

APPENDIX 1

Contract Standing Orders

Table of Contents

Application	2
1. Background	2
2. Scope	2
3. Accountability & Responsibility.....	3
4. Basic Principles	3
5. Exemptions.....	4
6. Requirements to consult Head of Legal Services and Head of Procurement	4
7. Grants	5
8. Collaborative Procurement, Frameworks and Use of Agents	5
The Contracting Process	5
9. Competition Requirements	5
10. General	7
11. Select Lists	7
12. The Quotation Process	7
13. Requirements Applicable to all Tendering Exercises	8
14. Tendering Exercises	9
15. Conditions of Contract & Contract Formalities	10
Other Requirements	11
16. Prevention of Corruption & Declaration of Interests	11
17. Procurement Guidance	11

Application

1. Background

- 1.1 The purpose of these Contract Standing Orders is to ensure that all Council contracts are demonstrably made:
- a) in compliance with the law and best practice;
 - b) maximising fairness, transparency and competition;
 - c) to improve quality and value for money;
 - d) to enable the Council to develop and deliver its Commercial Strategy; and
 - e) in compliance with the Council's Financial Regulations.

2. Scope

- 2.1 These Contract Standing Orders apply to all relevant contracts made (including all orders placed) by, for or on behalf of the Council, including when the Council is acting on behalf of other public bodies. Relevant contracts include arrangements for:
- a) the supply or disposal of goods
 - b) the hire, rental or lease of goods or equipment
 - c) the provision of works and the supply of works materials
 - d) the provision of services, including consultancy services
 - e) the granting of works concessions or services concessions
 - f) the selection of sub-contractors by the Council, where these are nominated under a main/prime contract
- 2.2 Relevant contracts include contracts between the Council and any other contracting party, including:
- a) Other public bodies, including other local authorities
 - b) Voluntary and community sector organisations acting as suppliers to the Council.
 - c) Private sector suppliers to the Council.
- 2.3 Relevant contracts do not include:
- a) agreements regarding the acquisition, disposal, or transfer of land, pre-existing property leases, and licenses; or
 - b) the award of grants by the Council
- The rules governing these are covered by separate procedural guidelines approved (from time to time) by the Cabinet, Leader of the Council or a Cabinet Member.
- 2.4 Subject to the Fair Funding Scheme for Financing Schools of the Council for the time being under Section 48 of the School Standards and Framework Act 1998 these Standing Orders apply to Gloucestershire Education Authority schools.

3. Accountability & Responsibility

- 3.1 These Contract Standing Orders apply to all Officers of the Council. Officers must ensure that any agents, consultants and contractual partners acting as procurement agents on behalf of the Council also comply with these Contract Standing Orders.
- 3.2 It is a disciplinary offence for officers not to comply with these Contract Standing Orders.
- 3.3 Directors must ensure that their staff comply with these Contract Standing Orders.
- 3.4 An Authorised Officer must not seek or accept technical advice on the preparation of a request for quotation or an Invitation to tender from any party which may have a commercial interest in the procurement if this may prejudice the equal treatment of all potential suppliers or distort competition.
- 3.5 Authorised Officers may award contracts and place orders and requisitions that comply with these Contract Standing Orders provided that:
- a) the financial values and commitments are within approved budget estimates and within their delegated responsibility;
 - c) they are within the Council's legal powers;
 - e) where the contract involves the transfer of Council staff, or former Council staff who have previously been the subject of an outsourcing of service, the authorised officer is acting in accordance the Direction made by the Secretary of State under section 102 of the Local Government Act 2003 (pension provision) or any replacement.
- 3.6 Directors must ensure that schemes of authorisation exist identifying which officers have responsibility and the level of their financial delegation for:
- a) authorising orders and the payment of invoices
 - b) agreeing tender and quotation processes
 - c) approving tender and contract documents
 - d) holding and opening returned tenders (CSO 13.4)
 - e) awarding contracts
 - f) managing contracts in line with the council's Contract Management Framework, including performance monitoring and the agreement of specification and price variations
 - h) arrangements for the management of the contract
- 3.7 Directors must ensure that officers undertaking procurement and commissioning have skills, competencies, and knowledge appropriate to the scope, risk and complexity of their activity.

4 Basic Principles

- 4.1 All purchasing and disposal activities must:

- a) achieve best value for public money spent
- b) support the Council's corporate aims and policies
- c) be consistent with the highest standards of integrity
- d) ensure fairness and transparency in allocating public contracts
- e) comply with all legal requirements
- f) produce and maintain adequate records and a clear audit trail
- g) be consistent with any procedures or guidance set out in accounting instructions and any procedures or guidance issued by the Head of Commercial Services.

5. Exemptions

- 5.1 These Contract Standing Orders do not apply where they are superseded by the Fair Funding Scheme for Financing Schools
- 5.2 Any requirement under these Contract Standing Orders to seek more than one tender or quotation does not apply where arrangements are being made for the appointment of counsel or other experts by the Head of Legal Services, who must be satisfied that the fee to be paid is relative to the level of advice and expertise required.
- 5.3 Any requirement for competition shall not apply to the letting of a bespoke care, education, accommodation or assessment package for a specified individual or the placement of an individual to a provider accredited by the Council at the Council's contracted rates.
- 5.4 Subject to CSO 13.4(b) any exception to these Contract Standing Orders may only be made by the express direction of the Cabinet, Leader of the Council, a Cabinet Member or the Chief Executive.

6 Requirements to consult Head of Legal Services and Head of Commercial Services

In addition to those instances outlined in CSO 6, this Contract Standing Order identifies other occasions where these Contract Standing Orders create a mandatory obligation to consult with the Head of Legal Services and/or the Head of Commercial Services.

- 6.1 All quotations, expressions of interest and tenders must be received by the date and time given in the original advertisement. An Authorised Officer may consider exceptions to this Standing Order in situations where the late submission is genuinely outside the control of the supplier concerned, but only with the agreement of the Head of Legal Services (CSO 13.4).
- 6.2 Officers must obtain the agreement of the Head of Commercial Services before using any third party to conduct any procurement exercise on the Council's behalf.

- 6.3 Authorised Officers shall consult with the Head of Legal Services immediately they become aware that any significant dispute or claim may arise in relation to a contract or procurement exercise or during the life of a contract.
- 6.4 Minor contract variations that have regard to small administrative changes can be undertaken by the Authorised Officer such as contact name changes, address changes, small service or specification changes. All major contract variations (i.e. anything beyond a minor change) that have regard to changes in price, term or terms and conditions must be referred to the Head of Commercial Services

7. Grants & External Funding

- 7.1 Authorised Officers shall have regard to guidance on grant making which may be issued from time to time by the Director of Strategic Finance.
- 7.2 Where the Council is using grant monies itself or passing it on to a third party, the application of that money shall be subject to the requirements of the relevant grant funding body.
- 7.3 In considering the award of a grant, Directors shall have regard to the law on state aid and best value law.
- 7.4 Before entering into any arrangement where the Council takes on accountable body status, appropriate advice must be sought from the Head of Finance, Head of Commercial Services and the Head of Legal Services.

8. Collaborative Procurement, Frameworks and Use of Agents

- 8.1 Without prejudice to CSO 8.2, where a collaborative contract or framework has been let by another public authority or central buying organisation through competition, and in accordance with its own contract standing orders and legal requirements, this contract shall be deemed to comply with the Council's Contract Standing Orders.
- 8.2 Before using any collaborative contract, an officer must first verify that:
- a) the contract was procured in accordance with all relevant UK and EU law; and
 - b) the contract was advertised appropriately, and specifically that the scope of the advert allowed the contract's use by the Council; and
 - c) the contract has been let on appropriate conditions of contract; and
 - d) the contract offers, or is reasonably likely to offer, better overall value for money, or benefit to the Council, than the Council could achieve through independent procurement

The Contracting Process

9. Competition Requirements

Goods and/or Services and Works

- 9.1 All contracts for goods and/or services and all contracts for works that have a total value or estimated total value equal to or in excess of the relevant EU threshold shall be tendered in accordance with European procurement law and the provisions of the Public Contract Regulations 2006 or such other replacement or amending legislation as may from time to time apply.
- 9.2 All contracts for goods and/or services and all contracts for works that have a total value or estimated total value of less than the relevant EU threshold shall be tendered in accordance with the provisions of these Contract Standing Orders.
- 9.3 Contracts for goods and or services that have a total value or estimated total value:
- a) up to £15,000 may be procured after obtaining a single written quotation which must be obtained against a written request for a quotation.
 - b) between £15,001 and £75,000 may be procured after obtaining three written quotations which must be obtained using the Council's e-procurement system.
 - c) between £75,001 and up to EU threshold may be procured after having undertaken a tendering process using the Council's e-procurement system.
 - d) over EU threshold must be procured after having undertaken a tendering process using the Council's e-procurement system.
- 9.4 Contracts for works that have a total value or estimated total value of:
- e) up to £250,000 may be procured after obtaining three written quotations which must be obtained using the council's e-procurement system.
 - f) between £250,001 and up to the relevant EU threshold may be procured after having undertaken a tendering process using the council's e-procurement system.
 - g) over EU threshold must be procured after having undertaken a tendering process using the Council's e-procurement system.
- 9.5 Contract extensions may only be considered if there is a legal right to extend the contract and must follow the Council's governance process for approval.
- 9.6 A Direct Award (DA) should only be considered as a last resort when all other procurement strategies have been excluded and only in accordance with EU legislation under the following circumstances:
- a) where it is determined through market analysis/engagement that the services are only capable of being provided by one particular provider; or
 - b) where there is an urgent need; or
 - c) in limited cases, to protect intellectual property rights that the provider holds

For all direct awards over £75,001 the process detailed in the guidance from the Head of Commercial Services must be followed.

10. General

Authorised Officers must, when looking to award any relevant contract, fully comply at all times with any procurement guidance issued by the Head of Commercial Services under CSO 17.

11. Select Lists

11.1 A Select List is a list of pre-qualified suppliers used for running quotations or non – EU tenders.

11.2 The use of a select list may be appropriate where:

- a) quotations or tenders are regularly obtained for the same or similar types of goods, services, and works; and
- b) it is not practical or appropriate that the goods, services and works in question be aggregated into a single requirement and/or competed under one procurement; and
- a) the total value of the goods, services and work, if aggregated, would not exceed any relevant EU threshold.

11.3 A select list shall only be used where an agreed procurement strategy is in place that has identified that a select list is the most appropriate option having considered all others.

11.4 Authorised Officers shall seek the prior agreement of the Head of Commercial Services before establishing a select list. The authorised officer shall ensure that the level of expenditure through the select list is monitored so as not to risk breaching the EU rules on aggregation.

11.5 A select list may be either a Rolling select list or a set select list:

- a) with a rolling select list a supplier may apply to the Council at any time for inclusion on the select list.
- b) with a set select list a supplier may apply to the Council only within specific time-periods, in response to specific advertisements placed by the Council.

12. The Quotation Process

12.1 The quotation process applies when the estimated total value of a contract is £75,000 or less for goods and services and £250,000 or less for works.

12.2 All requests for quotation should be carried out on the Council's e-procurement system in accordance with guidance from the Head of Commercial Services.

12.3 Where a single supplier is to be selected, an authorised officer may choose either to:

- a) place an order with the selected supplier, on the basis of a pre-quoted price (such as in a supplier's catalogue) having satisfied themselves that the price to be paid represents good value for money; or
- b) issue a request for quotation to the selected single supplier

13. Requirements applicable to all tendering exercises

13.1 All tendering exercises must be conducted electronically through the Council's e-procurement system unless the use of an alternative process has been previously approved in writing by the Head of Commercial Services.

13.2 Receiving Expressions of Interest

All expressions of interest must be received by the date and time given in the original advertisement. An authorised officer may consider exceptions to this Contract Standing Order in situations where the late submission is genuinely outside the control of the supplier concerned, but only with the agreement of the Head of Legal Services.

13.3 Issuing Invitations to Tender

- a) Where a tendering process involves a process of qualification and selection before the award phase, an authorised officer shall only issue an invitation to tender to those suppliers that have met the required selection criteria, including any minimum standards set. Suppliers may be shortlisted to be invited to tender on the basis of marks awarded against the selection criteria
- b) An authorised officer shall ensure that an invitation to tender is based on a robust procurement strategy based on model instructions for tendering approved by the Head of Commercial Services
- c) Suppliers shall be allowed sufficient time to complete their tenders, taking into account the complexity of the requirement and the contract, and the time required for them to prepare their response. A minimum of ten working days must be allowed from the date on which the invitation was sent.
- d) All suppliers being invited to tender must be issued with the same information at the same time and subject to the same conditions. Any clarification, supplementary information, or changes to the content or detail of the invitation, must be given on the same basis.
- e) All communications with the suppliers should be through the Council's e-procurement system.

13.4 Receiving Tenders

- a) Where in accordance with CSO 13.1 tenders are to be submitted electronically, authorised officers shall ensure that they are kept secure and un-opened via the Council's e-procurement system until the specified date and time, after which they shall be opened by an officer who has been authorised to do so by the Head of Legal Services. The precise process to be adopted shall be agreed with the Head of Commercial Services and the Head of Legal Services.
- b) If suppliers have not followed the instructions issued within the invitation to tender (with regard to how tenders should be delivered, packaged,

marked, referenced etc.) such tenders must normally be excluded from further participation in the tender process. However, in exceptional circumstances, the Head of Legal Services may permit tenders to be considered in the case of a minor breach by the tenderer, providing the principle of equal treatment of tenderers and the integrity and confidentiality of the tendering process would not be breached.

- c) In exceptional circumstances, any tenders that are received after the specified date and time, but before the tenders have actually been opened, may be included - but only where the late submission is genuinely outside the control of the supplier concerned, and only with the agreement of the Head of Legal Services, who shall in considering whether to waive the deadline have regard to the need to avoid unequal treatment, discrimination or lack of transparency. Such decision shall be made by the Head of Legal Services personally or by the Deputy Head of Legal Services but shall not be given by any other person.
- d) Any tender that is received after the tenders have been opened, or which otherwise does not comply with the instructions in the invitation to tender, shall be rejected and shall be returned to the tendering supplier with an explanation for this rejection.

14. Tendering Exercises

14.1 Contracts for service concessions and contracts for goods, services and works of total value below the relevant EU thresholds, shall be tendered if they equal or exceed the financial values set out in CSO 9.3 or 9.4

14.2 All tender opportunities must be advertised via the Council's e-procurement system in line with the appropriate levels in CSOs 9.3 and 9.4

14.3 Award

- a) Any Contract(s) shall be awarded to the supplier(s) whose tender(s) best meet(s) the previously published award criteria.
- b) Award may be made on the basis of only:
 - i) the 'most economically advantageous tender' (which is equivalent to the best value for money); or
 - ii) the lowest price
- c) If awarding on the basis of the 'most economically advantageous tender' (the best value for money), an Authorised Officer shall use criteria linked to the subject matter of the contract.
- d) If, having completed tender evaluation, the Director or otherwise Authorised Officer believes that one (or more) tender(s) offers good value for money to the Council, they may award a contract to this supplier (or suppliers).
- e) When awarding any contract for goods, services or works which in aggregate value exceeds the EU threshold; an Authorised Officer shall apply a minimum ten (10) day Standstill Period and provide, with the Standstill notice, sent to all tenderers and candidates, full reasons for the decision, including the characteristics and relative advantages of the successful tenderer.

15. Conditions of Contract & Contract Formalities

- 15.1 All contracts must be formally concluded in writing before the supply, service or work begins.
- 15.2 Contracts shall be written in plain language and shall adopt either:
- a) conditions of contract produced by professional bodies and agreed by the Head of Legal Services; or
 - b) conditions of contract developed by or agreed by the Head of Legal Services for specific types of procurement or specific procurement projects; or
 - c) conditions of contract within collaborative contracts let by other public contracting authorities; or
 - d) exceptionally, and where unavoidable, conditions of contract requested by suppliers; but only where the use of these conditions has been previously agreed by the Head of Legal Services
- 15.3 CSOs 15.1 and 15.2 do not apply to low value, one-off retail purchases where a purchasing card is used.
- 15.4 All contracts, irrespective of value, shall as a minimum clearly specify:
- a) a full description of what is to be supplied (i.e. the works, materials, services, matters or things to be furnished, received or completed)
 - b) the quantities to be provided
 - c) the provisions for payment (i.e. the price to be paid and when)
 - d) the time(s) and location(s) for delivery or performance
 - e) the provisions for the Council to terminate the contract
 - f) the provisions for indemnity and insurance for service contracts
 - g) such other conditions and terms as may be agreed between the parties which shall include, where relevant, a reference to continuous improvement in accordance with the best value legislation.
- 15.5 Where contracts are awarded which involve the transfer of Council staff, or of former Council staff who were previously the subject of an outsourcing of service, they shall include provisions to ensure that the relevant regulations are complied with and that the Council is indemnified. Where the Council is a third party to any transfer, the contract shall in addition ensure that the Council has access to staff and employee information on request
- 15.6 Every relevant contract must provide for the Council to cancel the contract and recover any resulting losses if the supplier or his or her employees or agents, with or without his or her knowledge:
- a) does, or has done, anything improper to influence the Council to give him or her the contract;
 - b) commits an offence under the Bribery Act 2010 or Section 117(2) of the Local Government Act 1972

- 15.7 In appropriate cases, after consultation with the Head of Legal Services, the supplier shall provide for the payment of liquidated damages by the supplier where he or she fails to complete the contract in accordance with the terms of the contract, including within the specified time.
- 15.8 In appropriate cases, after consultation with the Head of Legal Services, the contract shall be required to give sufficient security for the due performance of his or her contract.
- 15.9 Where a relevant contract exceeds:
- a) £75,001 in total value it must be signed by at least two officers of the Council, being the relevant authorised officer and one other officer above salary scale point 33; and
 - b) above EU threshold in total value it shall be executed under the Common seal of the Council.
- 15.10 Unless otherwise agreed by the Head of Legal Services, a contract must be sealed where:
- a) the Council may wish to enforce the contract more than six years after its end; or
 - b) there is any doubt as to whether valid consideration is being created under the contract.
- 15.11 Contract sealing shall be carried out by the Head of Legal Services or those persons who have been given authority to do so from time to time.

Other Requirements

16. Prevention of Corruption & Declaration of Interests

- 16.1 Officers shall comply with the Council's Code of Conduct for Employees and the Anti-Fraud and Corruption Policy Statement and Strategy. In particular:
- a) no officer shall use or be seen to use their position to obtain any personal or private benefit (including benefit accruing to connected third parties) from any contract entered into by the Council;
 - b) officers' attention is drawn to the provisions of the Code of Conduct relating to the separation of roles during tendering.
- 16.2 With regards to any contract that has been proposed or entered into by the Council, officers must disclose in writing to their Director any instances:
- a) where they have any relationship with a supplier; or
 - b) where they have any personal interest (financial or non-financial) which could reasonably be considered to conflict with the Council's interests.

17. Procurement Guidance

In support of these Standing Orders, the Head of Commercial Services may issue guidance, procedures and standard documents as Procurement

Guidance. Authorised Officers shall comply with such guidance when undertaking procurement activities and contract management.