obtained under (b)(ii) above are unsatisfactory or the tenderer concerned is not prepared to enter into a contract with the Council then the next lowest or highest tender (according to whether payments are to be made by or to the Council respectively) may be accepted as in (a) above provided it is within the appropriate budget provision and subject to satisfactory references as in (b)(ii) above, and to the relevant tenderer being prepared to enter into a contract with the Council;

- (d) Except in the circumstances mentioned in (c) above a tender other than the lowest or the highest (according to whether payments are made by or to the Council respectively) shall not be accepted unless such acceptance is authorised by the Executive having considered a relevant report by the Managing Director or Director or other authorised person.

13 **Nominated Sub-Contractors**

Where a sub-contractor or supplier is to be nominated to a main contractor by the Council the following provisions shall apply, subject to Standing Order 2:

- (a) quotations shall be sought for the nomination unless the Managing Director or Director, with the agreement of the Head of Resources, is of the opinion that it is not reasonably practicable to obtain competitive quotations;
- (b) the provisions of Standing Orders 8 to 12 inclusive shall apply to tenders received under this Standing Order.

14 **Contracts to be in Writing**

- (a) Every contract for the execution of works or supply of goods or services (with the exception of contracts for treasury management transactions, banking and insurance arrangements) and which exceed the sum of £50,000 in amount or value must be made in writing under the Council's common seal executed by the Solicitor to the Council or other officer nominated by him/her or otherwise signed by the Solicitor to the Council and other officer authorised by him or two officers authorised by the Solicitor to the Council. It shall be an overriding requirement in all cases that the Solicitor to the Council or other officer authorised by him/her must be properly empowered to effect such execution or signature of a contract to which this standing order applies. A properly effected resolution or delegated decision to accept a quotation or tender pursuant to contract standing orders or to negotiate a contract shall comprise such authority;
- (b) Every contract to which this standing order applies shall specify the works to be executed or the goods or services to be supplied and the price to be paid together with a statement as to the amount of discount(s) or other deduction(s), the period within which the contract is to be performed, the date of commencement of execution of the works or for delivery of the goods or services, and such other conditions and terms as may be agreed between the parties.

15 **Liquidated and Ascertained Damages**

Every contract which is estimated to exceed £50,000 in value or amount and which is for the execution of works, shall specify an amount for liquidated and ascertained damages to be paid by the contractor should the terms of the contract not be duly performed. The amount to be specified shall be determined by the Managing Director or Director concerned in consultation with the Head of Resources or his/her authorised representative.

16 **Performance Bonds**

- (a) The Council may require and take sufficient security for the due performance of any contract for the execution of works or the supply of goods or services. Where such contract exceeds £500,000 in value or amount such security shall be in the form of a joint Stock Bank or Insurance Company Bond or as otherwise agreed by the Head of Resources and the Managing Director or Director concerned.
- (b) The Head of Resources or officer authorised by him/her shall determine the cases when

security as aforementioned shall be required.

17 **Avoidance of Corruption**

There shall be inserted in every written contract a clause empowering the Council to cancel a contract, and recover from the contractor all losses in doing so, if any gift or money has been offered/given by the Contractor or anyone working for it/acting as its agent to anyone either to do/refrain from doing anything to get any contract with the Council or to favour or not favour anyone in relation to any contract with the Council. The Council may also cancel a contract if the contractor or anyone working for it/acting as its agent is found to have committed an offence under the Prevention of Corruption Acts 1889 to 1916, or made any payment receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

18 **Insurance**

Any officer responsible for obtaining quotations or letting a contract must ensure that the company or person to whom it is proposed to award the contract possesses such levels and policies of insurance as are deemed necessary including, but not limited to, Public Liability insurance. The levels of insurance shall be determined from time to time by the Head of Resources following consultation with the Council's insurers and appropriate officers.

19 **Council Members and Council Property**

- (a) A member of the Council shall not, unless specifically authorised by the Council or the Executive claim as a member to have the authority to or actually:
 - (i) issue an order in connection with any work being done by or on behalf of the Council;
 - (ii) enter or inspect any land or premises which the Council have the right or duty to enter or inspect;
- (b) This Standing Order shall not prevent members, when exercising their duties as Councillors, at a reasonable time, from entering on or inspecting any open land which the Council own.

20 **Financial Control of Contracts**

Every extra or variation shall be authorised in writing at the time the instruction is issued by the Managing Director or Director or other officer nominated by him/her in writing for the purpose.

In any case where the total estimated cost of any work being carried out under a contract over £50,000 in value appears likely to exceed the contract sum by more than £25,000 a report shall be submitted to the Executive by the Managing Director or Director concerned.

In any case where, after agreement of the final account, the total cost of any contract work costing over £50,000 exceeds the approved tender sum, as amended by variable price clause charges and any expenditure already reported to the Council, by a sum of more than £25,000 the Managing Director or Director concerned shall report to the Executive.

Certificates issued under the terms of a contract shall be signed by the Managing Director or Director concerned or other officer nominated by him/her in writing for the purpose.

Claims from contractors and third parties in respect of matters not clearly within the terms of any existing contract shall be referred to the Solicitor to the Council for consideration of the Authority's legal liability, and to the Head of Resources for financial consideration.