

# **FERRYHILL TOWN COUNCIL**



# **CONTRACTS AND PROCUREMENT STANDING ORDERS**

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## 1.0 INTRODUCTION AND STATUS OF THE STANDING ORDERS

- 1.1 The Standing Orders for Contracts and Procurement provide the framework rules for the procurement of all works, goods, materials and services and also set out the Council's tendering and contract procedures and rules.
- 1.2 The Standing Orders are intended to help the Council to achieve value for money in the use of public resources, comply with legal requirements, promote good purchasing practice, demonstrate public accountability and help to deter fraud and corruption in the undertaking of all procurement activity.
- 1.3 The Town Clerk is responsible for maintaining a continuous review of the Standing Orders and submitting any revisions to Full Council. The Standing Orders may only be amended or varied by resolution of the Council.
- 1.4 The requirements of these Standing Orders apply to every Member and Officer of the Council and to anyone else acting on their behalf in undertaking procurement activity. The Town Clerk and the Finance and Administration Manager will ensure that the requirements of the Standing Orders are applied whenever the Council engages in any procurement activity.
- 1.5 Service managers are responsible for ensuring that all staff in their service areas with responsibility for raising purchase orders are made aware of the existence and content of the Standing Orders and that they comply with their requirements.
- 1.6 Officers must ensure that they are able to demonstrate the achievement of value for money in the use of public resources by having regard to a combination of economy, efficiency and effectiveness in undertaking all procurement activity.
- 1.7 All Officers with responsibility for drawing up contracts on behalf of the Council to which the power of making contracts has been delegated, must ensure that they comply with the requirements of the Standing Orders and all relevant legislation.
- 1.8 In order to ensure that the Standing Orders are flexible to the Council's operational requirements, a list of exemptions from the main provisions of these Standing Orders is available in Standing Order 5. Application for exemptions from the Standing Orders must be formally requested and approved by the Town Clerk and Finance and Administration Manager.
- 1.9 These Standing Orders will not apply in those circumstances where works, goods, materials or services are to be purchased under agency arrangements with another local authority or public sector body. In such cases, the procurement of the works, goods, materials or services will be made in accordance with that organisation's own Standing Order rules for procurement.
- 1.10 The Town Clerk is responsible for issuing financial procedures, advice, training and guidance to underpin these Standing Orders.
- 1.11 No other exception can be made from the provisions of these Standing Orders, unless in an emergency or other exceptional circumstances with the approval of the Town Clerk. All such exceptions must subsequently be reported to and approved by the Council and the report must specify the emergency or exceptional circumstances by which the exception has been justified.

- 1.12 Any known breach of or non-compliance with these Standing Orders must be reported to the Council's Internal Auditor. The Internal Auditor, after consulting with the Town Clerk and Finance and Administration Manager, will decide whether the breach or non-compliance represents a significant risk of harm to the Council's interests, and will report to Council accordingly.

## 2.0 CONTRACTS AND PROCUREMENT RESPONSIBILITIES

### All Officers of the Council

- 2.1 All officers with responsibility for raising and certifying purchase orders and drawing up contracts on behalf of the Council must comply with the provisions of these Standing Orders.
- 2.2 The Town Clerk is the authorised officer to undertake procurement activity and raise and certify purchase orders.
- 2.3 It is accepted that in some cases, responsibility for raising purchase orders may be delegated to an officer e.g. the Finance and Administration Manager and the Clerical/Civic Administrator. However responsible officers must ensure that they take responsibility for the procurement, that the provisions of these Standing Orders are applied, and that the purchase order is subsequently certified by a responsible officer.
- 2.4 Only the Town Clerk of the Council may authorise invoices for payment.
- 2.5 Senior officers must also ensure that the appropriate procurement records are kept in line with the Standing Orders and that any contract and tender procedures are undertaken in accordance with the specific procedures set out in Standing Orders 10 to 20.
- 2.6 The Town Clerk and Finance and Administration Manager are available to provide advice to officers around undertaking procurement activity and to assist with interpretation and application of these Standing Orders.

### Town Clerk, Finance and Administration Manager and Internal Auditor

- 2.7 The Town Clerk and the Finance and Administration Manager are responsible for ensuring compliance with the Standing Orders and for approving the use of any exemptions from the Standing Orders.
- 2.8 The Internal Auditor is responsible for monitoring the application of the Standing Orders in procurement activity, undertaking an annual audit of tendering and contracts, and the investigation of any breaches or non-compliance with the Standing Orders that represents a significant risk of harm to the Council's interests.
- 2.9 The Town Clerk is responsible for the annual review and update of the Standing Orders and reporting this to Council each year.
- 2.10 The Town Clerk is responsible for ensuring that a file record for each individual tender and contract is maintained, and that all original contract documents are securely held on Council premises.
- 2.11 The Town Clerk is also responsible for providing officers with relevant legal advice, in relation to procurement and contracts, where appropriate, and for reporting to the Council,

following advice from the Internal Auditor, any breach or non-compliance with the Standing Orders which represents a significant risk of harm to the Council's interests.

### The Council

- 2.12 The Council is responsible for the consideration and approval of the Standing Orders, the consideration and approval of any exemptions from the Standing Orders, and the consideration of any breaches or non-compliance with the Standing Orders.

## **3.0 DEFINITION OF CONTRACTS AND PROCUREMENT ACTIVITY**

- 3.1 For the purposes of these Standing Orders, contracts and procurement activity is defined as being:-

“a commitment to future expenditure arising from any arrangement or agreement made by or on behalf of the Council for the carrying out of work, the supply of goods and materials or the delivery of services”

This definition therefore encompasses the arrangements for all areas of procurement relating to both the Revenue and the Capital Budgets including the following:-

- The supply of goods, materials, vehicles, plant, machinery or equipment;
- The hire, lease or rental of vehicles, plant, machinery or equipment;
- The execution of works to land or buildings;
- The delivery of services including training of staff and members.

## **4.0 TABLE OF FINANCIAL THRESHOLDS FOR PROCUREMENT**

- 4.1 The following table shows the financial thresholds that will apply to the procurement of all works, goods, materials, services and consultancy and the associated procurement and tendering procedures:-

PROCUREMENT	TENDERING PROCEDURE
<b>Up to and including £5,000</b>	<b>NO WRITTEN QUOTATIONS OR TENDERS WILL BE REQUIRED.</b> However, the principles of value for money i.e. having regard to the achievement of economy, efficiency and effectiveness in the use of public money must be observed and where possible evidenced, at all times.
<b>£5,001 up to and including £50,000</b>	<b>NO FORMAL TENDER PROCEDURE IS REQUIRED BUT AT LEAST THREE WRITTEN QUOTATIONS MUST BE SOUGHT.</b> This will help to demonstrate and provide evidence of the achievement of value for money.
<b>Over £50,001 up to £213,477</b>	<b>AT LEAST THREE TENDERS MUST BE SOUGHT VIA PUBLIC NOTICE OF CONTRACT OR INVITATION TO TENDER.</b> The Tender advertisement must be placed in at least one local newspaper.
<b>Over £213,477 for goods or services and over £5,336,937 for construction works</b>	<b>COMPLIANCE WITH PUBLIC CONTRACTS REGULATIONS IS MANDATORY</b> Specific tendering methods and timescales apply, and the requirement to advertise on both the Contracts Finder and Find-a-Tender

4.2 In addition to the above, where an estimated tender value, including VAT, is below these thresholds but is above £25,000 it must be advertised on Contracts Finder. The award of a contract above £25,000 must be published on Contracts Finder within a reasonable timescale.

4.3 However, it is important to note that there are a number of exceptions or exemptions to the requirement to apply the rules contained within these Standing Orders and these are included in Standing Order 5.

## 5.0 Exemptions to the Application of the Standing Orders

5.1 The Council has the power to waive the requirement of these Standing Orders in specific instances. In such instances, an exemption must be applied for under this Standing Order. However, it is important to note that no exemptions can be applied if the Public Contracts Regulations apply.

5.2 An exemption granted under this Standing Order allows a contract for the procurement of goods, materials, works or services to be placed by direct negotiation with one or more suppliers, rather than in full accordance with the requirements of these Standing Orders. However, in doing so the Council must avoid allowing non-commercial considerations, as defined in Part 2 of the Local Government Act 1988, to influence its decisions.

- 5.3 However, in applying for an Exemption from the Standing Orders, the responsible officer must still ensure that the principles of value for money i.e. having regard to the achievement of economy, efficiency and effectiveness in the use of public money are observed at all times.
- 5.4 All applications for exemptions, and the reasons for them, must be recorded using the appropriate form, signed by the responsible officer and countersigned by the Town Clerk and Finance and administration Manager. The Exemption Application Form is attached as Appendix 1.
- 5.5 Exemptions in respect of capital expenditure should be reported to and considered by the appropriate Committee and subsequently approved by Full Council.
- 5.6 The following exemptions may be applied subject to the relevant approval:-
- a) for the supply of **utilities**: gas, electricity, water, sewerage and telephone services
  - b) For **used, recycled or second-hand goods** where the Town Clerk is satisfied that the market for such goods or materials is such that it would be unreasonable to tender or where the time required to complete the tender process is likely to lead to the loss of an opportunity to purchase a used or second hand item.
  - c) The goods, materials, works or services to be purchased are **sold at a fixed price**;
  - d) The goods or materials are **patented** or the goods, materials , works or services are of a **proprietary** or **specialised nature** and for which it is not therefore possible to obtain competitive prices;
  - e) The goods or materials are obtainable only from a **limited number of contractors** or the services or works can only be carried out by a limited number of contractors. However, in such a case a reasonable number of those contractors shall be invited to submit tenders;
  - f) The price of the goods or materials to be purchased are **controlled by trade organisations** or for other reasons there is **no genuine competition** for the goods, materials, services or works;
  - g) Any contract or sub contract that is substantially for the undertaking of services in which the exercise of **professional knowledge** is of primary importance;
  - h) The work to be executed or the goods or materials to be supplied consist of **emergency repairs or servicing** to buildings and existing vehicles, machinery or plant;
  - i) The work to be executed, services required or the goods or materials to be purchased are required as a **matter of urgency**;
  - j) Officers and the Council are of the opinion that in any particular case **more favourable terms** are likely to be obtained **by negotiating a price** with a supplier or contractor for the goods, materials, services or works;
  - k) The purchase is to be made by **auction**;
  - l) The purchase of the goods, materials, services or works is to be made using **standing arrangements with another public sector body**;

m) The purchase of the goods, materials, services or works is to be made using a **public service purchasing consortium**;

n) Where the contract is an **extension of an existing contract and a change of supplier would cause:-**

- **disproportionate technical difficulties**;
- **diseconomies**;
- **significant disruption to the delivery of Council services**

5.7 Where an exemption is necessary because of an unforeseeable emergency involving immediate risk to persons, property, other assets or serious disruption to Council services, the Town Clerk may authorise the exemption, and the exemption may be applied prior to approval by the Council. However, the Town Clerk must prepare a report for the next meeting of the Council to support the action taken.

## 6.0 PROCEDURE PRIOR TO PROCUREMENT

6.1 Before commencing the procurement process, the responsible officer should ensure that they have:-

- Considered the objectives of the expenditure and how this contributes towards the Council's strategic aims and targets;
- Appraised the need for the expenditure and its priority;
- Ensured that sufficient Revenue or Capital Programme Budget provision exists;
- Informed the Finance and Administration Manager if the expenditure is unexpected, unbudgeted or is likely to be material;
- Assessed the risks associated with incurring the expenditure (undertaking a formal risk assessment if necessary);
- Referred to the Standing Orders in order to determine the relevant procurement action required;
- Considered which procurement method is most likely to achieve the purchasing objectives and achieve value for money e.g. negotiating with existing suppliers, testing the market, utilising professional advice e.g. County Council staff, surveyors, architects, etc.

6.2 In all cases where the procurement is over £5,000 and relates to a capital project, approval must be sought from the Full Council before proceeding.

6.3 All expenditure relating to the Revenue Budget and any Capital Programme Budget expenditure less than £5,000 is not required to be reported to Council but the procurement process must follow the requirements of the Standing Orders.

6.4 However, if the procurement involves unbudgeted revenue or capital expenditure, approval must also be sought from the Council before proceeding.

6.5 Responsible officers may consult with potential suppliers prior to the issue of any invitation to quote or tender, but only in general terms about the nature, level and standard of the

supply and other general matters, provided that this does not prejudice any potential candidate.

- 6.6 Where seeking more than one quote, responsible officers should avoid seeking technical advice from suppliers, as this may prejudice the equal treatment of all potential candidates.

## **7.0 PROCUREMENT UP TO AND INCLUDING £5,000**

- 7.1 Where the total value of the procurement is less than £5,000, the Standing Orders do not include a formal requirement to seek three written quotations or tenders, although there is nothing to stop responsible officers from seeking three quotes if they wish.
- 7.2 What is important is that responsible officers are satisfied that value for money i.e. economy, efficiency and effectiveness in the use of public money, has been achieved.
- 7.3 This could be demonstrated by informally seeking prices from a number of alternative suppliers e.g. via an internet search, using suppliers that have provided a good service and value for money to the Council in the past, or negotiating a better deal with existing suppliers.
- 7.4 In terms of procurement records, all supplementary evidence relating to the purchase should be retained, for example copy purchase orders, emails, delivery notes, invoices etc.

## **8.0 WRITTEN QUOTATIONS (PROCUREMENT OVER £5,001 UP TO AND INCLUDING £50,000)**

- 8.1 Where the procurement of the goods, materials, services or works is in excess of £5,000 but below £50,000, at least three written quotations are required to be obtained, unless an exemption is approved under the requirements of Standing Order 5.
- 8.2 The responsible officer will be required to set out, ideally in writing, the particulars of the procurement or specification for the contract into which the Council wishes to enter, and to seek, via invitations to quote, at least three written quotations from relevant persons, suppliers or contractors able to provide the required goods, materials or services or undertake the required works.
- 8.3 The Council has a select list of tenderers for some goods and services and this should be used where appropriate. In other cases the choice of suppliers should be based on the professional knowledge of the responsible officer undertaking the procurement.
- 8.4 Every effort should be made to obtain at least three written quotations, and more quotes should be sought if more than three relevant suppliers are available.
- 8.5 However, if less than three quotes are actually received, following the invitation to quote, this Standing Order permits only those quotations received to be considered. Further quotes do not need to be sought.
- 8.6 Upon receipt of written quotations, the responsible officer will then be required to evaluate the quotes received against the requirements of the procurement or the contract specification and recommend the preferred contractor, including the reasons if the lowest price is not accepted or if less than three quotes were received.
- 8.7 All procurement relating to capital projects over £5,000 must be reported to the Council. These reports must include the full background to the project, any exemption applied from

the Standing Orders, details of the quotes sought and received, and the recommended contractor including the reason if the lowest price has not been accepted.

- 8.8 There are also a number of expenditure items relating to the Revenue Budget which are over the value of £5,000. These include loan repayments, I.T. contracts, vehicle hire, accountancy fees, audit fees, insurance contracts, etc.
- 8.9 However, as these are all regular payments already well-established within the Revenue Budget, the Standing Orders do not require revenue expenditure to be reported to Committee.
- 8.10 However, responsible officers must ensure that the procurement process follows the requirements of the Standing Orders including seeking an exemption if three quotes are not sought.
- 8.11 Also, if the procurement involves unbudgeted revenue expenditure e.g. one-off use of the contingency sum, approval must also be sought from the Council before proceeding.
- 8.12 The following supporting records for all procurement between the value of £5,001 and £50,000 are also expected to be kept:-
- Copies of the invitations to quote;
  - Copies of any contract specification;
  - Copies of all quotations received;
  - Reports to Committee or Council;
  - Purchase orders, emails, delivery notes and invoices;
  - Copies of any contract where relevant;
  - Standing Order Exemption Form, if an exemption applied;
  - A record of the reasons if the lowest price was not accepted;
  - Copies of correspondence with the successful contractor;

### **Important Note Regarding Standing Orders 9 to 16**

Given the small size of the Council and the lack of specialist in house expertise in relation to project management e.g. surveyors, architects etc, it is unlikely that the Council would undertake a project over the value of £50,000 without utilising the services of another local authority, public sector body or specialist company.

It is therefore very unlikely that the tendering rules set out in the following Standing Orders 9 to 16 would ever need to be used by the Council.

In cases where procurement is managed by another local authority on behalf of the Council, attention is drawn to Standing Order 1.8 which states that:-

“these Standing Orders shall not apply in the case where works, goods, materials or services are to be purchased in connection with the carrying out of works under agency arrangements with another local authority or public sector body. In such cases, the procurement the works, goods, materials or services will be made in accordance with that organisations own Standing Order rules”.

### **9.0 PUBLIC NOTICE OF CONTRACT (PROCUREMENT OVER £50,001 UP TO AND INCLUDING PUBLIC CONTRACTS REGULATIONS FOR GOODS AND SERVICES**

- 9.1 This Standing Order shall have effect where a tender for specified categories of work or for the supply of specified categories of goods, materials or services, is at a value between £50,001 and the current Public Contract Regulations Threshold.

- 9.2 This Standing Order will only apply on the rare occasions that the Council undertakes procurement over the value of £50,000 and where such a contract is not to be managed by another local authority.
- 9.3 In such cases the tender will be awarded by formal invitation to tender and is therefore limited to persons or organisations who reply to a public notice.
- 9.4 Public notice shall be given in one or more local newspapers circulating in the area or in one or more newspapers or journals circulating among such organisations as undertake such contracts.
- 9.5 The public notice must set out the nature and purpose of the contract into which the Council wishes to enter and invite interested organisations to apply, within such a period as may be specified but not being less than ten days, for permission to tender. The public notice should state the last date and time by which tenders must be received.
- 9.6 After the expiration of the period specified in the public notice, invitations to tender for the contract shall be sent to not less than three of the organisations who have applied for permission to tender, either generally or in relation to a particular contract or category of contracts in line with the procedures set out in Standing Orders 11 to 16.
- 9.7 However, if fewer than three organisations have responded to the public notice, then invitations to tender should be sent only to those organisations who have replied to the public notice. Further tenders do not need to be sought.
- 9.8 Detailed tendering procedures including instructions for tenderers, standard conditions of tender, submission, receipt and opening of tenders, shortlisting, evaluation and award of contract and the withdrawal of tenders are set out in Standing Orders 11 to 16.
- 9.9 The following supporting records for all procurement between the value of £50,001 and the current threshold would be expected to be retained:-
- Cuttings or copies of the newspaper advertisement(s);
  - Tender document including contract specification if relevant;
  - Completed tender documents received from candidates;
  - Contract document (see Standing Order 18);
  - Standing Order Exemption Form, if exemption applied for;
  - A record of the reasons if the lowest price was not accepted;
  - Copies of all written correspondence with candidates during the tender process;
  - Post tender correspondence with the successful contractor;
  - Post contract evaluation and monitoring records.
- 9.10 The Freedom of Information Act 2000 gives a general right of public access to all types of recorded information held by public authorities, sets out exemptions from that general right, and places a number of obligations on public authorities with regard to the disclosures of information. The Council will, as a general rule, allow public access to recorded information, where possible, and contractors must agree to the Council making any disclosures in accordance with the Act.

## **10.0 PUBLIC CONTRACTS REGULATIONS PROCEDURE**

- 10.1 This Standing Order shall have effect on the rare occasions where a tender for specified categories of work or for the supply of specified categories of goods, materials or services, is at a value over the current Public Contracts Regulations Threshold, and where such a contract is not to be managed by another local authority.
- 10.2 In such instances the contract would be subject to the requirements of the Regulations.

## **11.0 INVITATION TO TENDER / INSTRUCTIONS FOR TENDERERS**

- 11.1 The invitation to tender must state that no tender will be considered unless it is received by the date and time stipulated. No tender delivered in contravention of this rule will be considered.
- 11.2 All invitations to tender will include the following information:-
- A specification of the goods, materials, services or works that are required, describing the Council's requirements, including any Standards that apply, in sufficient enough detail to enable the submission of competitive tenders;
  - A requirement for the candidate to declare that the tender content, price or any other particulars concerning the tender have not been disclosed to any other party;
  - A requirement for the candidate to complete fully and sign all tender documents;
  - Notification that tenders are submitted to the Council on the basis that they are compiled at the candidates expense;
  - A description of the award procedure and a definition of the award criteria (see Standing Order 13 for further details);
  - A stipulation that any tenders submitted by email, fax or any other electronic means will not be considered;
  - The method by which any arithmetical errors discovered in submitted tenders will be dealt with, in particular whether the overall price prevails over the individual rates in the tender;
  - A statement that the Council is not bound to accept the lowest tender or any tender received;
  - A statement that unless otherwise agreed by the Council, tenders for a part or parts of the works, services, goods or materials will be rejected.
- 11.3 All candidates invited to tender must be issued with the same information, at the same time, and subject to the same conditions. Any supplementary information must also be given on the same basis.
- 11.4 All invitations to tender must specify the terms and conditions of the contract that will apply. The content of contract documents is covered in more detail in Standing Order 18.
- 11.5 Candidates invited to respond must be given an adequate period of time in which to prepare and submit a proper tender, consistent with urgency of the contract requirement. This will normally be four weeks.
- 11.6 If so decided for any particular contract, the tender conditions should state that the Council may, in its absolute discretion, extend for all candidates the time and date for return.

## **12.0 SUBMISSION, RECEIPT AND OPENING OF TENDERS**

- 12.1 Written tenders relating to formal contracts, and where an exemption to the Standing Orders does not apply, shall be received in an official envelope supplied by the Town Clerk for that purpose.
- 12.2 Such envelopes shall not bear any name or mark indicating the sender, and shall remain sealed in the custody of the Town Clerk until the time appointed for their opening.

- 12.3 On receipt by the Council, the envelope shall be initialled by the receiving officer and stamped with the date and time of receipt.
- 12.4 The Council shall be under no duty to consider any tender which is received after the time notified to candidates for return of tender or which otherwise does not comply with these instructions.
- 12.5 Tenders shall be opened at the appointed time and date by an authorised officer in the presence of two Members of the Council selected from an agreed list. All tenders will be opened at the same time and each tender will be signed and dated by both the Town Clerk and Member.
- 12.6 The Town Clerk will maintain a record on the appropriate contract file of all tenders received, including those opened and those tenders that have been returned as not complying with these instructions.

### **13.0 AWARD CRITERIA / EVALUATION OF TENDERS AND CONTRACTS**

- 13.1 Short listing and evaluation of tenders must have regard to the standards set out in the tender or contract specification and the award criteria for the tender or contract.
- 13.2 The responsible officer must ascertain if any standards apply to the subject matter of the contract. These standards must be clearly set out in the invitation to tender and contract specification as set out in Standing Order 11, and are necessary in order to properly describe the required quality of the contract.
- 13.3 The responsible officer must also define the award criteria appropriate to the evaluation of the tenders and shortlist of candidates. Award criteria must be designed in order to ensure an outcome that achieves value for money for the Council, and demonstrates economy, efficiency and effectiveness in the use of public resources.
- 13.4 The basic award criteria where price is the only consideration to be taken into account, would be as follows:-
  - Lowest price to be accepted where payment is to be made by the Council;
  - Highest price to be accepted where payment is to be received by the Council;
- 13.5 However, in many cases there will be a number of considerations other than price that need to be taken into account and in these cases it should be stated that the 'most economically advantageous' tender will be accepted.
- 13.6 If the 'most economically advantageous' criteria is to be adopted, the award criteria must be further defined by reference to the various non- financial sub criteria.
- 13.7 Sub criteria may refer to a number of relevant considerations and these may include:-
  - Quality of goods or service quality;
  - Future running costs;
  - Technical requirements;
  - Previous experience;
  - Delivery date;
  - Environmental considerations;
  - Functional characteristics e.g. security and control features;
  - Safety considerations;
  - After sales service;
  - Technical support e.g. IT software support contract;

- Any other relevant matters

13.8 Award criteria cannot include:-

- non commercial considerations;
- matters which are deemed to be anti competitive within the definitions in the Local Government Act 1988.

13.9 All tenders must be checked for arithmetic accuracy. If arithmetic errors are found, they should be notified to the tenderer, who should then be requested to reconfirm the figures or withdraw the tender.

13.10 Where the Council seeks clarification of a tender, this must either be requested in writing or by way of a meeting during which recorded minutes must be taken.

## **14.0 POST TENDER NEGOTIATION**

14.1 Post tender negotiation is defined as negotiations with any tenderer after the submission of a tender, but before the award of the contract, with a view to obtaining an adjustment in price, delivery or content.

14.2 However, where post tender negotiation results in a fundamental change to the contract specification, the contract must be re-tendered.

14.3 Post tender negotiation must be carried out by the Town Clerk and one other senior officer of the Council, preferably the Finance and Administration Manager.

14.4 Post tender negotiations should only be undertaken with the tenderer who has previously been identified as submitting the lowest or most economically advantageous tender.

14.5 Tendered rates and prices can only be adjusted in respect of a corresponding adjustment in the scope or quantity included in the tender documents and contract specification.

14.6 The responsible officer must ensure that all post tender negotiations are properly recorded by way of minutes of any meetings held and agreement to any amendments is made in writing between the tenderer and the Council.

## **15.0 ACCEPTANCE AND AWARD OF TENDERS**

15.1 All contracts must be evaluated and awarded in accordance with the contract specification and the award criteria as detailed in Standing Order 13.

15.2 The responsible officer, in consultation with the Town Clerk, will be responsible for evaluating the tenders received and recommending the acceptance of the lowest or most economically advantageous tender.

15.3 Full details of the capital project, tender process, contract specification, tenders received, and the recommended award of the tender should be reported to the appropriate spending Committee of the Council. Where the lowest priced tender is not recommended, full details must be given of the award criteria and the non-financial considerations that have been taken into account.

15.4 The Council will then consider the tender and make a final decision in relation to awarding the contract.

- 15.5 If the lowest tender exceeds the agreed budget set aside for that matter, then a written report by the Town Clerk must also be made to the next meeting of the Council requesting approval for the additional budget.
- 15.6 Unless otherwise decided by the Council, acceptance of any tender will not give rise to a contract unless and until a formal contract document is completed. Where the invitation to tender stipulates a form of contract or specific contract terms, the form of contract or terms submitted by the tenderer shall not be deemed to be accepted by virtue of the tender being received.
- 15.7 Following acceptance of a tender by the Council, the responsible officer should write to all tenderers who submitted a bid, with the reasons that they were unsuccessful including details of the award criteria and the prices or ranges of prices submitted, without relating these to tenderer's names.

## **16.0 WITHDRAWAL OF TENDER**

- 16.1 In the event of any person or organisation withdrawing a tender or declining to sign a form of contract on being called upon to do so after the tender has been accepted by the Council, no further tender from such person or organisation, will in the absence of a satisfactory explanation, be considered by the Council.

## **17.0 NOMINATED SUB – CONTRACTORS OR SUPPLIERS**

- 17.1 This Standing Order will have effect where the Council approves a contract for the execution of work with a main contractor and also proposes to nominate to the main contractor one or more sub-contractors or suppliers for the execution of the work or the supply of goods, materials or services within the main contract.
- 17.2 Where a sub-contractor or supplier is to be nominated to the main contractor, tenders for the nomination will be made in accordance with the normal provisions of these Standing Orders, and based on the financial thresholds detailed in Standing Order 4.
- 17.3 The terms of the invitation shall require an undertaking by the sub-contractor that if selected that they will be willing to enter into a contract with the main contractor on terms which indemnify the main contractor against their own obligations under the main contract in relation to the work or goods including in the sub-contract.
- 17.4 The tenders shall be opened, evaluated and awarded in accordance with Standing Orders 12, 13, 14 and 15 and reported to the Council.

## **18.0 CONTENT OF CONTRACT / CONTRACT CONDITIONS**

- 18.1 All contracts for goods, materials, services or works below the value of £50,000, for which only written quotations are required, will be made by the issue of an official purchase order, duly certified by the appropriate responsible officer.
- 18.2 However, in specific cases a written contract as set out below, may also be deemed to be appropriate.
- 18.3 All contracts above £50,000 and therefore requiring invitation to tender must be made in the form of a written contract, signed by the Town Clerk and the Mayor of the Council and an authorised representative of the contractor and sealed on behalf of the Council, prior to the issue of an official purchase order.

18.4 Written contracts must, as a minimum, clearly state the following:-

- Signed and sealed Form of Agreement between the Council and the Contractor;
- Definitions of the terminology used within the Contract;
- Contract period if applicable;
- Full description of the services or works to be provided;
- The time and dates for the delivery of goods, materials or services to be supplied or the performance of works to be delivered;
- Any penalties for not meeting the terms of the contract
- Staffing requirements and rules;
- Contract monitoring, inspection and audit arrangements;
- Use of Council premises and equipment;
- Confidentiality rules;
- Security arrangements;
- Contract price and payment terms;
- A statement that the contract is subject to the appropriate laws for the prevention of corruption;
- Contract default rules;
- Contract termination rules;
- Arbitration rules;
- Assignment, transfer and sub letting rules;
- Income Tax rules;
- Indemnity to the Council;
- Insurance requirements;
- Health and Safety Act requirements;
- Data Protection Act requirements;
- Equalities legislation requirements;
- Right of access to relevant documentation and records of the contractor for monitoring and audit purposes

18.5 All contracts must be concluded formally in writing before the supply, service or works begins, except in exceptional circumstances, with the consent of the Town Clerk. An award letter is not sufficient for these purposes.

18.6 All contracts for the execution for services or works must include a condition that the contractor will be responsible for ensuring that all persons employed by them, and by any sub-contractor, are in the contractor's or sub contractor's direct employment.

18.7 It is expressly agreed that the contractor and sub-contractor will not use 'lump labour'. The expression 'lump labour means the practice of individual work people or groups of work people contracting as independent labour only sub contracts and not being in the direct employment of the contractor or sub-contractor.

18.8 The following clauses regarding the prevention of corruption must be included in every written contract:-

The Council may terminate a contract immediately and recover all of its losses if the contractor, its employees or anyone acting on the contractor's behalf:-

- Offer, give or agree to give any inducement, reward or consideration of any kind (other than the tender itself) to any person in relation to the listing or selection of any tenderer or the award of any contract with the Council, whether or not the contractor has knowledge of those acts;
- Committed any offence under the Prevention of Corruption Acts 1889 to 1916 (or equivalent law);

- Given any fee or reward, the receipt of which is an offence under Section 117 of the Local Government Act 1972 (or equivalent law);
- The contractor is shown to have knowingly or recklessly given materially false information to the Council within a tender.

18.9 If the Council terminates the contract under Standing Order 18.7 it shall be entitled to recover from the contractor the amount of any loss caused to the Council. The Council shall not be liable to the contractor for any loss (including loss of profit) caused to the contractor by the termination.

18.10 The contractor will indemnify the Council against all liability, loss, damage, death or personal injury arising out of the performance of the contract. The contractor will have both employers' and public liability insurance to the minimum value that the Council requires and will provide evidence of current insurance cover to the Council.

18.11 The contractor shall pay to the Council liquidated and ascertained damages if the contractor fails or delays in performance. The amount of damage for each period or instance of failure or delay will be set out in the contract and shall be a genuine estimate of the Council's loss. This clause may be omitted where the Town Clerk considers it impractical or unreasonable to apply.

18.12 The contractor shall ensure that all sub-contractors employed to undertake the contract are contractually bound to comply with the requirements of this Standing Order and that all such sub-contractors also comply with these requirements.

## **19.0 DECLARATIONS OF INTEREST**

19.1 If it comes to the knowledge of a Member or a senior officer of the Council, that a contract in which he or she has a pecuniary interest has been or is proposed to be entered into by the Council, he or she must give written notice to the Town Clerk, who will report such declarations to the Council.

19.2 Those Members or officers would then be excluded from taking part in any discussions relating to the contract or voting thereon at the Committee meeting at which the procurement is to be discussed.

19.3 The Town Clerk will maintain a register of all declarations of interest notified by Members or Officers

## **20.0 STANDARD SPECIFICATION**

21.1 Where an appropriate Standard Specification or Standard Code of Practice issued by the British Standards Institution is current at the date of the tender, the contract shall require that all goods and materials used or supplied and all workmanship shall be in accordance with those standards.

## **21.0 ENGAGEMENT OF CONSULTANTS**

21.1 The engagement of consultants must be procured in line with the overall requirements of the Standing Orders.

21.2 In considering the need to engage consultants, responsible officers must have a clear understanding of:-

- (1) The precise nature of the work involved and the reasons why it cannot be undertaken by existing staff;
  - (2) Whether sufficient budget provision exists to employ the consultant(s);
  - (3) The procurement action required in accordance with these Standing Orders;
  - (4) The fees or fee scale payable, and when payable, including details of any instalments;
  - (5) The basis on which the fee or fee scale is calculated;
  - (6) What, if any, additional payments or expenses are payable and on what basis;
  - (7) What provision there is if the work is aborted part way through or if an extension or addition to the work is required;
  - (8) Provision for consultants to give the Council ownership of/copyright in any documentary work or intellectual property on completion of the contract.
- 21.3 The engagement of consultants will be subject to the completion of a formal written letter, contract of appointment or brief.
- 21.4 Where the value of the consultancy is more than £5,000 per year, approval should be sought from the appropriate spending committee prior to engaging the consultant in line with the main rules of the Standing Orders unless an Exemption to the Standing Orders has been applied for.
- 21.5 Where an architect, engineer, surveyor or other consultant is responsible for the supervision of a contract he/she shall comply with the Council's Standing Orders and Financial Regulations as though he/she were an officer of the Council and shall produce to the Town Clerk all records kept in relation to the contract.

Contracts and Procurement

Standing Orders

**EXEMPTION APPLICATION FORM**

Description of Procurement / Contract Activity Responsible Officer	Procurement Amount	
<i>Insert brief description of the procurement activity or the contract to be entered into</i>	£	
Description of the Goods, Materials, Services or Works to be Procured:		
<i>Insert detailed description of the goods, materials, services or works to be procured</i>		
Name of Contractor / Supplier		
<i>Insert details of the preferred contractor or supplier</i>		
Exemption claimed:		
<i>Refer to Standing Order 5.6 and select an exemption from that list</i>		
Reason for Application Exemption:		
<i>Insert reasons for the application for an Exemption from the Standing orders</i>		
Date to be reported to committee:		
<i>Insert date of meeting of the appropriate spending committee to which the application for the Exemption is requested</i>		
Manager Authorisation:		
Signature:	Designation:	Date:
Town Clerk		
Finance and Administration Manager		