

Contract Management Regulations

Objectives

1. The primary objectives of these Regulations are to ensure that all contracts for works, services and supplies (goods and services) are entered into by the Council in a manner which : -
 - a. secures the best possible value for money
 - b. is demonstrably free from impropriety.
2. To do this the selection and award procedures for contracts must be conducted fairly and in an open and regularised way. The Council must conform to relevant legal requirements. The Council will adopt a procurement strategy in the near future. This Code will be updated to reflect it.

General

3. These Regulations apply to all contracts, whether formal or otherwise, for the purchase of works, services or supplies. They relate to both Revenue and Capital Expenditure. All purchasing must comply with EU Regulations.
4. No contract or purchase may be made unless a properly approved budget exists for the expenditure. All contracts and purchase procedures must otherwise comply with Financial Regulations and the Financial Rules of Procedure.

Gifts and Declaration of Interest

5. Members and employees involved in the letting of contracts for and the purchase of goods and services, must ensure they comply with the relevant Code of Conduct in respect of the declaration of interest. Any gift offered, either during a contract process, or prior to or after the procedure, must be reported in accordance with the Council's procedures for these matters. If any person believes such a gift to have been offered as an inducement the appropriate General Manager and the Monitoring Officer are to be informed immediately.

Estimates of Cost

6. Before any offer to quote or tender is released the relevant employee is required to draw up in writing a specification of the Council's requirement. This is to make clear all aspects of the goods and services the Council intends to procure and over what period.

7. From this an estimate is to be made of the value of a contract or purchase to allow for the correct procedure to be followed. This estimate and the basis of it is to be recorded in writing by the relevant employee, delegated by the General Manager for this purpose.

Basic Procedures

8. The Council will operate three means of purchase or contract : -
 - a. Direct Purchase
 - b. Approved Lists
 - c. Tendered Contracts.

For the purpose of deciding the correct procedure to be followed it is requirement that all foreseeable purchases or contracts for the service be aggregated. Amounts purchased are not to be divided to allow inclusion in a less rigorous procedure.

9. The above procedures do not have to be applied where : -
 - a. the Council considers that there is no effective competition for the supply of the service or goods (eg patented items)
 - b. the purchase is for the supply of goods involving special professional, technical scientific or artistic skills or knowledge
 - c. where the contract or purchase relates to the repairs, spare parts etc for existing machinery and plant
 - d. purchases through an approved buying consortium such as the Wiltshire Consortium for Purchasing and Distribution
 - e. where the execution of work etc is a matter of exceptional urgency.

Where an employee proposes to invoke this Regulation (except sub para d above) a notification to this effect is to be made to the Finance Manager in adequate time for an objection to be made. If the Finance Manager makes no objection a record is to be made by the Monitoring Officer in a Procedural Exceptions Register maintained by them.

Local Suppliers and Council Policies

10. Wherever possible the policies of the Council for the economic growth and sustainability of the area are to be taken into account when purchasing is intended. Local suppliers, where they exist, should normally be provided with an opportunity to quote for supplying the goods and services etc but neither of these is to be given undue weight over value for money and efficiency.

11. Where the contract is for work to be undertaken on the Councils behalf the criteria for inclusion in the tendering or approved list processes are to include appropriate requirements to match or adhere to Council equalities policy, environmental policies and health and safety requirements.

Direct Purchase

12. Where the Council intends to purchase relatively low value goods and services an abbreviated procedure may be followed. This depends on the value of purchases. Employees making use of these procedures must ensure that they consider at least one alternative suppliers to those most often approached on each occasion.

- a. Up to £3000 in a twelve month period

Orders for goods and services below £3000 value can be placed with the most appropriate supplier, giving consideration to any relevant factors. For goods and services that are likely to be a regular requirement this should be discussed with the Facilities Team Leader to establish whether a call-off contract would be appropriate.

- b. £3000 to £10,000 in a twelve month period or £5,000 annualised if the period exceeds 12 months

At least three suppliers are to be contacted and prices obtained from each of them. This may be done over the telephone. The employee undertaking the exercise must record the details of the product/service specified in writing and the prices quoted are to be recorded when they are given. An order for the successful quoted amount must then be raised under normal procedures and a record of the quotations received attached to the order.

- c. Between £10,000 and £30,000 in a twelve month period and between £5,001 and £20,000 annualised if the period exceeds twelve months

Written quotations from at least three suppliers are to be obtained following submission in writing of the Council's specification for the goods or services. A date for response is to be set and advised to suppliers. The response of the suppliers is to be filed and retained with the order for not less than 2 years. If any supplier fails to respond another supplier is to be sought.

- d. For Contracts over £30,000 in a twelve month period or greater than £20,000 annualised for periods greater than twelve months then full tendering will be required (see below)

All contracts covered by sub paragraph b and c above to run for periods in excess of twelve months will require the written approval of the relevant General Manager

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For contracts included in sub paragraph d that will run for periods in excess of twelve months the approval of Senior Management Team will be required.

Approved Lists

13. For purchases of a regular or call-off nature and likely to be between £15000 and £50000 the Approved List procedure is to be followed. This procedure is for contracts between these values for which there is likely to be a regular requirement, for example for minor categories of engineering or building work, the provision of IT equipment etc.
14. The Council will advertise in local or regional newspapers, trade press etc for contractors wishing to be included in an approved list. The advertisements will specify the nature of the services to be purchased by this means and who may apply for inclusion. Where applicable exemplar pricing may be sought and evaluated prior to inclusion; this is particularly relevant where call-off type procedures may be most appropriate.
15. The criteria for inclusion will be drawn up and sent to all those contractors or suppliers who indicate a wish to be included together with a standard Approved List Form drawn up by the Finance Manager. Those satisfying the criteria will be included in the relevant list. The Approved List Form is to require information as follows : -
 - a. Financial standing and insurance cover
 - b. Technical capacity
 - c. Experience as evidenced by at least three written references relating to work within the previous two years
 - d. The Contractors policies and procedures as required at Regulation 11 above.
16. Consideration of contractors and suppliers for inclusion in Approved Lists is to be by at least 2 employees nominated for this purpose and a record is to be made of any reasons for rejection. An Approved List for the relevant range of goods and services is to be sent to Finance Services Manager and the Monitoring Officer for information. This is to be updated at least annually.
17. Once included in an approved list contractors and suppliers will be invited to tender for goods and services in accordance with the limits set at paragraph 12. Contractors are to be afforded the opportunity to quote in strict rotation, any decision to invite quotes or tenders other than in rotation is to be clearly documented. The Facilities Team will maintain a database of approved suppliers and a record of offers to tender etc.
18. Any contractor found to be unable to quote or consistently fails to meet the requirements, including price or quality requirements, may be removed from an Approved List. If this is to be done, a notification is to be sent to the contractor explaining why this is to happen and a copy of this is to be forwarded to the Chairman of the Overview and Scrutiny Committee. A contractor may be restored to a list after 2 years if they fully meet the required criteria at that time.

19. Approved Lists are to be reviewed formally every three years by the General Manager responsible for their main use. The review is to include the suitability of the contractor for retention on the list and whether additional contractors should be sought. The outcome of the review is to be advised to the Overview and Scrutiny Committee and the Monitoring Officer.

Full Tendering

20. Where the sums involved are greater than those set out above or where the alternatives are not appropriate, a full tendering process is to be followed. In this case there will be 4 stages to the process : -
- i. The pre-tender stage
 - ii. The invitation to Tender
 - iii. The receipt and opening of Tenders
 - iv. The consideration and acceptance stage.

The Pre-Tender Stage

21. When a contract is to be let a specification of the goods and services required is to be drawn up. At the same time the EU Procurement Rules are to be examined to ensure that the tendering procedure complies with these Rules and their incorporation into UK law.
22. Advertisements are then to be placed seeking expressions of interest. These advertisements must indicate the form an expression of interest is to take and the form of tendering procedure to be followed by the Council. The expression of interest is to set out any information required for a contractor to be considered to be invited to tender and any selection procedure which may be applied.

The Invitation to Tender

23. The Invitation to Tender is to be sent to any suitable contractor, unless it was predetermined that some selection process was to be used to limit the numbers. The invitation to tender is to include the main contract terms required is to use standard industry forms of tender as far as possible and is to specify : -
- a. that tenders must be submitted in sealed envelopes that do not identify the tenderer and to whom they are to be addressed
 - b. the closing date for receipt of tenders
 - c. the period for which a tender must remain valid and the consideration required to do so
 - d. whether variant tenders will be considered and if so in what form
 - e. whether a bond or parenting company guarantee will be required
 - f. professional, public liability and other insurance required
 - g. that the Council is not obliged to accept the lowest tender.

Receipt and Opening of Tenders

24. When tenders are received they are to be marked with the time and date of receipt and are to be kept securely until they are due to be opened. Tenders

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bearing a mark which identifies the tenderer are to be retained until formally opened.

25. Tenders received after the stipulated time for receipt and opening may be opened and considered providing a General Manager, in consultation with the Monitoring Officer, determines that it is proper to do so. This is to be recorded in the Procedural Exceptions Register by the Monitoring Officer.
26. A Tender Board consisting of at least two suitably qualified employees, acting on the instructions of the General Manager concerned is to open tenders to a contract value of up to £100,000. The Finance Manager is to be advised when tenders are to be opened and from time to time the opening procedure is to be overseen by their representative. For any contract value in excess of £100,000 a Cabinet Member is to be present at the tender opening and the Chairman of the Overview and Scrutiny Committee is to be advised of the time and place of the proposed opening.
27. A record of the main elements of a tender is to be made at the time of opening. This record is to stipulate : -
 - a. the name of the tenderer
 - b. the basic tender price or prices or predetermined prices for elements of the contract
 - c. any other matters relevant to the tender
 - d. tenders excluded by virtue of identification unless in the opinion of the relevant General Manager this is not necessary
 - e. any problems encountered with the tender.

The record is to be signed as correct by the Tender Board and any exceptions to prescribed procedure are to be recorded in the Procedural Exceptions Register.

Consideration and Acceptance

28. Where the matter under consideration is straightforward and basically one of a single price, the Tender Board may allocate the contract. If this is the case the decision is to be recorded as part of the record of opening.
29. Where the matter is not simple to decide, a Tender Evaluation Board is to be appointed by the relevant General Manager. This is to consist of (at least 2) suitably qualified persons capable of evaluating the tenders, if necessary including (in addition) external advisors. Where external advisors are to be appointed they are normally to be involved at the contract specification (Pre Tender) stage of these procedures.
30. Where contract values exceed key decision thresholds the relevant Portfolio Holder and the Chairman of the Overview and Scrutiny Committee are to be advised and are to be invited to review the findings of the Board
31. In considering the tenders the Tender Evaluation Board must have regard not only to the prices quoted but also to factors such as the quality of the service or goods offered relative to a cheaper quotation and the suitability of the contractor in relation to the Council's policies. The Board should also have regard to the Council's original estimate of the value of the contract and explain

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any significant difference. The Board is to draw up a report recommending which (if any) of the tenders is to be accepted and on what terms.

32. If there is a possibility that a genuine misunderstanding by one contractor has led to a mistaken tender, the General Manager concerned may accept that the tender be amended to allow acceptance by the Council on more advantageous terms than would otherwise be the case. This concession is not to be used to renegotiate any tender. In this case the Portfolio Holder and Chairman of Overview and Scrutiny Committee are to be advised in advance of the General Manager's intentions and the matter is to be recorded in the Procedural Exceptions Register.

Notification and Contractual Matters

33. Once a tender has been accepted a notification to that effect is to be made in accordance with EU based legislation and to unsuccessful tenderers. A contract is then to be drawn up to incorporate the agreed terms and this is to be reviewed by the Finance Manager and Monitoring Officer prior to signing.
34. Any contract is to stipulate that it is not to be assigned nor is the work to be let to sub-contractors unless this was clearly stipulated in the tender document. If this was allowed as part of the tender process it is not to be undertaken unless agreed in writing by the General Manager concerned.
35. Where any contract value is £100000 or more the contract is to require a bond for at least 10% of the contract value or some other security deemed by the Finance Manager to be suitable. Consideration is to be given to the inclusion of a clause requiring payment of unliquidated damages in the event of the failure of the contractor to complete the contract to the required specification or within the timescale agreed.

Sealing of Contracts

36. Contracts with an estimated net value of £100000 or more are to be sealed by the appropriate employee who has custody of the Council's Seal unless otherwise directed by the Council. This is then to be recorded in the register maintained for this purpose.

