

DARTFORD

BOROUGH COUNCIL

CONTRACT STANDING ORDERS (Contracts Procedure Rules)

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CONTRACT STANDING ORDERS (Contracts Procedure Rules)

1 Introduction – Purpose of the Contract Standing Orders

- 1.1 Procurement decisions and processes are important because the money involved is public money. The purpose of these Contract Standing Orders is to provide a structure within which procurement decisions are made and implemented and which ensure that the Council:
 - 1.1.1 Furthers its corporate objectives
 - 1.1.2 Uses its resources efficiently
 - 1.1.3 Purchases quality goods, services and works
 - 1.1.4 Grants service concessions
 - 1.1.5 Safeguards its reputation from any implication of dishonesty or corruption.
- 1.2 Procurement by the Council, from planning to delivery, shall incorporate (where appropriate) principles of sustainability, efficiency, equality, social value, whole life costings and cost savings.
- 1.3 These Contract Standing Orders are made in accordance with the requirements of Section 135 of the Local Government Act 1972.
- 1.4 These Contract Standing Orders do not provide guidelines on what is the best way to purchase works, supplies (goods) and services and grant service concessions. They set out minimum requirements to be followed. Further information and guidelines are set out in the Council's Procurement Guide.

2 General Principles – Application and Compliance with Contract Standing Orders

- 2.1 These Contract Standing Orders apply to the purchase by or on behalf of the Council of works, supplies (goods) and services and the granting of service concessions.
- 2.2 These Contract Standing Orders apply to all contracts including all purchase orders, concessions and contractual arrangements entered into by or on behalf of the Council, except for the specific types of contracts and purchasing methods which are listed in 2.3.
- 2.3 These Contract Standing Orders do not apply to:
 - 2.3.1 Employment contracts
 - 2.3.2 Contracts relating solely to the purchase or sale of interests in land

- 2.3.3 Contracts for retention of legal counsel and the appointment of expert witnesses in legal proceedings
- 2.3.4. Service level agreements setting out the conditions which the Council applies to its funding of particular voluntary sector bodies.

3 General Principles Applying to All Contracts

For the purposes of this CSO 3, 'contract' means purchase orders, alternative order forms, standard industry contracts (JCT/IEE/ICE etc), works, supplies, and services terms and conditions, service concessions etc and 'contractor' includes concessionaires

- 3.1 All purchases however small shall be in writing.
- 3.2 Contracts of a value of £25,000 or more shall include contract clauses relevant to the procurement. Contract clauses are issued by Legal Services and are held on the Council's intranet (Documents/Procurement/4.Contract Terms and Conditions).
- 3.3 As a minimum, all contracts of a value of £25,000 or more shall include clauses which set out:
 - 3.3.1 The works, supplies (goods), services, service concession, material, matters or things to be carried out or supplied
 - 3.3.2 The time within which the contract is to be performed
 - 3.3.3 Quality requirements and/or standards which must be met
 - 3.3.4 Requirements on the contractor to hold and maintain appropriate insurance
 - 3.3.5 What happens in the event that the contractor fails to comply with its contractual obligations (in whole or in part)
 - 3.3.6 Requirements on the contractor to comply with all relevant equalities and health and safety legislation
 - 3.3.7 Requirements on the contractor to comply with the provisions of the data protection legislation¹ insofar as this applies to the processing of personal data, including provisions in the contract, of data controller and processor responsibilities sufficient to comply with the data protection legislation
 - 3.3.8 That the Council shall be entitled to cancel the contract and recover losses in the event that the contractor does anything improper to influence the Council to give the contractor any contract or commits an offence under the Bribery Act 2010 or s117(2) Local Government Act 1972.

¹ means the Data Protection Regulation (GDPR) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time and any successor legislation to the GDPR or the Data Protection Act 2018 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner

- 3.4 All contracts subject to the relevant EU Rules² will include:
- (a) additional termination clauses pursuant to Regulation 73 of the EU Rules relating respectively to substantial modification of the contract requiring a new procurement process, situations amounting to mandatory exclusion of the contractor and infringement of obligations declared by the Court of Justice of the European Union;
 - (b) payment clauses pursuant to Regulation 113 of the EU Rules relating to payment of invoices no later than the end of a period of 30 days from the date on which the relevant invoice is regarded as valid and undisputed.
- 3.5 Contracts shall not include non-commercial terms unless these are necessary to achieve best value for the Council or are included in accordance with the Public Services (Social value) Act 2012 or necessary to enable or facilitate the Council's compliance with the public sector equality duty³ or any duty imposed on it by the Equality Act 2010. In this context, "non commercial" means requirements unrelated to the actual performance of the contract.
- 3.6 All contracts shall include relevant specifications and/or briefs/technical requirements which are prepared taking into account the need for effectiveness of delivery, quality, sustainability and efficiency (as appropriate) and the information set out in the Council's Procurement Guide.
- 3.7 All contracts of a value of £50,000 or more shall be subject to a written risk assessment, which should be kept on the contract file.

4 Regulatory Context

- 4.1 All procurement shall be conducted in accordance with Regulatory Provisions which are:
- 4.1.1 All relevant statutory provisions
 - 4.1.2 The relevant EU Rules and EC Treaty Principles which are defined in the Council's Procurement Guide
 - 4.1.3 The Council's Constitution including these Contract Standing Orders, the Council's Financial Regulations and Scheme of Delegation
 - 4.1.4 The Council's Procurement Guide and other policies and procedures of the Council as appropriate.
- 4.2 In the event of conflict between the above, the EU Rules will take precedence, followed by UK legislation, then the Council's Constitution, the Council's Procurement Guide and guidelines, policies and procedures.

5 Responsibilities of Directors and Responsible Officers

- 5.1 Each Director shall:
- 5.1.1 be responsible for the purchasing undertaken by his/her Directorate.

² Public Contracts Regulations 2015

³ Section 149 Equality Act 2010

- 5.1.2 be accountable to the Cabinet for the performance of his/her duties in relation to purchasing
 - 5.1.3 comply with the Council's decision making processes including, where appropriate, implementing and operating a Scheme of Delegation
 - 5.1.4 appoint a Responsible Officer in writing who shall be an authorised signatory
 - 5.1.5 take immediate action in the event of breach of these Contract Standing Orders.
- 5.2 A Responsible Officer is an officer with responsibility for conducting purchasing processes for the purchase of works, supplies (goods) or services or the granting of service concessions on behalf of the Council.
- 5.3 A Responsible Officer's duties in respect of purchasing are to ensure:
- 5.3.1 compliance with all Regulatory Provisions and integrity of the tender process
 - 5.3.2 compliance with the relevant statutory provisions and the Council's requirements relating to declarations of interest affecting any purchasing process
 - 5.3.3 that there is an appropriate analysis of the requirement, timescales, procedure and documentation to be used
 - 5.3.4 the purchasing process, from planning to delivery incorporates (where appropriate) principles of sustainability, efficiency, whole life costings and cost savings
 - 5.3.5 compliance with the Council's decision making processes
 - 5.3.6 that all contracts of a value of £25,000 or more are included on the Council's Contract Register
 - 5.3.7 that proper records are maintained in accordance with the Data Retention Schedule, with separate files for each procurement of a value of £25,000 or more, to justify the decisions taken in all stages of the procurement process
 - 5.3.8 that value for money is achieved
 - 5.3.9 that adequate and appropriate security (such as a bond or guarantee) is taken to protect the Council in the event of non-performance.
- 5.4 In considering how best to procure works, supplies and services or the granting of service concessions, Directors and/or Responsible Officers (as appropriate in the context), shall take into account wider contractual delivery opportunities and purchasing methods including the use of Purchasing Schemes and e-

procurement/purchasing methods, and the availability of local authority charging and trading powers under the Local Government Act 2003.

- 5.5 It is a disciplinary offence to fail to comply with these Contract Standing Orders and the Council's Procurement Guide. All employees have a duty to report breaches of Contract Standing Orders to the Strategic Director (Internal Services)r.
- 5.6 Any officer or Member who suspects any misconduct or corruption in relation to the purchase by or on behalf of the Council of works, supplies (goods), services and the granting of service concessions must immediately report that suspicion to the Strategic Director (Internal Services).

6 Scheme of Delegation

- 6.1 Council procurement may only be undertaken by officers with the appropriate delegated authority to carry out such tasks as set out in the Council's Scheme(s) of Delegation. Officers with delegated authority may only delegate to other officers who have the appropriate skills and knowledge for the task and such delegation shall be recorded in writing by the officer delegating the task and notified to the relevant Director.
- 6.2 Officers shall, where appropriate, be informed by their Director of the extent of any delegated authority and applicable financial thresholds.

7 Financial Thresholds and Procedures

- 7.1 The table below sets out the general rules applying to the choice of purchasing procedure for contracts at the stated threshold values.
- 7.2 There is a general presumption in favour of competition. Wherever possible contract opportunities should be advertised by way of a public notice. The Council must consider the potential effect of a contract on interstate trade (at a European level). If a contract (e.g. service concession) may be of interest to contractors from other member states then this may result in a need to advertise in a manner which ensures that potential contractors from other member states are aware of the opportunity, even for small value contracts or contracts under the EU threshold levels outlined below.
- 7.3 The public notice referred to at 7.2 may take the form of a notice or advertisement in an electronic or paper format, on an easily accessible website or other electronic media and/or in the press, trade journals or Official Journal of the European Union ("OJEU") (as appropriate). The Responsible Officer may choose to place one or more public notices in different media.
- 7.4 Where a contract above £25,000 is advertised, the advert will be published on Contracts Finder (in addition to, or instead of any other portal or publications' route the Responsible Officer may use). Once a contract has been awarded as a result of a procurement process, details of the winning tenderer, the contract value, and for procurements below the EU thresholds, an indication of whether the winning tenderer is a small business or voluntary sector organisation must be published on Contracts Finder.

7.5 Table setting out financial thresholds (net of VAT) and procedures

Total value £	Type of contract	Conducted by	Procedure to be used
0 to 499	works, supplies, services and service concessions	Process can be conducted by a Responsible Officer	No formal quotes required but value for money must be obtained
At 500 to 24,999	works, supplies, services and service concessions	Process can be conducted by a Responsible Officer	At least one quote in advance and value for money obtained
At 25,000 to 49,999	works, supplies, services and service concessions	A Responsible Officer must use the Council's procurement team and e-tendering system to administer the process	Seek to obtain at least three written quotes in advance
At 50,000 to 99,999	works, supplies, services and service concessions	A Responsible Officer must use the Council's procurement team and e-tendering system to administer the process	Seek to obtain at least three written quotes in advance and the opportunity must be advertised on Contracts Finder as a minimum
At 100,000 to 189,330	works, supplies, services and service concessions	A Responsible Officer must use the Council's procurement team and e-tendering system to administer the process	Seek to obtain at least three written tenders in advance and the opportunity must be advertised on Contracts Finder as a minimum. For service concessions – OJEU advertisement, if likely to be of interest to non-domestic providers (cross-border interest)
At 189,330 and above	supplies, services and service concessions NB: excludes Light Touch Regime (LTR) services see below	A Responsible Officer must use the Council's procurement team and e-tendering system to administer the process	EU Rules apply to supplies and services – full competitive process following advertisement in the OJEU for supplies and services For service concessions - OJEU advertisement, if likely to be of interest to non-domestic providers (cross-border interest)
At 189,330 to 4,733,252	works	A Responsible Officer must use the Council's procurement team and e-tendering system to administer the process	Full competitive process with tenders following advertisement by public notice
At 4,733,252 and above	works	A Responsible Officer must use the Council's procurement team and e-tendering system to administer the process	EU Rules apply – full competitive process with tenders following OJEU advertisement
At 663,540 and below	LTR services (e.g. cultural/festival event organisation/benefit/ other community services etc.)	A Responsible Officer must use the Council's procurement team and e-tendering system to administer the process	Reduced requirements apply under the EU Rules but there is a presumption in favour of advertising and a competitive process - required to advertise in the OJEU if likely to be of interest to non-domestic providers (cross-border interest)
At 663,540 and above	LTR services (e.g. cultural/festival event organisation/benefit/	A Responsible Officer must use the Council's procurement team and e-	If listed in Schedule 3 to the EU Rules, advertise in the OJEU ⁷

	other community services etc.)	tendering system to administer the process	If not listed in Schedule 3 to the EU Rules, – full competitive process following advertisement in the OJEU
At 4,733,252 and above	services and works concessions	A Responsible Officer must use the Council's procurement team and e-tendering system to administer the process	EU Rules apply – full competitive process with tenders following OJEU advertisement – if below threshold, required to advertise in the OJEU if likely to be of interest to non-domestic providers (cross-border interest)

The EU Rules apply to services contracts to differing degrees, depending on the service. Responsible Officers should act cautiously and seek advice when considering the procedure to be used and application of the EU Rules to services contracts.

- 7.6 Where contracts are of a type and value which means that they are subject to the EU Rules then there are five main types of EU procedures available. These are the open, restricted, competitive dialogue, competitive procedure with negotiation and innovation partnership procedures (intended for long term partnerships which allow for both the development and subsequent purchase of new and innovative products, services or works currently not on the market). Care must be taken to ensure that the correct and most appropriate procedure is used and assistance on the choice and use of EU procedure should be sought.

8 Financial Thresholds and Processes Applying to Approval and Execution of Contracts

- 8.1 For contracts over the relevant EU Threshold (in force at the time), the choice of purchasing procedure to be used and the decision to proceed to advertisement must be authorised in writing by the relevant Director in advance.
- 8.2 When a decision is made to award a contract then the Responsible Officer must, in addition to complying with his/her general obligations under these Contract Standing Orders ensure, in particular, that:
- 8.2.1 the appropriate approvals have been obtained to authorise that decision; and
- 8.2.2 where appropriate, a standstill period complying with the EU Rules is incorporated into the final award process.
- 8.3 Any contracts valued at £100,000 or above shall be executed as a deed (under seal). For the purposes of Regulation 8 of the Local Authority (Executive Arrangements) (Modification of Enactments and Further Provisions) (England) Order 2001, contracts with values between £50,000 and £99,999 shall require the relevant Director's signature (except where standard purchase order terms and conditions are used). All other contracts below £50,000, may be signed by an officer with appropriate delegated authority.
- 8.4 Electronic signatures may be used in accordance with the Electronic Signature Regulations 2002 provided the sufficiency of security arrangements has been approved by the Strategic Director (Internal Services).

9 Calculating the Contract Value

- 9.1 The starting point for calculating the contract value for the purposes of these Contract Standing Orders is that the contract value shall be the genuine pre-estimate of the value of the entire contract excluding Value Added Tax. This includes all payments to be made, or potentially to be made, under the entirety of the contract and for the whole of the predicted contract period (including proposed extensions and options).
- 9.2 There shall be no artificial splitting of a contract to avoid the application of the provisions of the EU Rules and/or these Contract Standing Orders.
- 9.3 The EU Rules can cover contracts which are below the stated EU threshold where they constitute repeat purchases and/or purchases of a similar type in a specified period. Responsible Officers should therefore seek advice on the application of the EU Rules where they envisage that they may require repeat purchases and/or purchases of a similar type.

10 Principles Underlying Tendering Processes and Tender Evaluation

- 10.1 All tendering procedures (including obtaining quotes), from planning to contract award and signature, shall be undertaken in a manner so as to ensure:
 - 10.1.1 Sufficient time is given to plan and run the process
 - 10.1.2 Equal opportunity and equal treatment
 - 10.1.3 Openness and transparency
 - 10.1.4 Probity
 - 10.1.5 Outcomes which deliver sustainability, efficiency and cost savings (where appropriate).

11 Submission and Opening of tenders

- 11.1 An Invitation to Tender shall be issued by the Council for all contracts valued at or over £100,000 and tenders shall be submitted in accordance with the requirements of the Invitation to Tender.
- 11.2 Any tenders received (other than those received electronically, to which 11.3 shall apply) shall be:
 - 11.2.1 addressed to the Procurement Section
 - 11.2.2 clearly marked "Tender" followed by the subject matter to which it relates
 - 11.2.3 kept in a safe place by Financial Services
 - 11.2.4 retained unopened until the date and time specified for its opening.
 - 11.2.5 opened by the relevant Director or nominee and an immediate record shall be made of the tenders received including names and addresses and the date and time of opening.

- 11.3 Where the Council has indicated in the Invitation to Tender that a tender can or must be submitted electronically via the Council's e-tendering system, then those tenders shall be:
- 11.3.1 in the format specified in the Invitation to Tender
 - 11.3.2 remain sealed and unopened in the system until the date and time specified for its opening.
 - 11.3.3 opened by a member of Financial Services
- 11.4 No tender received after the time and date specified for its opening shall be accepted or considered by the Council unless the relevant Director is satisfied that there is sufficient evidence of the tender having been dispatched in time for it to have arrived before the closing date and time, or other exceptional circumstances apply and the other tenders have not been opened.

12 Evaluation of Quotes and Tenders

- 12.1 All quotes and tenders shall be evaluated in accordance with evaluation criteria notified in advance to those submitting quotes/tenderers.
- 12.2 Tenders subject to the EU Rules shall be evaluated in accordance with the EU Rules.
- 12.3 Save in exceptional circumstances approved in advance by the relevant Director all contracts shall be awarded on the basis of the quote or tender which represents best value for money to the Council and not on the basis of lowest price.

13 Waivers

- 13.1 The requirement for the Council to conduct a competitive purchasing process for contracts at or above £25,000 may be waived in the following circumstances:
- 13.1.1 for contracts which are not subject to the EU Rules, the work, supply service or grant of service concession is required as a matter of urgency and a delay would be likely to lead to financial loss, personal injury or damage to property; or
 - 13.1.2 the circumstances set out in the EU Rules⁴ apply (whether or not the contract is of a type which is subject to the application of the EU Rules); or
 - 13.1.3 the contract is awarded under a Purchasing Scheme of a type where a competition has already been undertaken on behalf of the Council; or
 - 13.1.4 subject to CSO 13.5 at the discretion of the relevant Director who may proceed in a manner most expedient to the efficient management of the service/Council with reasons recorded in writing.

⁴ Regulation 32 Public Contracts Regulations 2015

- 13.2 A Responsible Officer who seeks a waiver of Contract Standing Orders, shall do so only in advance and only in exceptional circumstances. Further guidance on what may constitute exceptional circumstances permitting waiver of these Contract Standing Orders is set out in the Council's Procurement Guide.
- 13.3 All waivers from these Contract Standing Orders must be:
- 13.3.1 Fully documented
 - 13.3.2 Subject to a written report in an approved format to be submitted in advance to the relevant Director which shall include reasons for the waiver which demonstrate that the waiver is genuinely required
 - 13.3.3 Subject to approval in advance by the relevant Director who shall record that they have considered the reasons for the waiver and that they are satisfied that the circumstances justifying the waiver are genuinely exceptional.
- 13.4 All decisions on waivers must take into account:
- 13.4.1 Probity
 - 13.4.2 Best value/value for money principles.
- 13.5 For contracts subject to the EU Rules, any waiver from the requirement for competition must meet the conditions set out in the EU Rules in addition to the general requirements above.
- 13.6 A waiver shall not be applied for reasons of poor contract planning.

14 Extensions and Modifications to Existing Contracts

- 14.1 An extension to the duration of an existing contract may be implemented if specifically provided for in the contract and for the specified period.
- 14.2 Extensions to the duration of and/or modifications to existing contracts such as the inclusion of additional services shall be:
- 14.2.1 made in accordance with any statutory restrictions and any specific terms of the contract
 - 14.2.2 fully documented
 - 14.2.3 subject to a written report in an approved format to be submitted to the relevant Director, which shall include reasons for the extension or modification
 - 14.2.4 subject to approval by the relevant Director who shall record that they have considered the reasons for the extension or modification and that they are satisfied that there are circumstances justifying the extension or modification.
- 14.3 Any extension to the duration of and/or modification to existing contracts must take into account:

- 14.3.1 Probity
- 14.3.2 Best value/value for money principles.
- 14.4 Where the EU Rules apply, any extension to the duration of and/or modification to existing contracts must meet the conditions set out in the EU Rules⁵ in addition to the more general requirements set out above.

15 Purchasing Schemes (including Framework Agreements)

- 15.1 A Responsible Officer may use Purchasing Schemes subject to the following conditions and the Council's Procurement Guide.
- 15.2 Responsible Officers must check in advance that
 - 15.2.1 The Council is legally entitled to use the Purchasing Scheme
 - 15.2.2 The purchases to be made do properly fall within the coverage of the Purchasing Scheme
 - 15.2.3 The establishment and operation of each Purchasing Scheme is in compliance with the EU Rules (where they apply) and meets the Council's own requirements.
- 15.3 A "Purchasing Scheme" may include:
 - 15.3.1 Contractor prequalification lists/select lists
 - 15.3.2 Framework arrangements (including those set up by the Crown Commercial Service and any successor body)
 - 15.3.3 Purchasing arrangements set up by central purchasing bodies and commercial organisations
 - 15.3.4 Consortium purchasing
 - 15.3.5 Collaborative working arrangements
 - 15.3.6 Formal agency arrangements
 - 15.3.7 E-procurement/purchasing schemes and methods
 - 15.3.8 Other similar arrangements e.g. procurement platforms which drive compliance, provide controls over the procurement process and allow organisations to achieve contract realisation etc.
- 15.4 Where a Purchasing Scheme is used then there shall be a whole or partial exemption from the obligations under these Contract Standing Orders in respect of the choice and conduct of procedures to the extent permitted and indicated in the Council's Procurement Guide.

⁵ Regulation 72 of Public Contracts Regulations 2015

16 Review and Changes to these Contract Standing Orders

- 16.1 These Contract Standing Orders shall be reviewed and updated on a regular basis by the Strategic Director (Internal Services) in accordance with the Scheme of Delegation.

17 Suspension of these Contract Standing Orders

- 17.1 These Contract Standing Orders may be suspended in accordance with the Council Procedure Rules at Standing Order 41.