

CONTRACT

STANDING ORDERS

APPENDIX 8 – CONTRACT STANDING ORDERS

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APPENDIX 8 - CONTRACT STANDING ORDERS

CSO 1 INTERPRETATION

'Approved Officer'

- (1) An Approved Officer is a person (whether or not an officer of the Council) who is specifically designated by a member of the Chief Officers' Management Board (COMB) to undertake procurement on behalf of the Council, and as such they are required to be nominated and designated in pursuance of CSO 2(4) – (6).

'Best Value'

- (2) The optimum combination of whole life cost and quality (or fitness for purpose) to meet the customer's requirement assessed in accordance with the Procurement Code.

'Contract'

- (3) A contract for the purposes of these Contract Standing Orders shall be any agreement (whether or not in writing) between the Council and one or more other parties in respect of:-
- (a) the acquisition of goods, works and services as such are defined in the EU Rules;
 - (b) the disposal of goods so defined; and includes an agreement with the financier, or any insurer of or trustees for the financier of a kind described in Section 1(2) of the Local Government (Contracts) Act 1997.
- (4) For the avoidance of doubt, these Contract Standing Orders shall not apply to: -
- (a) The sale, leasing or purchase of land, or of any interest in land; and
 - (b) Any contract of employment.

'Council's Threshold'

- (5) The threshold value that determines the application of these Contract Standing Orders pursuant to CSO 5(1) is as set out in the Procurement Code.

‘EU Rules’

- (6) The Agreement on Government Procurement (GPA) entered into under the auspices of the World Trade Organisation; the European Community Treaty (EU Treaty) and any relevant regulations, directives or decisions of the European Community; any Acts of Parliament or statutory instruments implementing the aforementioned for the time being in force in the United Kingdom; and any relevant judgements of the European Court of Justice or the UK courts.

‘Procurement Plan’

- (7) The procurement plan prepared in pursuance of CSO 4.

‘Register of Approved Contractors’

- (8) The register of approved contractors maintained in pursuance of CSO 10.

‘Register of Approved Officers’

- (9) The register of approved officers maintained in pursuance of CSO2(5).

‘Register of Contracts’

- (10) The register of contracts entered into by the Council maintained in pursuance of CSO 9(2).

‘Register of Tenders’

- (11) The register of tenders received by the Council maintained in pursuance of CSO 7(5)

‘Relevant EU Thresholds’

- (12) The threshold values that determine the application of the EU Rules pursuant to CSO 6(2).

‘Tender’

- (13) For the purposes of CSOs 7 and 8, ‘tender’ includes an offer submitted at any stage of a negotiated procedure conducted pursuant to CSO 6(6) and, where the context so requires, ‘invitation to tender’ includes an invitation to negotiate.

‘Writing’

- (14) The expression ‘in writing’ in relation to any communication includes an electronic communication as defined in the Electronic

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Communications Act 2000, and in relation to the conclusion of a contract may include conclusion by electronic means provided that the Director of Financial Services and the Director of Corporate Services have approved the means of conclusion and the conclusion of the contract or class of contracts in question by such means. Where reference is made to 'records' and 'registers' these may be electronic in form provided that approval has been given in the same way.

CSO 2 COMPLIANCE

(1) Every contract awarded by or on behalf of the Council in respect of

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- (a) goods;
- (b) works; or
- (c) services

of any description shall be awarded and managed, as necessary, in accordance with the EU Rules directives and regulations or other applicable statutory regulations for the time being in force in the United Kingdom, the Council's Financial Regulations and Standing Orders, Procurement Strategy and the Procurement Code issued under paragraph (2) below.

(2) The Director of Corporate Services may from time to time issue a Procurement Code setting out in further detail the rules to be followed when awarding contracts under these Contract Standing Orders and Financial Regulations together with guidance on best practice.

(3) Compliance with the rules set out in the Procurement Code is mandatory under these Contract Standing Orders and the adoption of best practice is recommended.

(4) An 'Approved Officer' shall be designated in respect of any specified contract or category of contracts and the values or amounts in respect of that category or those categories, provided that the phrase 'Approved Officer' may also include any person specified by name or office as being able to act in the absence of a person designated as 'Approved Officer'.

(5) The Director of Corporate Services shall maintain a Register of Approved Officers and such Register shall be open to inspection by the public at all reasonable times.

(6) Any member of the Chief Officers Management Board is hereby authorised to nominate on behalf of the Council any person for designation as an Approved Officer. Such designation shall occur and take effect upon the date of receipt by the Director of Corporate Services of the nomination and the name of the person

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so nominated shall be recorded in the Register of Approved Officers.

CSO 3 ETHICS AND PROBITY

- (1) In all their dealings, members and officers of the Council shall preserve the highest standards of honesty, integrity, impartiality and objectivity. This includes compliance with the Members' Code of Conduct and the Employees' Code of Conduct respectively.
- (2) The Director of Corporate Services shall record in a book to be kept for the purpose particulars of any notice given by an Officer of the Council under Section 117 of the Local Government Act 1972 of a pecuniary interest in a contract and the book shall be open during office hours for inspection by any member of the Council.

CSO 4 PROCUREMENT PLAN, NOTICES, ETC

- (1) As soon as possible after the commencement of each financial year, the Director of Corporate Services shall prepare a Procurement Plan setting out information on current contracts and contracts to be awarded in the period covered by the plan.
- (2) The information to be included in the Procurement Plan pursuant to paragraph (1) and the procedures for publishing and maintaining the plan are set out in the Procurement Code.
- (3) Pursuant to the EU Rules, prior information notices and contract award notices shall be published in respect of contracts to which the EU Rules apply and a statistical return shall be completed each year.

CSO 5 INVITATION OF TENDERS

- (1) Subject to CSO 6(6), tenders shall be invited for all contracts with an estimated value (in money or money's worth) equal to or exceeding the Council's Threshold as set out in the Procurement Code.
- (2) Chief Officers may make arrangements, in accordance with Financial Regulations, for handling contracts of value less than the Council's threshold.
- (3) Where the estimated value of a contract does not equal or exceed the amount mentioned in paragraph (1) above, an Approved Officer may -
 - (a) proceed in accordance with CSO 6, or

- (b) enter into such contract in accordance with the arrangements made by the Chief Officer under (2) above.
- (4) The number of tenders invited pursuant to paragraph (1) shall be appropriate to the nature and size of the contract and shall be determined with a view to obtaining Best Value for the Council. In the case of open and restricted procedures, the number invited may not be less than FIVE or such number (if fewer) that meet the Council's pre-qualification criteria, and in any event may not be less than THREE.
- (5) The estimated value of a contract for the purposes of these Contract Standing Orders is the total estimated expenditure for the duration of the contract calculated in accordance with the EU Rules, assuming that all options which would bring about an increase in expenditure are exercised.
- (6) No requirement for goods, works or services may be sub-divided with the intention of avoiding the application of the EU Rules or these Contract Standing Orders.

CSO 6 TENDERING PROCEDURES

- (1) Before proceeding in accordance with CSO 5 in relation to any contract the Approved Officer shall consult the Procurement Code to determine whether and to what extent the EU Rules apply to the award of that contract.
- (2) The EU Rules apply to the award of contracts with an estimated value equal to or exceeding the Relevant EU Thresholds as set out in the Procurement Full Code. The code specifies which contracts are excluded from the full application of the EU Rules.
- (3) Contacts to which the EU Rules apply shall be awarded in accordance with those rules and by means of one of the following procedures as set out in the Procurement Code -
 - (a) open;
 - (b) restricted;
 - (c) or negotiated.
- (4) Where in pursuance of CSO 5(1) tenders are to be invited in respect of contracts that are excluded from the full application of the EU Rules the Approved Officer may proceed:-
 - (a) by following any of the procedures referred to in paragraph (3) above (adjusted in the manner set out in the Procurement Code); or

- (b) by inviting tenders from persons included in the Register of Approved Contractors maintained in accordance with CSO 10.
- (5) Subject to paragraph (6) below, the Approved Officer shall select the procedure that appears to him/her to be most likely to secure Best Value for the Council.
- (6) An Approved Officer may decide on any of the grounds set out in the Procurement Code (those grounds being consistent with the EU Rules), but not otherwise, to award a contract for which tenders would otherwise be required under CSO 5(1) by means of a negotiated procedure.
- (7) The Approved Officer shall record the justification for using a negotiated procedure pursuant to paragraph (6) above. The record shall be held by the Director of Corporate Services.
- (7) Negotiations shall be conducted in accordance with the procedures set out in the Procurement Code and by at least two Approved Officers, at least one of which is a Chief Officer or an officer of the Council designated by a Chief Officer. A Chief Officer remains directly accountable for the actions of his/her designate.
- (8) A proper record shall be kept of all stages of the negotiations and the record shall be signed by all of those present. The record shall be held by the Director of Corporate Services.

CSO 7 SUBMISSION AND OPENING OF TENDERS

Except as provided in CSO 11:-

- (1) Every tender submitted in pursuance of these Contract Standing Orders (other than any tender or similar offer made where the Council is proceeding in pursuance of CSO 5(3)(b) shall be addressed to the Director of Corporate Services in a sealed envelope endorsed with the word 'Tender' followed by the subject to which it relates.
- (2) Any invitation to tender shall name the latest date and time for the delivery of tenders and the address to which such tenders are to be sent.
- (3) Tenders shall be kept safe by or on behalf of the Director of Corporate Services and unopened until the time and date specified for their opening. No tender shall be considered if it is received after the time and date specified in the invitation to tender.
- (4) Tenders shall be opened at one time and in the presence of an Approved Officer by the Director of Corporate Services or an officer of the Council designated by him/her (or if the Director of Corporate

Services is the Approved Officer, the Director of Financial Services or an officer of the Council designated by him/her); and shall be immediately initialled and dated by the person opening them and a note of the time of opening kept.

- (5) The Director of Corporate Services or the Director's designated representative (or the Director of Financial Services or his/her designated representative as the case may be) shall, at the time tenders are so opened, record in a Register of Tenders maintained for that purpose the information specified in the Procurement Code.

CSO 8 ACCEPTANCE OF TENDERS

- (1) Where tenders have been received and opened in accordance with these Contract Standing Orders, the Approved Officer shall examine the tenders received, shall carry out any negotiations appearing to be necessary and authorised by the Procurement Code and shall satisfy him/herself that: -
- (a) all approvals required by the Council's Constitution have been obtained, together with any necessary consents, permissions or other approvals (including loan or other financial approvals);
 - (b) the tender is compliant with the invitation to tender and, in particular, meets any specification or requirements or contract terms set out in or detailed in that invitation;
 - (c) where appropriate, and if necessary by taking specialist advice, the quantity, quality or safety of any goods, materials, services or works is likely to be satisfactory; and
 - (d) (by reference to an estimate, where appropriate), the lowest tender (if payment is to be made by the Council), or the highest tender (if payment is to be made to the Council) is the tender which offers Best Value.
- (2) Where the Approved Officer is satisfied as regards the matters specified in paragraph (1) above in respect of the lowest tender (if payment is to be made by the Council) or the highest tender (if payment is to be made to the Council) he / she may accept that tender.
- (3) Where the tender which represents Best Value in the opinion of the Approved Officer is not the lowest tender (if payment is to be made by the Council) or the highest tender (if payment is to be made to the Council) then, the Approved Officer shall by written report refer the matter in accordance with the requirements of the Council's Scheme of Assignment of Responsibility for Functions.

- (4) Paragraphs (2) and (3) hereof notwithstanding, if the Approved Officer is a governing body of a school required to be covered by the scheme, it may proceed in any manner in which it would be in order for the appropriate body set out in the Council's Scheme of Assignment of Responsibility for Functions to proceed in relation to any matter referred to it under the aforementioned paragraphs.

CSO 9 EXECUTION OF CONTRACTS

- (1) Every contract to be entered into by or on behalf of the Council that equals or exceeds in value (in money or money's worth) the Council's Threshold shall be in writing and either
- (a) have the Common Seal of the Council affixed and attested either by the Head of Legal and Democratic Services or any person authorised by him/her present at the sealing; or
 - (b) be signed by two Officers of the Council at least one of which is an Approved Officer.
- (2) A record of each contract executed in accordance with paragraph (1) above shall be entered in a Register of Contracts maintained for that purpose by the Director of Corporate Services.

CSO 10 APPROVED CONTRACTORS

- (1) Subject to the EU Rules, the Council may compile and maintain a Register of Approved Contractors.
- (2) An Approved Officer may, in relation to the contract or class of contracts in respect of which he / she has been designated by or on behalf of the Council as Approved Officer, compile and maintain, according to the procedure set out in the Procurement Code, that part of the Register of Approved Contractors as relates to that contract or class of contracts

CSO 11 DELEGATED MANAGEMENT

- (1) The provisions of CSO 7 shall not apply to:-
- (a) the governing body of any school which is subject to the Scheme of Delegation approved by the Secretary of State for Education pursuant to statutory authority; or
 - (b) such other bodies as may be designated from time to time by the Director of Corporate Services.

- (2) The bodies designated in accordance with paragraph (1)(b) above and the arrangements to be made by the bodies referred to in paragraph (1) shall be set out in the Procurement Code.

CSO 12 EXEMPTIONS FROM CONTRACT STANDING ORDERS

In any circumstances not provided for by the preceding Contract Standing Orders, an Approved Officer will consult with the Director of Corporate Services. If necessary, an Approved Officer will then, after consultation with the Cabinet Member with Responsibility for Corporate Services, make exemption from the stated provisions of these Contract Standing Orders, specifying the circumstances by which the exemption was considered justified. The Director of Corporate Services will maintain a register containing the records of the exemptions made.