

## **Part 3: F**

# Contract Standing Orders

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## Contract Standing Order 1: Interpretation

1.1 In these Contract Standing Orders, the following terms have the following meanings:

“Advance Works Order” means an advance works order issued under CSO 12.10

“Approved List” means a list of suitable Contractors drawn up under CSO 5

“Area of Responsibility” means the function and area of responsibility for a Chief Officer as detailed in Part 1: Chapter 12, Paragraph 12.2 of the Council’s Constitution

“Chief Officer” means any of the posts identified at Part 1: Chapter 12, Paragraph 12.2 of the Council’s Constitution

“Contract” means

(i) any agreement for the supply of goods, services, or the execution of works to or for the Council including the use of consultants;

(ii) any Framework Agreement; or

(iii) any agreement where no payment is made by the Council but which is of financial value to the Contractor (e.g. a catering concession)

but does not include (without exception)

(iv) an employment contract: or

(v) a Grant Agreement

"Contract Lead Officer" means a Council officer nominated to deal with Contracts in accordance with CSO 3.4

“Contractor” means the party or potential party to a Contract

“Council” means Hampshire County Council

“CSO”/ "CSOs" means Contract Standing Order/ Contract Standing Orders

“EC Treaty” means the Treaty establishing the European Community signed on 25 March 1957 as amended by subsequent treaties

“EU Public Procurement Directives “ means EU Directive 2004/18/EC This directive consolidates all previous directives relating to public works, supplies (goods) and service contracts and any Directives and Regulations by which it is applied, extended, amended, consolidated or replaced and any re-enactment thereof

“EU Thresholds” means the thresholds for public advertisement of goods, works and services contracts as provided for in the EU Public Procurement Directives and advised by the Government

“Evaluation Report” means a report on the evaluation of tenders prepared under CSO 12

"Framework Agreement" means an agreement with Contractors that sets out the terms and conditions under which specific purchases can be made

“Grant Agreement” means an agreement giving financial assistance to an individual or organisation with no supply of goods or services, or execution of works, in return

"OJEU" means the Official Journal of the European Union

“Procurement Network” means a formal group of officers of the County Council representing all departments and procurement teams whose main purpose is to provide leadership on procurement matters for the County Council

“Senior Officer” means a Council officer on grade HMG E or above

“UK Regulations” means the Public Contracts Regulations 2006

“works” “supplies” & “services” are as defined in the EU Public Procurement Directives

## Contract Standing Order 2: Status of, and Compliance with, Standing Orders

- 2.1 By law, the Council is required to make standing orders with respect to contracts for the supply of goods or materials or for the execution of works which provide for securing competition and regulation of the manner in which tenders are invited.
- 2.2 The Council is a contracting authority for the purposes of the EU Public Procurement Directives, and is thereby legally bound to comply with certain practices and procedures in the award of Contracts.
- 2.3 The Council has therefore adopted these Contract Standing Orders (CSOs), setting set out the administrative procedures that must be followed in relation to the procurement and award of a Contract. CSOs provide a framework to ensure that the Council uses its resources efficiently in making purchasing decisions to obtain best value in public services. CSOs also provide a means of safeguarding the reputation of the Council and its staff from any implication of dishonesty or corruption.
- 2.4 The County Treasurer and Head of Legal Services are the joint custodians of these CSOs and are responsible for keeping them under review. This includes giving advice on their implementation and interpretation.
- 2.5 Every Contract made by the Council or on its behalf (irrespective of the source of funding) shall comply with the EC Treaty, the EU Public Procurement Directives, all other applicable EU and domestic legal requirements, CSOs and Financial Regulations. In the event that there is any conflict or inconsistency between the provisions of CSOs and any legal requirement, the legal requirement shall apply.
- 2.6 The EC Treaty provisions and Treaty-based principles, including non-discrimination and equal treatment, and transparency, apply generally in the award of public contracts – including those of a value below the EU Thresholds. Care must be taken at all times to ensure that nothing is done which is discriminatory, improper or which distorts competition.
- 2.7 It is the role of the Director of Property, Business, Regulatory Services & IT (PBR&IT) to publish the [Corporate Procurement Strategy](#) and to maintain a Procurement Network on behalf of the County Council.
- 2.8 These CSOs are supplemented by the [Procurement Best Practice Guide](#) maintained by the Director of PBR&IT. In the event that there is any conflict or inconsistency between the provisions of the Procurement Best Practice Guide and CSOs, CSOs shall apply.
- 2.9 These CSOs supplement the officers' code of conduct and a failure to comply will normally be regarded as a disciplinary offence. Where a person who is not a Council employee is contracted to a position where they are authorised to carry out purchasing functions, it is a condition of their contract that they comply with CSOs.
- 2.10 These CSOs shall always be interpreted and applied in a way that supports the achievement of the Council's identified business objectives, within relevant legal frameworks.

### Contract Standing Order 3: Approval to Commence Procurement

- 3.1 The commencement of a procurement process for a Contract is subject to the prior approval of the relevant decision maker who has the authority to give such approval under the Constitution. The giving of approval is subject to the expenditure involved having been included in approved estimates and sufficient budgetary provision having been made in the Council's capital programme or revenue budget.
- 3.2 In estimating the value of the Contract, the principles of CSO 4 shall be applied.
- 3.3 In all cases, the Chief Officer within whose Area of Responsibility the Contract falls shall designate a Senior Officer as Contract Lead Officer for the Contract. It shall be the responsibility of the Contract Lead Officer to ensure that the processes followed in relation to the procurement and award of the Contract are compliant with these CSOs.

## Contract Standing Order 4: Contract Value and Aggregation

- 4.1 The estimated value of a Contract shall be the total value of the Contract net of VAT. This is the total consideration estimated to be payable over the full term of the Contract by the Council to the Contractor. Where the Contract is one where no payment is made by the Council (e.g. a concession) a best estimate of the financial value to the Contractor shall be ascertained.
- 4.2 Where the Contract period is indefinite or uncertain, the estimated value shall be calculated on the basis that the Contract will be for a period of four years.
- 4.3 The estimated value of a Framework Agreement is the total value of all the Contracts which could be entered into by the Council and other contracting authorities, further to that Framework Agreement.
- 4.4 Purchases of the same or similar goods or services must be aggregated wherever practicable. Contracts must not be artificially separated so as to circumvent the application of any part of CSOs, the EU Public Procurement Directives or UK Regulations.
- 4.5 Contracts which are each of a value below the relevant EU Threshold may nevertheless be subject to full EU Public Procurement Directives tendering requirements, where they constitute a series of related or repeat purchases. Advice should be sought where this is the case, in order that the relevant procurement route can be adopted.

## Contract Standing Order 5: Framework Agreements, Approved Lists and Suitability of Contractors

- 5.1 A **Framework Agreement** is an agreement with Contractors that sets out the terms and conditions under which specific purchases can be made (or “called-off”) throughout the term of the agreement. Framework Agreements may be established by the Council, or by other public bodies, or public sector buying consortia, as arrangements through which the Council, along with other public bodies, may make specific purchases.
- 5.2 A Framework Agreement that has been approved as suitable by the Head of Legal Services and Director of PBR&IT should be used for the making of the proposed purchase. Approving the use of a Framework Agreement shall be subject to confirmation that the procurement of that Agreement was compliant with the EU Public Procurement Directives, and that the terms and conditions applicable to call-off arrangements meet the minimum requirements of the Council. The terms of a particular call-off arrangement shall not be substantially amended from the terms laid down in the Framework Agreement.
- 5.3 An **Approved List** is a list of Contractors for the execution of works, or the supply of goods and/or services, who have been assessed as meeting specified criteria. The criteria are designed to ensure the competence and suitability of the Contractor as a party with whom the Council may contract. In each case where tenders are invited from Contractors who are included on an Approved List, it is not then necessary for their competence and suitability to be investigated afresh, thus making for more efficient use of time and resources in purchasing.
- 5.4 Any Chief Officer may establish an Approved List for supplies, services or works within their Area of Responsibility.
- 5.5 An Approved List shall be established following an advertised competitive process. A notice shall be published in accordance with CSO 6. The public notice shall specify (i) a time period (minimum 14 days) within which interested parties may express an interest in being included in the Approved List and (ii) the method by which such interest shall be expressed. The public notice shall specify that information is to be provided by the completion and return of a pre-qualification questionnaire. Interested parties shall be advised of the criteria that apply for inclusion in the Approved List. As a minimum these shall include the requirements of CSO 5.9.
- 5.6 An Approved List shall contain the names and addresses of all providers who meet the Approved List criteria, and shall indicate the nature and value of Contracts for which the Contractors listed may be used. The value of any Contract entered into, calculated in accordance with CSO 4, may not exceed the relevant EU Threshold.
- 5.7 An Approved List shall be reviewed and re-established every three years, following the procedure in CSO 5.5.
- 5.8 A Contractor may be removed from an Approved List should their circumstances change, to the extent that they no longer meet the criteria for inclusion in the Approved List.

5.9 In all cases where a Contract is awarded under these CSOs, a Contractor can only be appointed who, as a minimum:

a) can confirm a business contact address and contact number (e.g. telephone, mobile, fax)

b) meets the Council's insurance requirements for the Contract (in respect of public liability, product, professional indemnity and/or employer's liability as appropriate, based on an assessment of risk for the Contract)

c) is registered for tax and holds a valid certificate (where appropriate)

d) is able to provide at least two independent referees from whom a reference may be sought for contracts completed within the last three years

## Contract Standing Order 6: Public Notice

- 6.1 In all cases where, by virtue of these CSOs or by some other authority, a public notice is required, it shall be placed on the corporate tendering opportunities portal on Hantsweb.
- 6.2 Where the estimated total value of a proposed Contract is less than £100,000, the notice shall additionally be placed in at least one relevant local publication and/or one newspaper or journal circulating among Contractors who undertake Contracts of that nature. However, this is not required where the relevant Chief Officer is satisfied that to do so would not be value for money.
- 6.3 Where the estimated total value of a proposed Contract is £100,000 or above, the notice shall be placed in at least one newspaper or journal circulating among Contractors who undertake Contracts of that nature. It shall also be placed in a local publication unless the relevant Chief Officer is satisfied that there are insufficient Contractors in the locality who undertake Contracts of that nature.
- 6.4 Where the value of the Contract exceeds the relevant EU Threshold, public notice shall also be placed in the OJEU in accordance with the EU Public Procurement Directives.
- 6.5 The position is summarised in the table below:

| Contract Value     | Corporate tendering opportunities portal on Hantsweb | Local publication                          | Trade journal | OJEU      |
|--------------------|--|--|---------------|-----------|
| <£100,000          | Mandatory  | At least one – Optional<br>Both - Optional |               | Optional  |
| >£100,000          | Mandatory  | Optional                                   | Mandatory     | Optional  |
| Above EU Threshold | Mandatory  | Optional                                   | Mandatory     | Mandatory |

## Contract Standing Order 7: Purchasing Procedures for Contracts of a Value less than £25,000

- 7.1 Where the estimated value of the Contract, calculated in accordance with CSO 4, is less than £25,000, and there is a suitable Framework Agreement approved by the Director of PBR&IT and Head of Legal Services, under CSO 5.2, that Framework Agreement shall be used.
- 7.2 Where no Framework Agreement is available, three written quotations should be obtained against the same written request for quotation. Where a relevant Approved List exists, the written quotations should be sought from Contractors included on it.
- 7.3 In the selection of the Contractor, the Contract Lead Officer shall bear in mind the need to seek best value for money and be able to demonstrate that they have achieved this.
- 7.4 The Contract shall be evidenced in writing, by submission of an order in accordance with the Framework Agreement or, where a Framework Agreement is not used, by the placing of an order on the basis that the price in the written quotation received shall apply.

## Contract Standing Order 8: Tendering Procedures for Contracts of a Value £25,000 or greater but less than £100,000

- 8.1 Where the estimated value of the Contract, calculated in accordance with CSO 4, is £25,000 or greater but less than £100,000, and there is a suitable Framework Agreement approved by the Director of PBR&IT and Head of Legal Services, under CSO 5.2, that Framework Agreement shall be used.
- 8.2 Where no Framework Agreement is available, at least **three** tenders shall be invited. Where a relevant Approved List exists, the tenders shall be sought from Contractors included on it.
- 8.3 Where no Framework Agreement or Approved List is available, at least **three** tenders shall be invited. The tendering procedure to be followed shall be that set out in CSO 9.4 – 9.8, with the term “Chief Officer” substituted for “Head of Legal Services” in CSO 9.7.
- 8.4 The invitation to tender shall state the evaluation criteria, including sub-criteria and sub-sub-criteria (where used), weightings and scoring criteria that will be applied in the award of the Contract. These criteria must be capable of objective assessment, include price and any other relevant factors, and be weighted by relative importance. The invitation to tender shall also include the terms and conditions that will apply to the Contract.
- 8.5 The Contract shall be evidenced in writing by the completion of a written Contract between the Council and the Contractor(s).

## Contract Standing Order 9: Tendering Procedures for Contracts of a Value of £100,000 or greater but less than relevant EU Threshold

- 9.1 Where the estimated value of the Contract, calculated in accordance with CSO 4, is £100,000 or greater but less than the relevant EU Threshold, and there is a suitable Framework Agreement approved by the Director of PBR&IT and Head of Legal Services, under CSO 5.2, that Framework Agreement shall be used.
- 9.2 Where no Framework Agreement is available, at least **five** tenders shall be invited. Where a relevant Approved List exists, the tenders shall be sought from Contractors included on it.
- 9.3 Where no Framework Agreement or Approved List is available, at least **five** tenders shall be invited, using either the open or restricted procedure.
- 9.4 The open procedure requires the publication of a notice in accordance with CSO 6. The public notice shall specify (i) a time period (minimum 14 days) within which interested parties may express an interest in tendering and (ii) the method by which such interest shall be expressed. At the end of this period, an invitation to tender shall be sent to all parties who have expressed an interest, specifying a period of not less than three weeks for tenders to be returned.
- 9.5 The restricted procedure, where a number of tenderers are selected from those who express an interest, is identical to that for open tendering, except that:
- a) the public notice shall state that a restricted tendering procedure will be used;
  - b) the public notice should specify that information is to be provided by interested parties for the short-listing process and that this shall be by their completion and return of a pre-qualification questionnaire;
  - c) at the end of the period specified in the public notice, an invitation to tender shall be issued to tenderers selected by means of pre-determined, objective selection criteria (or all of them where less than five entrants meet the criteria). The invitation to tender should specify a period of not less than three weeks for tenders to be returned.
- 9.6 In all cases, every invitation to tender shall include the following:
- A statement that the tendering process will be conducted within the Council's corporate electronic tendering system;
  - Full instructions on how to submit their tender to this system;

- Advice that tenders, once received in the system, will be anonymous and locked away until the time specified for their opening;
- Advice as to the deadline for submission of tenders to this system

9.7 Tenderers shall be advised that, in exceptional circumstances, where a tenderer wishes to submit a tender on paper they may do so, but that:

- no tender will be considered unless it is enclosed in a plain, sealed packet addressed to the Head of Legal Services and endorsed with the words “Tender for....” followed by the subject to which it relates and the latest time and day for the receipt of the tender

- the packet should bear no mark that identifies the tenderer; and

- faxed or e-mailed tenders will not be considered.

9.8 In exceptional circumstances, and with the prior approval of the Director of PBR&IT, an invitation to tender may be sent to tenderers in hard copy paper form, rather than through the electronic tendering system.

9.9 The invitation to tender shall state the evaluation criteria, including sub-criteria and sub-sub-criteria (where used), weightings and scoring criteria that will be applied in the award of the Contract. These criteria must be capable of objective assessment, include price and any other relevant factors, and be weighted by relative importance. The invitation to tender shall also include the terms and conditions that will apply to the Contract.

9.10 The Contract shall be evidenced in writing by the completion of a formal written Contract, the terms of which have been approved by the Head of Legal Services or other person authorised by him for this purpose.

## Contract Standing Order 10: Tendering Procedures for Contracts Above EU Thresholds

- 10.1 The EU Public Procurement Directives set a financial threshold beyond which prescribed tendering procedures must be followed. The EU Thresholds are reviewed annually, and the updated figures can be found in the Best Practice Guide ([insert hyperlink](#)).
  
- 10.2 Where the estimated value of the Contract is in excess of the relevant EU Threshold, the procedures set out in the EU Public Procurement Directives must be followed. In most cases, the open, or restricted procedure will be used, but in certain specialist cases, such as private finance initiative Contracts, the negotiated or competitive dialogue procedure shall apply. Advice on which procedure is appropriate to the specific case should be sought from the Head of Legal Services. Approval of the Head of Legal Services shall be sought to the use of the negotiated or competitive dialogue procedure.

## Contract Standing Order 11: Receipt and Opening of Tenders

- 11.1 Subject to CSO 11.2 – 11.3, all tenders shall be opened at the same time, by two officers as soon as reasonably practicable on or after the date for return of tenders.
- 11.2 For a Contract of a value less than £100,000, the two officers opening tenders shall include the Chief Officer or other Senior Officer within his/her Department authorised by the Chief Officer for this purpose.
- 11.3 For a Contract of a value of £100,000 or greater, the two officers opening tenders shall include the Head of Legal Services or a Senior Officer within Legal Services or Business and Member Support authorised by the Head of Legal Services for this purpose.
- 11.4 The officers opening tenders shall record, in respect of each tender opened, the name of the tenderer and, where applicable, the total value.
- 11.5 Where a paper tender is received in a sealed packet further to CSO 9.7, a record shall be kept of the time and date of receipt, and it shall be kept secure until the time specified for tender opening. Any tender received after the specified time shall not be considered for evaluation and shall be returned promptly to the tenderer. A late tender may be opened to ascertain the name of the tenderer but no details of the tender shall be disclosed.

## Contract Standing Order 12: Evaluation of Tenders and Award of Contract

- 12.1 The Contract Lead Officer shall ensure that the tenders received are evaluated in accordance with the evaluation criteria that have been adopted for the Contract, and stated in the invitation to tender. These criteria must be capable of objective assessment, include price and other relevant factors, and be weighted by relative importance.
- 12.2 The Contract Lead Officer shall produce a written report evaluating each tender received against the evaluation criteria. The report shall identify the tenderer who has submitted the most economically advantageous tender i.e. the tender that achieves the highest score in the evaluation, and recommend the award of the Contract to that tenderer. This report shall be submitted to the person authorised to award the Contract under CSO 12.4.
- 12.3 No contract may be awarded unless the expenditure involved has been included in approved estimates and sufficient budgetary provision made in the Council's capital or revenue accounts in accordance with CSO 3.1. The Evaluation Report shall confirm how this requirement is met.
- 12.4 Each Chief Officer is authorised to award and sign any contract entered into on the Council's behalf, where it relates to their Area of Responsibility, and where the value of the Contract is less than £100,000. The Contract may be awarded and signed by a Senior Officer who is authorised to do so on behalf of the Chief Officer as documented in that Chief Officer's scheme of financial delegation. All other Contracts shall be awarded by the Head of Legal Services or a Senior Officer nominated by the Head of Legal Services for this purpose, and signed by or on behalf of the Head of Legal Services in accordance with Part 1 Chapter 14 of the Constitution.
- 12.5 Where the value of a Contract is above the relevant EU Threshold, the Contract shall be awarded in accordance with the UK Regulations and in particular the requirements relating to a "standstill" period prior to the Contract being entered into.
- 12.6 All Contracts, including an arrangement subject to a purchase order, must be made in writing under English Law, and must clearly and carefully specify the supplies, services or works to be provided, the agreed programme for delivery and the price and terms for payment together with all other terms and conditions.
- 12.7 As far as practicable, purchases of a value less than £100,000 shall be made on the basis of standard terms and conditions that have been approved by the Head of Legal Services. Where a contract is estimated at a value £100,000 or above or is of an unusual or complex nature, the Head of Legal Services shall be consulted to produce a suitable set of conditions of contract.

- 12.8 Every contract must also include certain clauses, in a form approved by the Head of Legal Services, to protect the Council from fraud and to ensure that Contractors understand their responsibilities when they are acting on the Council's behalf.
- 12.9 The Chief Officer within whose Area of Responsibility the Contract falls shall allocate to a Senior Officer responsibility for the ongoing management of the Contract.
- 12.10 In exceptional circumstances, where a Contract has been awarded under CSO 12.4, but it is considered necessary in the best interests of the Council to initiate the provision of goods or services under that Contract prior to the Contract being signed, the issue of an Advance Works Order by the Head of Legal Services may be requested. Issue will be subject to confirmation that a decision to award the Contract has been made in accordance with CSOs, the necessary funding for the Contract having been approved, and the value of the Advance Works Order not exceeding £100,000.

## Contract Standing Order 13: Waiver of Contract Standing Orders

- 13.1 Any of the requirements of these CSOs may be waived in an individual case, by the person authorised as follows:
- Where the estimated value of the Contract is less than £100,000, the Chief Officer within whose Area of Responsibility the Contract falls
  - Where the estimated value of the Contract is £100,000 or greater but less than £1m, the Head of Legal Services
  - Where the estimated value of the Contract is £1m or greater, the Executive or, in respect of non-executive matters, the committee with delegated responsibility for the relevant service area
- 13.2 A request for the issue of a waiver must be made in writing to the person authorised under CSO 13.1, with full reasons as to why the waiver is required, and evidence that the issue of a waiver will not prevent best value from being obtained. The decision in response to the request must also be in writing. No action shall be taken to enter into the Contract until such request has been submitted and the decision made.
- 13.3 The Council is subject to legal requirements to ensure fair competition for Contracts of a value exceeding the EU Thresholds, and subject to obligations under the EU Treaty to ensure that all Contracts (regardless of value) are awarded having regard to the need to avoid any action that is discriminatory, improper or which distorts competition.
- 13.4 An extension of an existing Contract shall be deemed for the purposes of CSOs to be a new Contract, and as such waiver of CSOs will be required before proceeding with such extension. For the purposes of CSO 13.1, the value shall be the aggregated value of the original Contract and the proposed extension.
- 13.5 It is understood that waiver may be utilised where it can be demonstrated that the ability to act quickly to engage a single supplier would make economic sense and fit with service requirements, in circumstances where there is no more effective way to secure the capacity.