

## **BOROUGH OF SPELTHORNE**

### **STANDING ORDERS FOR CONTRACTS**

#### **GENERAL**

##### **Introduction**

1. These Standing Orders provide basic guidance to anyone making a contract for the Council. They apply equally to the supply of goods, materials, services or other work. In making such contracts, the overriding objective is to obtain the best value for the Council in all the relevant circumstances.

##### **Compliance**

2. Every contract made by or for the Council must comply with these Standing Orders except in the circumstances set out in paragraphs 16 – 21 (Exceptions) below.

##### **Documentation and Audit Trail**

3. All contracts must be fully documented on a dedicated contract file, with a complete audit trail recording all significant decisions and actions taken. All contract files should clearly record the identity of the officer undertaking the procurement (the procurement manager) and the identity of the proposed contract manager.
4. Where contracts are conducted electronically (see below) the procurement manager must ensure that appropriate arrangements are made for:
  - i) the safeguarding of data
  - ii) a complete and accurate record of the transaction to be made available for audit purposes

##### **Division of Contracts**

5. Large scale works or orders must not be broken down into smaller units for the purpose of creating lower value contracts unless there are sound operational or management reasons for doing so. Any such action must be authorised by the relevant Strategic Director in writing with the reasons recorded in the contract file. The avoidance of any provision of these Standing Orders is not an acceptable reason for such action.

##### **Estimated Value**

6. An estimated value must be prepared and documented for every contract immediately before starting the procurement process to confirm there is adequate budget provision, and to determine the appropriate form of tender or quotation process to follow. For contracts which continue over a number of years the estimated value of the contract shall be taken to be the annual value multiplied by four years as this will allow the procurement manager to assess whether European procurement rules may apply.

## **Specification and Selection Criteria**

7. A specification and selection criteria must be prepared in advance of tenders or quotations being sought. The main selection criteria should normally be the lowest price. Where a Strategic Director considers this is not appropriate and a reasonable balance needs to be struck between cost and quality, including other factors such as timing, the selection criteria must be approved by the Chief Executive. Both the specification and the selection criteria must be recorded on the contract file and be used to evaluate tenders/quotations received.
8. If a potential contractor requires information not provided in the specification, such additional information must be copied to all other tenderers. It is important that all potential contractors are treated equally.

## **Special Requirements**

9. All contracts must comply with relevant European Law and any relevant statutory provisions. Where there is a conflict between these Standing Orders and any statutory provision, the law must prevail. Advice on the tender process and form of contract should be taken from Legal Services at the start of any procurement project.

## **Authorisation to Officers**

10. Where a Strategic Director is authorised to take decisions under these Standing Orders, he may authorise a Head of Service to take decisions on any matters falling within the sphere of responsibility of that Head of Service. Where a Head of Service is so authorised, a record should be placed by the Strategic Director on the contract file.

## **CONTRACT VALUES**

11. The procedures outlined below by contract value are the minimum. Where better value for the Council might be achieved by seeking more tenders or quotations this should be done. The figures outlined in this document are exclusive of VAT.

### **Contracts estimated to be under £20,000**

12. At least three verbal or written quotations should be sought. If this is not possible or cost effective one or two quotations may be sought provided this is agreed by the relevant Strategic Director and this agreement and the reasons for it are recorded in writing on the contract file.

### **Contracts estimated to be between £20,000 & £75,000**

13. A minimum of three written quotations or tenders must be obtained.

### **Contracts of £75,000 and over**

14. Where the estimated contract value is £75,000 or above a minimum of three tenders must be sought in accordance with the procedure set out in paragraphs 23 – 25 (Types of Tender Procedure) below. Where less than two valid tenders are returned the Council's officer Management Team shall consider whether or not the contract should be readvertised before it is awarded.

## EU Public Procurement Rules

15. Some types of contracts have to be procured according to rules applicable throughout the EU. Indicative levels are shown below but these change periodically. Any large contracts for works or for the supply of goods and/or services should be discussed in advance with Legal Services to ascertain the current limits and the applicable process. Advice should be taken at the start of a procurement project.

*Informative: from 31 January 2006 the limits are:*

Supplies	€236,945 (£153,376)
Services	€236,945 (£153,376)
Works	€5,923,624 (£3,834,411)

## Exceptions

16. Exceptions to these Standing Orders may be made without reference to the Executive or Council only in the following circumstances :-
- For contracts under £75,000 where the Strategic Director is satisfied their application:
- (a) would not be practical, or
  - (b) would not ensure genuine competition, or
  - (c) where the supplies, works or services can most sensibly be obtained by extending or adding to an existing contract and the cost can be contained within the budget for the existing contract.
17. Any such exception must be agreed with the Strategic Director (Support) and the reasons for the exception and the appropriate approval recorded in writing on the contract file.
18. For contracts of £75,000 and over where the Strategic Director is satisfied their application:
- (a) would not be practical, or
  - (b) would not ensure genuine competition, or
  - (c) would not achieve best value for the Council
19. Any such exception must be approved in advance by the Executive after receiving advice from the Strategic Director after consultation with the Strategic Director (Support). The reasons for the exception and the appropriate approval must be recorded in writing on the contract file.
20. Where the need for supplies, works or services is so urgent (other than for reasons of delay on the part of any Council Officer) that the invitation of estimates, quotations or tenders is not practicable, exceptions may be approved by the relevant Strategic Director if the work is estimated to cost less than £75,000. The reasons for any exception and the appropriate approval must be recorded in writing on the contract file.
21. In cases of civil emergency, where the need for supplies, works or services is so urgent that the invitation of estimates, quotations or tenders is not practicable, exceptions may be approved by the relevant Strategic Director in

consultation with the Chief Executive if the work is estimated to cost more than £75,000. The reasons for any exception and the appropriate approval must be recorded in writing on the contract file as soon as possible.

22. Where tenders have been invited on behalf of any consortium, collaboration or agency arrangement of which the Council is a member, the Standing Orders or requirements adopted by such a body should be observed if they differ from these Standing Orders.

## **TYPES OF TENDER PROCEDURE**

### **General**

23. All contracts estimated at £75,000 or more must be the subject of public advertisement. This can be either an open invitation to tender or an invitation to tender for a place on a select list of contractors (ie a list from which a number of contractors will be invited to tender for the particular contract or particular types of work). The reason for choosing a particular course should be recorded in the contract file. Either procedure may also be used for contracts less than £75,000 if there are a large number of possible contractors or in the opinion of the relevant Head of Service it would be likely to be cost effective for the Council.

### **Open invitation to tender**

24. Where it has been decided that tenders for a contract should be obtained by open competition, at least 10 days public notice of the contract must be given in a suitable medium. This may include, but is not limited to local newspapers, relevant professional journals, trade newspapers, websites or internet portals. The notice must state the nature and purpose of the contract, where further details and a specification may be obtained, invite tenders for its execution and state the last date and time by which tenders must be received. In addition an advertisement must be placed in the Official Journal of the European Community in accordance with EU Public Procurement Rules where necessary.

### **Advertisement inviting persons to join a select list**

25. Where it is decided to restrict the invitation to tender to persons from a select list, public notice of the intention to do so must be given in at least one local newspaper and at least one relevant professional or trade newspaper or journal. The notice must give details of the proposed contract, invite persons or bodies interested to apply for an invitation to tender, and specify a time limit of not less than ten days within which applications must be submitted to the Council. An appropriate notice must also appear in the Official Journal of the European Community where necessary.

## **SELECTION OF TENDERERS**

### **Contracts less than £75,000**

26. Where there is no open invitation to tender the persons invited to tender or quote should be approved by the relevant Strategic Director. This should be recorded on the contract file with the reasons for the choice of the particular invitees.

## **Invitations from a select list for contracts of £75,000 and over**

27. The persons or bodies included on any select list for contracts of £75,000 and over should be approved by the Executive after considering the responses to the public advertisement. A minimum of four persons on the select list should be invited to tender for any contract and the persons to be invited shall be chosen by the Strategic Director of the relevant department in consultation with the Chairman of the Executive

## **RECEIPT AND OPENING OF TENDERS OR QUOTATIONS**

28. Where written tenders or quotations are invited, tenderers should be asked to return their tender or quotation in a sealed, plain envelope with only the word "Tender" or "Quotation", the title of the contract and the closing date and time for receipt written on it. No marks which identify the sender must appear on the envelope. It should be made clear that where contracts are estimated to be worth £20,000 or over they will not be considered unless returned in this way. Envelopes containing tenders for contracts estimated to be £75,000 or over must be addressed to the Chief Executive, otherwise to the relevant Strategic Director.
29. Envelopes containing tenders or quotations should be kept secure, preferably in a tender box, until the time appointed for opening them. Tenders or quotations received after the closing time cannot be considered, unless the envelope bears a postmark prior to that time and has been received prior to the time fixed for opening.
30. All envelopes containing tenders or quotations must be opened at one time in the presence of at least two officers. Contracts estimated to be £75,000 or over must be opened in the presence of at least one authorised Member and an officer designated by the Chief Executive.
31. All tenders and quotations received must be recorded in writing on a Tender List. This must record the contract title, the name of each person or organisation submitting a tender, the amount of each tender, the date and time of opening the tenders and the names of all persons present at the time of opening. The Tender List must be signed by all present as an accurate record and placed on the contract file.

## **ERRORS & POST TENDER NEGOTIATIONS**

### **Errors in tenders**

32. Where examination of tenders reveals errors or discrepancies which would affect the tender figure in an otherwise successful tender, the tenderer should be given details and an opportunity to confirm, withdraw or amend his tender to correct genuine errors. If the resulting tender is no longer the lowest, the next tender in order of value should be examined.

### **Post tender negotiations**

33. No negotiations may be entered into with any contractors submitting tenders or quotations unless the relevant Strategic Director considers it necessary to obtain best value for the Council, to accommodate unforeseen changes in the specification, or for any other reason the Strategic Director considers is appropriate. In this event, any negotiations must be in writing and must be

conducted either solely with the contractor who has submitted the lowest tender received, or with all contractors who have submitted tenders. The reasons for entering into post tender negotiations must be recorded on the contract file.

## **ACCEPTANCE OF TENDERS AND QUOTATIONS**

### **Budget provision and suitability of contractor**

34. Before any tender or quotation is accepted the procurement manager must satisfy himself that:
- (a) sufficient budget provision is available; and
  - (b) the contractor is sufficiently capable and financially sound to undertake the contract by making enquiries, pursuing references and reviewing tender proposals/method statements as appropriate

### **Tenders less than £20,000**

35. The relevant Head of Service can accept a tender or estimate of less than £20,000.

### **Tenders of £20,000 and less than £75,000**

36. The relevant Strategic Director can accept a tender or estimate of between £20,000 and £75,000.

### **Tenders of £75,000 and over**

37. Tenders or quotations of £75,000 and over can be accepted by the relevant Strategic Director after consultation with the Chairman of the Executive, with all such acceptances being reported to the next possible meeting of the Executive.

## **ELECTRONIC TENDERING**

38. Procurement of works, goods, services etc by electronic means is an efficient process which can often save money in the form of officer time. The procurement manager should consider electronic tendering when considering any procurement exercise. The procurement manager may dispense with paragraphs 28 to 29 of these standing orders where it is proposed to invite and receive tenders electronically.
39. Where the procurement is to be conducted electronically, regard should be had to guidance published by the officer Procurement Board as to the most currently acceptable process for dissemination and receipt of information and tender documentation.

## **FORM OF CONTRACTS**

40. Every contract to which these Standing Orders applies must be in writing, in a form approved by the Head of Corporate Governance. All contracts of £75,000 and over in value (other than for vehicle purchase) must be in writing and under Seal.
41. Every contract to which these Standing orders applies must identify the name and title of a contract manager (and include provision for those details to be updated). The role of the contract manager will be to enforce duties owed to the Council under contract and to be responsible on behalf of the Council for those duties owed to the contractor.

42. Subject to paragraph 40 above, where the Council may be obliged to contract on the standard terms and conditions of another organisation, the following minimum requirements must be adhered to:
- (a) a specification of services required should be produced and sent to the contractor. This is required in all cases where the Council procures goods and services together. It is not required where the Council only procures goods.
  - (b) a copy of the applicable standard terms and conditions should be retained on the contract file.
  - (c) an appropriate letter or other document should be agreed with the contractor which refers to the Council's specification of services required and confirms the terms and conditions on which the supply is to be made.

## **CONTENT OF CONTRACTS**

### **Work to be done**

43. Every written contract must specify as a minimum the work, goods, materials or services to be provided; their price, with details of any discounts or other deductions; the time or times by which the contract must be completed; and any other agreed terms. All contracts of £20,000 and over in value, and any with unusual or potentially onerous clauses, should be referred to Legal Services for review and approval of terms and conditions.

### **Public liability insurance and professional indemnity insurance**

44. The procurement manager must consider the Council's need for appropriate indemnities backed by insurance. In the case of a contract for works or services, the contract must require the contractor to carry public liability insurance to a minimum of £5,000,000, unless otherwise agreed by the Strategic Director (Support).
45. In the case of a contract for professional services, the contract must require the contractor to carry professional indemnity insurance to a minimum of £5,000,000, unless otherwise agreed by the Strategic Director (Support).

### **Assignment of Contracts**

46. Assignment or underletting of contracts is not to be permitted except with the prior consent of the relevant Strategic Director, and then only where the Strategic Director is satisfied that an effective vetting procedure of assignees or subcontractors has been implemented.

### **Liquidated Damages**

47. The procurement manager must consider whether the contract should provide for the contractor to pay liquidated damages on failure to complete the contract by the specified completion date. Where considered appropriate by the Head of Corporate Governance, the contract must require the contractor to pay damages for any breach of the terms of the contract. Advice on liquidated damages should be taken from Legal Services at an early stage in the procurement project.

## **Standards**

48. Every contract must state that all goods, materials and work must comply with any relevant British, European Union, or ISO Standards or Standard Code of Practice in force at the date of tender.

## **Corruption & Cancellation**

49. Every contract must state that the Council may cancel the contract and recover any resulting losses if the contractor, his employees or anyone acting on his behalf, with or without his knowledge, does anything improper to influence the Council or commits an offence under the Prevention of Corruption Acts 1889 to 1916, or section 117(2) of the Local Government Act 1972.

## **PERFORMANCE BONDS**

50. Where a contract is estimated to be £75,000 or over, the relevant Strategic Director must consider before procurement whether the Council should require security for its performance. The Strategic Director must either certify on the contract file that no such security is considered necessary or specify in the conditions of tender the nature and amount of security to be given. In the latter event the Strategic Director must ensure the required bond or other security for the due performance of the contract is given at the time the contract is let.

## **NOMINATING SUB CONTRACTORS & SUPPLIERS**

51. Where it is decided to be in the Council's interest that a sub contractor or supplier should be nominated to a main contractor, at least three tenders for the nomination must be invited in accordance with one of the methods described in paragraphs 23- 24 ( Types of Tender Procedures) above. The only exception to this is if the relevant Strategic Director considers this to be impracticable and the reasons for this must then be recorded on the contract file. The invitation to tender as sub contractors or suppliers must require an undertaking from any tenderer to enter into a contract with the main contractor, including an obligation to indemnify the main contractor in respect of matters included in the sub contract.

## **CONSULTANTS**

52. Any consultant employed by the Council to let or manage contracts must comply with these Standing Orders. The contract with any consultant must provide that all records maintained by the consultant in relation to a contract must be made available to that Strategic Director or his representative on request and handed over to the Council on completion of the contract.

## **REGISTRATION OF CONTRACTS**

53. The Strategic Director (Support) will keep a register of all contracts of £10,000 and over placed by the Council. The register must state the name of the contractor, the name of the Council's contract manager, the work to be done or goods to be supplied, the duration and value of the contract. Any procurement manager letting a contract must ensure details are supplied to the Strategic Director (Support) for entry in the register.
54. The Strategic Director (Support) will also keep a register of all contracts for building, construction or engineering work and associated Consultants which provide for payment by instalments. This register must show the state of

account of each contract between the Council and contractor, together with any other payments and related professional fees. The procurement manager letting such a contract must ensure details are supplied to the Strategic Director (Support) for entry in the register.

55. The Chief Executive will maintain a tender book recording contracts opened in the presence of a Member.

## **VARIATIONS**

56. Where a Strategic Director considers an existing contract needs to be varied (ie practical changes which do not alter the essential nature of the original contract as opposed to additional works or supplies not originally envisaged) he may approve these subject to the proposed variation being contained within the total budget approved for the contract. The reasons for and details of any such variation must be recorded on the contract file. Where the approved budget would be exceeded, approval must be obtained from the Executive for any variation.

## **PROCUREMENT BOARD**

57. The role of the officer Procurement Board is to take a strategic approach to the Council's procurement. All contracts likely to exceed £20,000 (other than urgent contracts) should be notified at the planning stage to the Head of Finance who will maintain a forward plan of contracts to advise Procurement Board and where appropriate, Executive on relevant procurement matters.

## **PROJECT MANAGEMENT FOR PROCUREMENT**

58. All procurement projects likely to exceed £20,000 should have a project plan in a format which shows the key stages of the procurement process with a timeline and the resource requirements to complete the procurement. The procurement manager shall follow the Council's published guidance on project management from time to time in force.

## **CONTRACT MANAGEMENT**

59. Unless prior written approval is given by the Strategic Director (Support) to the procurement manager and recorded on the contract file by him then all contracts in excess of £20,000 should identify within the project plan the name of an officer who is to manage the contract throughout its duration, (the contract manager). Where reasonably practicable, the contract manager should be part of the procurement project team.
60. Unless prior written approval is given by the Strategic Director (Support) to the Project Manager and recorded on the contract file by him / her, the contract manager will be an officer of Spelthorne Borough Council.
61. The procurement manager must notify the name of the contract manager to the contractor prior to letting of the contract.
62. The responsibilities of the contract manager will include:
  - (a) monitoring performance of the contractor against the agreed level of service
  - (b) monitoring the continuing level of operational and financial risk to which the Council is exposed and to institute controls as appropriate

- (c) ensuring the contractor's due diligence with all appropriate health and safety obligations
- (d) facilitating the resolution of issues between the contractor and users of the service
- (e) ensuring prompt payment of invoices and compliance with all financial regulations and contract standing orders during the lifetime of the contract
- (f) ensuring that appropriate arrangements are made for the termination or re-letting of the contract at the appropriate time

## **HEALTH AND SAFETY**

63. Where contractors carry out work on behalf of the Council, this does not relieve the Council of the obligation to ensure that a safe system of work is employed. The procurement manager shall make sure that a "Safety Guidelines for Contractors" document is supplied to potential bidders and that a "Contractors Appraisal Questionnaire" document has been completed by tenderers prior to the evaluation of tenders. Evaluation of bids shall give due weighting to the information contained within the Questionnaire.