

21. Contract Standing Orders

KEY PRINCIPLES

- (a) These Contract Standing Orders (CSOs) are made pursuant to section 135 of the Local Government Act 1972 and will be regularly reviewed by the Strategic Manager for Legal Services.
- (b) CSOs are based on the following key principles:
 - (i) To achieve good value for money through appropriate market competition, so that we offer best value services to Isle of Wight residents;
 - (ii) To be transparent to our residents about how we spend their money through our procurement processes;
 - (iii) To ensure compliance with the legislation and regulations which govern the spending of public money;
 - (iv) To ensure against any criticism or allegation of wrongdoing in the buying of goods and services or in the commissioning of works;
 - (v) To support sustainability and social value objectives, the public sector equality duty, and encouraging local businesses on the Isle of Wight.

Compliance

- (a) These CSOs form part of the council's Constitution and in the event of a failure to comply with the CSOs, the council may invoke its disciplinary policy and procedure depending on all the circumstances of any such failures.
- (b) These CSOs are applicable to both members and officers.
- (c) Consultants acting on behalf of the council are required to operate in accordance with these CSOs and it is the responsibility of the officer contracting with the consultant to ensure such compliance.
- (d) Every person involved in any procurement process has a responsibility to declare any links or personal interests that they may have with potential Suppliers.
- (e) Every contract to be entered into on behalf of the council must:
 - (i) be in accordance with the council's lawful functions and within the bounds of its statutory powers
 - (ii) comply with domestic legislation, common law and relevant EU Directives
 - (iii) be let with integrity and fairness throughout and with sufficient openness to engender public and market confidence in the procurement process
 - (iv) demonstrate that value for money is being obtained having regard to an appropriate and realistic balance between price, quality and service considerations
 - (v) unless there is sufficient reason to the contrary, which must be approved in advance by the Board, be let through a reasonable show of competition
 - (vi) align/comply with the council's Corporate Plan, its Procurement Strategy and any other standing orders, regulations, policies and procedures of the council, insofar as they are directly relevant to that contract
- (f) In the event that there is any conflict or inconsistency between the provisions of the CSOs and any legal requirement, the legal requirement shall prevail.

Scope and Application

- (a) The CSOs are the rules that must be followed when buying goods or services or engaging a Supplier to carry out of works on behalf of the council and refer to the

- selection, award and entry into any contract by the council and by any person or representative acting on behalf of the council or council partnership.
- (b) Apart from the exemptions listed below, the CSOs cover all spend with external Suppliers regardless of how they are funded (for example, revenue, capital, grants, ring-fenced government money and/or any third party funding).
 - (c) The following are not caught by the requirements of the CSOs:
 - (i) contracts for permanent or fixed-term employment
 - (ii) contracts solely relating to the purchase or lease of land
 - (iii) transactions conducted by the Chief Finance Officer in respect of dealing in the money market or obtaining finance for the council
 - (iv) direct payments to customers following care assessment (for example, payments under Self-Directed Support or Personal Budgets)
 - (v) non-trade mandatory payments to third parties, e.g. insurance claims, pension payments, payments to public bodies, etc
 - (vi) fees for external auditors
 - (vii) contracts that can properly be regarded as a grant or internal service level agreements;
 - (viii) a declared emergency authorised by the Emergency Planning Officer and/or Duty Senior Officer

CONTRACT VALUE AND AGGREGATION

The estimated value of a contract shall be the total value of the contract net of VAT. This is the total consideration estimated to be payable over the full term of the contract, including all extension options, by the council to the Supplier. Where the contract is one where no payment is made by the council (e.g. a concession) a best estimate of the financial value to the Supplier shall be ascertained.

Where the contract period is indefinite or uncertain, the estimated value shall be calculated on the basis that the contract will be for a period of four years.

The estimated value of a Framework Agreement is the total value of all the contracts which could be entered into by the council and other contracting authorities during the lifetime of the Framework Agreement.

Purchases of the same or similar goods, works or services must be aggregated wherever practicable, including repeat purchases of the same or similar goods, works or services year on year. Contracts must not be artificially separated so as to circumvent the application of any part of the CSOs, the Public Contracts Directive 2014/24/EU or the Public Contracts Regulations 2015.

LETTING CONTRACTS FOR GOODS, SERVICES AND WORKS

Approvals

- (a) The commencement of a procurement process for a contract is subject to the prior approval of the relevant officer who has the delegated authority to give such approval under the Constitution.
- (b) The giving of approval is subject to the expenditure involved having been included in approved estimates and sufficient budgetary provision having been made in the council's capital programme or revenue budget.
- (c) Where relevant, proportionate and timely consultation shall take place with elected councillors prior to commencing the procurement process.

- (d) Where a contract has a whole life value of over £1.5m or is deemed to be of particularly high risk, sensitive or likely to have a substantial effect on the council's corporate priorities or its reputation, consultation with the designated Cabinet member will be required and the Cabinet may be required to give its approval to the procurement proceeding and/or the subsequent Contract award. This will be at the discretion of the Cabinet member and delegated officer.

Pre-Procurement Market Research/Consultation

- (a) Before commencing a procurement process, officers may conduct market consultations with a view to preparing the procurement and informing Suppliers of their procurement plans and requirements.
- (b) For this purpose, officers may seek or accept advice from independent experts or authorities or from market participants. Such advice may be used in the planning and conduct of the procurement procedure, provided it does not have the effect of distorting competition and does not result in a violation of the principles of non-discrimination and transparency.
- (c) Where a Supplier, or an undertaking related to a Supplier, has advised the council or has otherwise been involved in the preparation of the procurement procedure, the officer shall take appropriate measures to ensure that competition is not distorted by the participation of that Supplier such as the communication to the other Suppliers of relevant information exchanged in the context of or resulting from the involvement of the Supplier in the preparation of the procurement procedure.
- (d) The Supplier concerned shall only be excluded from the procurement procedure where there are no other means to ensure compliance with the duty to treat Suppliers equally.

ADVERTISING AND COMPETITION REQUIREMENTS

Procurement Process for Spend between £0-£10,000

- (a) Where the evidence based estimated value of a proposed contract (including all extensions) does not exceed £10,000, the officer may contract with any Supplier that they consider competent to provide a proven best value solution.
- (b) Officers should search the market for a suitable Supplier, and must obtain one quote; however, to ensure best value, it is advisable to seek further quotes. If they offer best value, officers should use an Isle of Wight-based Supplier.
- (c) The conditions of contract will be the council's standard terms and conditions, which are linked to the Purchase Order.
- (d) Officers may seek to use a suitable Framework Agreement. Any competition shall be conducted in accordance with the competition rules of the Framework Agreement.
- (e) Where a relevant Approved List exists, at least one quote should be sought from the Suppliers included on it.
- (f) It is the responsibility of the officer to ensure that all contracts within this threshold are, wherever practicable, entered into the council's Contracts Database.

Procurement Process for Spend between £10,001 - £25,000

- (a) Where the evidence based estimated value of a proposed contract (including all extensions) does not exceed £25,000, the officer must, wherever practicable, obtain at least three quotes. In cases where it is impracticable to seek at least three quotes, the officer must obtain approval from their Service Manager and record those reasons for not seeking three quotes.

- (b) Officers must ensure they are conducting a like-for-like comparison and that quotes are evaluated on the same basis.
- (c) Officers should search the market for at least three suitable Suppliers. If they offer best value, officers should use Isle of Wight-based Suppliers.
- (d) The conditions of contract will be the council's standard terms and conditions, which are linked to the Purchase Order.
- (e) Officers may seek to use a suitable Framework Agreement. Any competition shall be conducted in accordance with the competition rules of the Framework Agreement.
- (f) Where a relevant Approved List exists, at least three quotes should be sought from the Suppliers included on it.
- (g) It is the responsibility of the officer to ensure that all contracts within this threshold are wherever practicable entered into the council's Contracts Database.

Procurement Process for Spend between Spend £25,001 - £100,000

- (a) Where the evidence based estimated value of a proposed contract (including all extensions) exceeds £25,001 but is less than £100,000, the officer must notify the Procurement Team who will co-ordinate the Request for Quotation (RFQ) process in conjunction with the officer.
- (b) The RFQ process must be run using the Open Procedure, i.e. the use of a Pre-Qualification Questionnaire is prohibited.
- (c) The RFQ process shall be run using the council's e-tendering system and additionally, a Contract Notice must be placed in Contracts Finder as a minimum.
- (d) The evaluation criteria must be set out in the RFQ document including all weightings, sub-criteria (if applicable) and scoring criteria. The evaluation criteria must be relevant and proportionate to the subject matter of the contract.
- (e) Contracts can be awarded on the basis of the lowest price or the most economically advantageous offer. The chosen award mechanism must be set out in the RFQ document.
- (f) The RFQ document must contain the specification of requirements, which shall lay down the characteristics of the proposed contract. Officers must ensure that the Specification is not drafted in such a way that it distorts competition. Whenever practical, the Specification should focus on successful outcomes, rather than being unnecessarily prescriptive, to encourage innovation from Suppliers. The officer must also involve and seek input from relevant key stakeholders, if required.
- (g) The conditions of contract shall be the council's standard terms and conditions; however, timely consultation must take place with the council's contracts lawyer to determine whether any special conditions are required in addition. The conditions of contract must form part of the RFQ pack.
- (h) Suppliers should be given a minimum return period of 14 days to submit quotes. Prior approval of the Procurement Team must be sought if the officer wishes to shorten the return period.
- (i) Officers may seek to use a suitable Framework Agreement. Any competition shall be conducted in accordance with the competition rules of the Framework Agreement. The Procurement Team shall co-ordinate any mini competition or direct award in conjunction with the officer.
- (j) Where a relevant Approved List exists, a minimum of three written quotes should be sought from the Suppliers included on it.

- (k) In cases where it is impracticable to follow the RFQ process, the officer may seek a waiver (see below).

Procurement Process for Spend between Spend £100,001 – Relevant PCR15 Threshold

- (a) Where the evidence based estimated value of a proposed contract (including all extensions) exceeds £100,001 but is less than the relevant PCR15 threshold, the officer must notify the Procurement Team who will co-ordinate the Invitation to Tender (ITT) process in conjunction with the Officer.
- (b) The ITT process must be run using the Open Procedure, i.e. the use of a Pre-Qualification Questionnaire is prohibited.
- (c) The ITT process shall be run using the council's e-tendering system and additionally, a Contract Notice must be placed in Contracts Finder as a minimum and consideration should be made to placing a Contract Notice in a relevant industry publication.
- (d) The evaluation criteria must be set out in the ITT document including all weightings, sub-criteria (if applicable) and scoring criteria. The evaluation criteria must be relevant and proportionate to the subject matter of the Contract.
- (e) Contracts can be awarded on the basis of the lowest price or the most economically advantageous offer. The chosen award mechanism must be set out in the ITT document.
- (f) The ITT document must contain the specification of requirements, which shall lay down the characteristics of the proposed contract. Officers must ensure that the Specification is not drafted in such a way that it distorts competition. Whenever practical, the Specification should focus on successful outcomes, rather than being unnecessarily prescriptive, to encourage innovation from Suppliers. The officer must also involve and seek input from relevant key stakeholders, if required.
- (g) Timely consultation must take place with the council's contracts lawyer to determine the conditions of contract to be used. The conditions of contract must form part of the ITT pack.
- (h) Suppliers should be given a minimum return period of 21 days to submit tenders. Prior approval of the Procurement Team must be sought if the officer wishes to shorten the return period.
- (i) Officers may seek to use a suitable Framework Agreement. Any competition shall be conducted in accordance with the competition rules of the Framework Agreement. The Procurement Team shall co-ordinate any mini competition or direct award in conjunction with the officer.
- (j) Where a relevant Approved List exists, a minimum of five written tenders should be sought from the Suppliers included on it.
- (k) In cases where it is impracticable to follow the ITT process, the officer may seek a waiver (see below).

Procurement Process for Spend above Relevant PCR15 Threshold

- (a) Where the evidence based estimated value of a proposed contract is in excess of the relevant PCR15 Threshold, the officer must notify the Procurement Team, who will co-ordinate the procurement process in conjunction with the officer in accordance with the procedures set out in the Public Contracts Regulations 2015 (as amended and superseded from time to time).
- (b) The procurement process shall be run using the council's e-tendering system and adverts must be placed on the Contracts Finder website, the Official Journal of the

European Union (OJEU) or subsequent replacement system, and consideration should be made to placing an advert in two industry publications.

- (c) In most cases, the Open or Restricted Procedure will be used, but in certain specialist cases, such as private finance initiative contracts, the Negotiated or Competitive Dialogue procedure shall apply. Advice on which procedure is appropriate to the specific case should be sought from the Procurement Team.

PROCEDURE ON RECEIPT OF QUOTES AND TENDERS

- (a) All quotes and tenders invited for contracts over £25,000 must be returned via the council's e-tendering portal and remain unopened and anonymous until the closing time and date for the receipt of responses.
- (b) The only exception to this is where Suppliers are having problems with the e-tendering portal and are unable to upload their return. The Procurement Team must have been made aware of the problem prior to the return deadline.
- (c) Any pending, or late, quote or tender returns will be rejected by the e-tendering portal once the opening and verification process has been started.

Evaluation

- (a) All quotes and tenders must be checked for arithmetic accuracy. If any errors are found they must be notified to the Supplier who shall be given the opportunity to confirm the correct price. Officers should reject any quote or tender where the error undermines the integrity of the RFQ or ITT process.
- (b) Officers must ensure the quote or tender submission is compliant with the RFQ or ITT and, in particular, meets any specification, requirements and contract terms set out in or detailed in that document.
- (c) All quotes and tenders shall be evaluated in accordance with the designated evaluation criteria set out in the RFQ or ITT document.
- (d) For tenders invited for contracts over £100,000, officers must appoint an Evaluation Panel made up of council officers and stakeholders (where appropriate) who have sufficient knowledge of the contract requirements. The Procurement Team will act as scrutiniser.

Acceptance and Award of Quotes and Tenders

- (a) Prior to awarding a contract, the officer must ensure all necessary consents, permissions or approvals required by the council's Constitution or otherwise have been obtained.
- (b) Notification of the award decision and feedback for the unsuccessful Suppliers must be issued using the e-tendering portal.
- (c) Where the contract value is above £25,000, a contract award notice must be placed on Contracts Finder and where the value is above the relevant PCR15 threshold, a contract award notice must also be placed in the OJEU or subsequent replacement system.
- (d) Where the contract value is above the relevant PCR15 threshold, it shall be awarded in accordance with the Public Contracts Regulations 2015 (as amended and superseded) and in particular the requirements relating to a standstill period prior to the contract being entered into.
- (e) All contracts made on behalf of the council must be in writing and executed in accordance with the CSOs and the council's Constitution.

- (f) Contracts must either be signed by an officer of the council duly authorised for this purpose or, if valued at over £250,000, can only be made under the Common Seal of the council attested by the Strategic Manager for Legal Services or an officer authorised by the holder of that post.
- (g) The signed contract shall be held in the council's Contract Store.
- (h) The contract shall be registered on the council's Contracts Database.

Please see the table below for a summary of the procurement thresholds and the associated processes.

CORPORATE CONTRACTS

The council has a number of corporate contracts where prices and service levels have been negotiated using historic and projected volumes to achieve the best value for the council as a whole.

Where corporate contracts exist, they must be used. If a Service Manager wishes to opt out of such corporate contracts, the officer responsible for the corporate contract in question must be consulted and the reasons for the opt-out documented and approved. Officers must consult with the council's contracts lawyer to determine the conditions of contract to be used.

CONTRACT VARIATIONS

A contract variation is any change to a contract's terms and conditions (or any of its schedules or annexations) prior to the expiry of the contract and it may be either a one off item of work or service or a change for the remainder of the contract.

Contracts must not be varied if a variation is not expressly permitted by the contract.

If a budget has been approved, officers duly authorised for this purpose can agree to variations up to 10 per cent of the total contract value or £150,000, whichever is lowest. For all contracts the value reported must represent the potential total additional cost across the term of the variation.

If the variation exceeds these thresholds; there have been cumulative variations to this value; there are significant departmental implications; or changes to service levels arising from the variation (even if the variation has no financial value) approval must be sought from the Procurement Board.

All contract variations should be kept with the original contract in the Contract Store and be reflected on the Contracts Database.

Officers must adhere to the Public Contracts Regulations 2015 and consider whether a variation is of such magnitude that a new contract is required.

SOCIAL VALUE

The Public Services (Social Value) Act 2012 places an obligation on the council to consider the economic, social and environmental well-being of the local area at the pre-procurement stage of the procurement process for service contracts over the PCR15 threshold. The council will also informally apply this to all contracts with a whole life value of over £25,000, where it is deemed appropriate.

Where appropriate, social value will be evaluated as part of the tender award criteria.

These requirements must not override the fundamental competition provisions that prohibit any discriminatory measures in favour of local suppliers.

SUSTAINABILITY

Where appropriate, sustainability will be evaluated as part of the tender award criteria. Sustainable procurement offers the council the opportunity to encourage and work collaboratively with Suppliers to adopt practices that minimise environmental and social impacts. Officers must consider minimising the impact of the contract on the environment whilst also acquiring goods, works and services at a competitive rate, and are required to consider ways of procuring more resource and energy efficient alternatives.

EQUALITY AND DIVERSITY

To ensure that the council procures goods, works and services in a way which promotes equality, officers must, where appropriate:

- (a) seek information on a Supplier's equality policies and practices and evaluate this to help short list suitable Suppliers;
- (b) include equality clauses in contracts to ensure Suppliers meet relevant statutory duties;
- (c) encourage small and medium enterprises, minority and voluntary groups to tender for suitable contracts and create evaluation criteria that do not disadvantage these groups;
- (d) have due regard to the Equality Act 2010.

WAIVERS

Waivers of the CSOs may be sought in unforeseen or exceptional circumstances. Waivers must not be sought for reasons of poor planning nor as a means to by-pass the CSOs and cannot be given if they would contravene the Public Contracts Regulations 2015 or any other applicable legislation.

Any of the requirements of these CSOs may be waived in an individual case by the Director of Corporate Services with advice from the Procurement Board, or any officer of the Procurement Board as delegated by the Director of Corporate Services.

A request for the issue of a waiver must be made in writing, using the prescribed form. The decision in response to the request must also be in writing. No action shall be taken to enter into the contract until such request has been submitted and the decision made.

Waivers may be utilised where it can be demonstrated that the ability to act quickly to engage a single Supplier would make economic sense and fit with service requirements, in circumstances where there is no more effective way to secure the capacity.

Where a contract has been awarded following the approval of a waiver, the officer shall register the contract on the council's Contracts Database. No waiver is granted retrospectively, unless in exceptional circumstances at the discretion of the Procurement Board.

COLLABORATIVE WORKING

In order to secure best value, the council may enter into collaborative procurement arrangements with another local authority, government department, statutory undertaker or central purchasing body.

Any contracts entered into through collaboration with other local authorities or public bodies where a competitive process has been followed that complies with the equivalent of the procurement

rules of the leading organisation (but does not necessarily comply with the CSOs) will be deemed to comply with the CSOs and no exemption will be required.

Est. Total Contract Value (incl. all extension options)	Rules/Regulations to follow	Competition Requirements	Advertising Requirements	Notes
Below £10,000	IWC Contract Standing Orders	No formal competition required, although quotes can be sought in order to demonstrate best value	No advert required	<ul style="list-style-type: none"> • Seek one written quote • Consider using a procurement card • Conditions of contract will be standard IWC Ts and Cs linked from the Purchase Order • Service Department to carry out and manage the process with any advice being sought from the Procurement Team if/when required • Officers must be able to demonstrate that they have achieved value for money • Officers must ensure that all Contracts within this threshold are entered into the Contracts Database
£10,001 - £25,000	IWC Contract Standing Orders	Seek minimum of 3 written quotes identified following market research or use a suitable/compliant Framework Agreement or seek a minimum of 3 written quotes from an Approved Supplier List	No advert required	<ul style="list-style-type: none"> • Conditions of contract will be standard IWC Ts and Cs linked from the Purchase Order • Service Department to carry out and manage the process with any advice being sought from the Procurement Team if/when required • If Officers are not able to seek 3 quotes, the responsibility of waiving this requirement will sit with the Service Manager. Any decision to waive must be documented • Officers must demonstrate that they have achieved value for money and all quote comparisons must be on the same basis • The setting up of a Framework Agreement or Approved List must

				<p>be done in conjunction with the Procurement Team</p> <ul style="list-style-type: none"> Officers must ensure that all Contracts within this threshold are entered into the Contracts Database
£25,001 - £100,000	IWC Contract Standing Orders	Formal Request for Quotation process using the open procedure, or use a suitable approved/ compliant Framework Agreement or seek a minimum of 3 written quotes from an Approved Supplier List	Advertise through the council's e-tendering system and on Contracts Finder website	<ul style="list-style-type: none"> Conditions of contract will be standard IWC Ts and Cs with any special terms included where required Suppliers should be given a minimum return period of 14 days to submit quotes, if reduced must be approved by Procurement Team The procurement process will be co-ordinated by the Procurement Team through the council's e-tendering system Identify stakeholders and consult where appropriate
£100,001 to the relevant PCR15 threshold	IWC Contract Standing Orders	IWC Invitation to Tender or use of a suitable approved/ compliant framework or seek a minimum of 5 written quotes from an Approved Supplier List	Advertise through the council's e-tendering system, Contracts Finder website and consider one industry publication	<ul style="list-style-type: none"> Conditions of contract will be the standard IWC Ts and Cs, or bespoke, at the discretion of the Contracts lawyer Suppliers should be given a minimum return period of 21 days to submit quotes The procurement process will be co-ordinated by the Procurement Team through the council's e-tendering system Identify stakeholders and consult where appropriate
£4,733,252 and above for works contracts £663,540 and above	Public Contracts Regulations 2015	Invitation to tender process in accordance with Public Contracts Regulations 2015	Advertise through the council's e-tendering system, Contracts Finder website, the	<ul style="list-style-type: none"> Conditions of contract will be the standard IWC Ts and Cs, or bespoke, at the discretion of the Contracts lawyer All procurements must be conducted in accordance with the Public Contracts Regulations 2015

<p>for “light touch” contracts</p> <p>£189,330 and above for goods and services contracts</p>			<p>Official Journal of the European Union or subsequent replacement system, and two industry publications</p>	<ul style="list-style-type: none"> • The procurement process will be co-ordinated by the Procurement Team through the council’s e-tendering system • Identify stakeholders and consult where appropriate • If the contract value is over £1.5m, consultation with the relevant Cabinet Member is required
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