

# Part 4G

## CONTRACT STANDING ORDERS

### CSO1 GENERAL

- 1.1 These Contract Standing Orders are made pursuant to the Local Government Act 1972, Section 135 and shall come into force on 5<sup>th</sup> December 2007 but nothing in these Contract Standing Orders shall prejudice the validity of any actions taken before that date under any previous Contract Standing Orders.
- 1.2 Subject to CSO1.3 every contract made by or on behalf of the Council including its Executive and Cabinet Members shall comply with:
  - 1.2.1 these Contract Standing Orders;
  - 1.2.2 the Council's Financial Regulations;
  - 1.2.3 all relevant statutory provisions including, in particular, Local Government Act 1988 Part II Local Government Acts 1999 and 2000 and the Public Contracts Regulations 2006<sup>1</sup>;
  - 1.2.4 European Union treaties and European Council directives;
  - 1.2.5 the rules on State Aid;
  - 1.2.6 any direction by the Council, the Executive, Cabinet Member or Committee having appropriate allocated or delegated authority.
- 1.3 These Contract Standing Orders shall not apply or may be varied where or to the extent that:
  - 1.3.1 the Council, the Executive, Cabinet Member or appropriate Committee or Sub-Committee so resolves;
  - 1.3.2 the Chief Executive acting pursuant to Paragraph 3.1 of the Scheme of Delegation to Officers (urgency) so decides;
  - 1.3.3 statute or subordinate legislation prescribes otherwise.

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<sup>1</sup> The current thresholds for the general application of the Public Contracts Regulations 2006 are set out in Appendix 1



1.4 The estimated value for the purposes of these Contract Standing Orders of a contract shall be the value of the consideration which the Council expects to give under the contract calculated as follows:

1.4.1 where the Council has a requirement for a single contract comprising services, supplies or works in combination, the rules to be applied are those which apply to the largest element by consideration.

1.4.2 in determining the value of the consideration which the Council expects to give under a contract it shall, where appropriate, take account of:-

- (a) any form of option
- (b) any renewal of the contract
- (c) any prize or payment awarded by the Council to economic operator
- (d) the premium payable and other forms of remuneration for insurance services,
- (e) the fees, commission, interest or other forms of remuneration payable for banking and financial services, and
- (f) the fees or commissions or other forms of remuneration payable for design services

but shall exclude value added tax.

1.4.3 where the Council has a single requirement for services and a number of services contracts have been entered or are to be entered into to fulfil that requirement the estimated value for the purposes of these Contract Standing Orders of each services contract shall be the aggregate of the value of the consideration which the Council expects to give under each of those contracts.

1.4.4 where the Council has a single requirement for goods and a number of supplies contracts has been entered or is to be entered into to fulfil that requirement, the estimated value for the purposes of these Contract Standing Orders above of each supplies contract shall be the aggregate of the value of the consideration which the Council expects to give under each of those contracts.

1.4.5 the estimated value for the purposes of these Contract Standing Orders above of a works contract which is one of a number of contracts entered into or to be entered into for the carrying out of works shall be the aggregate of the value of the consideration which the Council has paid or expects to give under all the contracts for the carrying out of the work.

1.4.6 the estimated value for the purposes of these Contract Standing Orders above of a services contract under which services are to be



provided over a period exceeding four years or over an indefinite period shall be the value of the consideration which the Council expects to give in respect of each month of the period multiplied by 48.

1.4.7 the estimated value for the purposes of these Contract Standing Orders above of a supplies contract for the hire of goods for an indefinite period, or for a period which is uncertain at the time the contract is entered into, shall be the value of the consideration which the Council expects to give in respect of each month of the hire multiplied by 48.

1.4.8 where a services contract includes one or more options the estimated value of the contract for the purposes of these Contract Standing Orders above shall be determined by calculating the highest possible consideration which could be given under the contract.

1.4.9 the Council shall not enter into separate contracts nor select nor exercise a choice under a valuation method with the intention of avoiding the application of these Contract Standing Orders to those contracts.

1.4.10 the relevant time for the purposes of calculating the estimated value means the date on which a notice seeking expressions of interest is first published.

1.5 A decision whether to employ electronic or paper-based methods of seeking expressions of interest, inviting tenders and/or receiving tenders shall be taken before expressions of interest are sought and the method chosen shall take account of the class of potential economic operators and economic operators. Those decisions shall be advertised to potential economic operators and economic operators.

## **CSO2**

### **AUTHORITY TO ENTER INTO CONTRACTS**

2.1 The Chief Executive and every Head of Service (as defined by reference to Part 3 of the Council's Constitution) in relation to the work of his or her Department, shall have power to accept tenders (where required) and to enter into contracts on behalf of the Council to a value not exceeding £100,000.

2.2 In other cases the Executive, Cabinet Member or the relevant Committee shall have power to accept tenders and to authorise the conclusion of contracts.

2.3 The authority to accept tenders and/or to enter into contracts shall be documented by the Chief Executive or relevant Head of Service. The



report seeking authority and the decisions shall include: an executive summary, recommendations, reasons for recommendations, a list of background papers, the outcome of consultations, wards affected, statutory background, relevant policy background, other courses of action considered but rejected, staffing consequences, financial consequences, how the proposed course of action will promote human rights, how the proposal will help to reduce crime and disorder, how the proposal will help to promote race relations, the signature of the person authorising the action and the date of the authority. Decisions taken under delegated authority shall be recorded by the relevant Head of Service in the electronic database of delegated decisions managed by the Democratic Services Officer.

2.4 The Council, Executive, Cabinet Member, relevant Committee or officer shall not:

2.4.1 accept tenders or enter into contracts for the acquisition or maintenance of information technology hardware and software without having previously consulted and secured the agreement of the Head of Corporate Support Services;

2.4.2 accept tenders or enter into contracts having a value exceeding £50,000 without having previously consulted the Head of Financial and Legal Services;

2.4.3 accept tenders or enter into contracts other than for ordinary services, supplies or works without having first agreed with the Director of Corporate Resources the methods of financing including in particular the use of leasing;

2.4.4 accept tenders or enter into contracts having a value exceeding £10,000 without having previously notified the Council's Procurement Adviser.

### **CSO3 PRE-TENDER AND PRE-CONTRACT ENQUIRIES**

3.1 Before inviting tenders, inviting quotations or entering into contracts the Head of Service shall satisfy himself or herself that the proposed economic operator:

3.1.1 is not ineligible by reference to the criteria set out in Regulation 23 of the Public Contracts Regulations 2006 (criteria for the rejection of economic operators)<sup>1</sup>;

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<sup>1</sup> Regulation 23 is set out in Appendix 2



- 3.1.2 in appropriate cases can and should supply satisfactorily the information as to economic and financial standing set out in Regulation 24 of the Public Contracts Regulations 2006<sup>1</sup>;
- 3.1.3 in appropriate cases can and should supply satisfactorily the information as to technical or professional ability set out in Regulation 25 of the Public Contract Regulations 2006<sup>2</sup>.
- 3.2 The Head of Service shall ensure that where the information is sought under CSO3.1.2 and/or 3.1.3 that information is evaluated and held on file.
- 3.3 The Head of Service shall ensure that where the information under CSO3.1.2 and/or 3.1.3 is not sought the reasons for not doing are recorded on file.
- 3.4 CSO3.1 shall apply to all contracts estimated to have a value exceeding £50,000.

#### **CSO4 SMALL CONTRACTS OF £50,000 OR LESS**

- 4.1 Subject to CSO4.3 tenders need not be invited for contracts estimated to have a value of £10,000 or less but a written quotation shall be obtained unless CSO4.4 or 4.5 apply.
- 4.2 Tenders need not be invited for contracts estimated to have a value of more than £10,000 but not exceeding £50,000 but at least three written quotations shall be obtained unless CSO4.4 or 4.5 apply.
- 4.3 Quotations need not be obtained for contracts estimated to have a value of £1,000 or less.
- 4.4 The requirement for written quotations in CSO4.1 or 4.2 shall not apply where:
- 4.4.1 in the case of a contract—
- (a) where every economic operator which submitted a quotation or tender following an invitation made during the course of the procurement procedure was excluded or withdrew;
- (b) where there is an absence of quotations or tenders, suitable quotations or tenders or applications in response to an invitation to tender by the Council but only if the original terms of the proposed contract offered in the discontinued procedure have not been substantially altered in the negotiated procedure;

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<sup>1</sup> Regulation 24 is set out in Appendix 2

<sup>2</sup> Regulation 25 is set out in Appendix 2



(c) when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract may be awarded only to a particular economic operator;

#### 4.4.2 in the case of a supply contract—

(a) when the goods to be purchased or hired under the contract are to be manufactured solely for the purpose of research, experiment, study or development but not when the goods are to be purchased or hired with the aim of ensuring profitability or to recover research and development costs;

(b) when the goods to be purchased or hired under the contract are required by the Council as a partial replacement for, or in addition to, existing goods or an installation and when to obtain the goods from a supplier other than the supplier which supplied the existing goods or the installation would oblige the Council to acquire goods having different technical characteristics which would result in—

(i) incompatibility between the existing goods or the installation and the goods to be purchased or hired under the contract; or

(ii) disproportionate technical difficulties in the operation and maintenance of the existing goods or the installation;

but this exception shall not apply if the term of the proposed contract is more than three years, unless there are reasons why it is unavoidable that this period should be exceeded;

(c) for the purchase or hire of goods quoted and purchased on a commodity market;

(d) to take advantage of particularly advantageous terms for the purchase of goods in a closing down sale or in a sale brought about because a supplier is insolvent or subject to insolvency proceedings;

#### 4.4.3 in the case of a works contract or a services contract—

(a) when the Council wants an economic operator which has entered into a works contract or a services contract with the Council to carry out additional work or works or provide additional services which were not included in the project initially considered or in the original works contract or services contract but which through unforeseen circumstances have become necessary, and such work, works or services—

(i) cannot for technical or economic reasons be carried out or provided separately from those under the original contract



without major inconvenience to the Council; or

(ii) can be carried out or provided separately from those under the original contract but are strictly necessary to the later stages of the performance of that contract;

but this exception shall not apply where the aggregate value of the consideration to be given under contracts for the additional work, works or services exceeds 50% of the value of the consideration payable under the original contract;

(b) when the Council wants an economic operator which has entered into a works contract or a services contract with that Council to carry out new work or works or provide new services which are a repetition of the work or works carried out or the services provided under the original contract and which are in accordance with the project for the purpose of which the first contract was entered into but this exception only applies where the procedure for the new contract commences within three years of the original contract being entered into.

4.5 The requirement for written quotations in CSO4.1 or 4.2 shall not apply where the services comprise:

4.5.1 seeking the advice of counsel;

4.5.2 the services of counsel by way of representation;

4.5.3 the services of an expert witness;

4.5.4 the engagement of temporary or locum staff

but the appropriate Head of Service shall obtain quotations wherever possible.

4.6 The requirement for written quotations in CSO4.1 or 4.2 shall not apply where an up to date and relevant pre-tendered framework agreement from which the Council is entitled to benefit is in place unless the rules regulating such framework agreement require competitive tendering or quotations.

4.7 Contracts having a value of £50,000 or less shall be evidenced in writing (which may be the Council's purchase order form) unless the Head of Financial and Legal Services considers that a different form of contract is appropriate.



## CSO5 REQUIREMENT FOR TENDERS

- 5.1 Subject to CSO5.2 below, tenders shall be invited, where the contract sum is estimated to exceed £50,000.
- 5.2 Tenders need not be invited where:
- 5.2.1 CSO4.1 to 4.6 apply;
- 5.2.2 (a) in the case of a contract—
- (i) where every economic operator which submitted a tender following an invitation made during the course of the procurement procedure was excluded or withdrew;
  - (ii) where there is an absence of tenders, suitable tenders or applications in response to an invitation to tender by the Council but only if the original terms of the proposed contract offered in the discontinued procedure have not been substantially altered in the negotiated procedure;
  - (iii) when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract may be awarded only to a particular economic operator;
- (b) in the case of a supply contract—
- (i) when the goods to be purchased or hired under the contract are to be manufactured solely for the purpose of research, experiment, study or development but not when the goods are to be purchased or hired with the aim of ensuring profitability or to recover research and development costs;
  - (ii) when the goods to be purchased or hired under the contract are required by the Council as a partial replacement for, or in addition to, existing goods or an installation and when to obtain the goods from a supplier other than the supplier which supplied the existing goods or the installation would oblige the Council to acquire goods having different technical characteristics which would result in—
    - (aa) incompatibility between the existing goods or the installation and the goods to be purchased or hired under the contract; or
    - (bb) disproportionate technical difficulties in the operation and maintenance of the existing goods or the installation;



but this exception shall not apply if the term of the proposed contract is more than three years, unless there are reasons why it is unavoidable that this period should be exceeded;

(iii) for the purchase or hire of goods quoted and purchased on a commodity market;

(iv) to take advantage of particularly advantageous terms for the purchase of goods in a closing down sale or in a sale brought about because a supplier is insolvent or subject to insolvency proceedings;

(c) in the case of a works contract or a services contract—

(i) when the Council wants an economic operator which has entered into a works contract or a services contract with the Council to carry out additional work or works or provide additional services which were not included in the project initially considered or in the original works contract or services contract but which through unforeseen circumstances have become necessary, and such work, works or services—

(aa) cannot for technical or economic reasons be carried out or provided separately from those under the original contract without major inconvenience to the Council; or

(bb) can be carried out or provided separately from those under the original contract but are strictly necessary to the later stages of the performance of that contract;

but this exception shall not apply where the aggregate value of the consideration to be given under contracts for the additional work, works or services exceeds 50% of the value of the consideration payable under the original contract

(ii) when the Council wants an economic operator which has entered into a works contract or a services contract with that Council to carry out new work or works or provide new services which are a repetition of the work or works carried out or the services provided under the original contract and which are in accordance with the project for the purpose of which the first contract was entered into but this exception only applies where the procedure for the new contract commences within three years of the original contract being entered into;

5.2.3 the need for the services, supplies or works is certified as extremely urgent by the Chief Executive in accordance with the Scheme of Delegation to Officers, Article 3.1 and for this purpose “extremely urgent” means when (but only if it is strictly necessary) for reasons



of extreme urgency brought about by events unforeseeable by, and not attributable to, the Council, the time limits specified elsewhere in these Contract Standing Orders cannot be met;

5.2.4 the Council proposes to procure services, supplies or works through a contract entered into by another contracting authority (within the meaning of the Public Contracts Regulations 2006) having followed procurement procedures similar to those set out in these Contract Standing Orders;

5.2.5 where the services comprise:

- (a) seeking the advice of counsel;
- (b) the services of counsel by way of representation;
- (c) the services of an expert witness;
- (d) the engagement of temporary or locum staff;

5.2.6 where the services, supplies or works are comprised within an up to date and relevant pre-tendered framework agreement from which the Council is entitled to benefit unless the rules regulating such framework agreement require competitive tendering or quotations.

5.3 Where tenders are required to be invited one of the following methods shall be employed:-

5.3.1 open competitive tender in accordance with CSO6;

5.3.2 ad hoc approved list in accordance with CSO7.

5.3.3 standing approved list in accordance with CSO8.

5.4 In determining whether or not to seek tenders, inviting applications for inclusion in a list of economic operators or in selecting persons from whom tenders are to be invited, the Chief Executive, the appropriate Head of Service, the Executive, Cabinet Member or Committee (as the case may be) shall

5.4.1 make the appropriate business case demonstrating value for money; and

5.4.2 take appropriate steps to ensure fair and genuine competition.



## **CSO6 OPEN COMPETITIVE TENDERS**

- 6.1 Tenders shall be invited after giving at least 14 days public notice in at least one local newspaper, one trade journal and/or approved website stating the nature and purpose of the contract, inviting tenders and stating the last date when tenders will be accepted.

## **CSO7 AD HOC APPROVED LIST**

- 7.1 Subject to CSO7.2 tenders shall be invited after giving notice in the manner set out in CSO6 seeking applications to be placed on a list from which selected economic operators will be invited to submit tenders.
- 7.2 Where in respect of contracts for specialist or specialised services, supplies or works the contract sum of which is estimated to be £250,000 or less the Chief Executive or appropriate Head of Service considers that having regard to the nature of the work services or supplies and the need for urgency or the likelihood of producing a satisfactory list the methods of selecting economic operators set out in CSO6, 7.1 or 8 would not be appropriate, the compilation of the select list shall be delegated to the Chief Executive or appropriate Head of Service.

## **CSO8 STANDING APPROVED LIST**

- 8.1 Tenders shall be invited from persons included in a list approved by the Executive for works services or supplies of specified categories, values or amounts or for the carrying out of specified categories of work.
- 8.2 Subject to CSO8.3-8.5 the list shall be compiled in the following manner:
- 8.2.1 notices inviting applications for inclusion in the list shall be published not less than 28 days before the list is compiled in at least one local newspaper, one trade journal and/or approved website;
- 8.2.2 the approved list may be amended as required from time to time by the Executive and shall be reviewed at intervals not exceeding two years.
- 8.3 A list or the list referred to in CSO8.1 may comprise or include persons approved or accredited by official organisations or such persons to the extent that they may have been registered on the official lists of service providers, suppliers or economic operators prepared pursuant to the Regulations specified in CSO1.2.3.



- 8.4 A list or the list referred to in CSO8.1 may comprise or include persons approved or accredited or assessed by a recognised Government or trade organisation and included in a directory established for the purpose.
- 8.5 A list or the list referred to in CSO8.1 may comprise or include persons which have entered into a relevant framework agreement directly with the Council or from which the Council is entitled to benefit. Framework agreements shall be regularly reviewed to ensure that they represent good value for money.

## **CSO9**

### **NUMBER OF ECONOMIC OPERATORS OR INVITEES**

- 9.1 The selection of persons from whom tenders shall be invited in accordance with CSO7 and CSO8 shall, in respect of contracts where the contract sum is estimated to be £250,000 or less, be delegated to the Chief Executive, appropriate Head of Service and, in respect of contracts where the contract sum is estimated to exceed £250,000, be delegated to the Executive, Cabinet Member or appropriate Committee.
- 9.2 Invitations to tender in accordance with CSO7 and CSO8 above shall be sent to at least four persons selected from amongst those included in the approved list as appropriate for a contract of that amount, value or category; provided that if the appropriate approved list contains the names of fewer than four persons, invitations shall be sent to all such persons. Invitations to tender shall normally be sent by special delivery or recorded delivery post or electronic means enabling the despatch to be tracked and without prejudice to these requirements the officer despatching the invitation shall keep evidence by proof of posting or otherwise of despatch to each economic operator or invitee.

## **CSO10**

### **FORM OF INVITATION TO TENDER AND SUBMISSION OF TENDER**

- 10.1 All tenders shall be required to be submitted on a form of tender prepared by the Council which form shall include a certificate against collusion, a statement that the Council shall not be bound to accept any tender and a statement that any tender or contract may be inspected by any regulator.
- 10.2 The invitations to tender shall state that no tender will be considered unless contained in a plain sealed envelope and endorsed "Tender" followed by the subject to which it relates. Every such envelope shall bear no name or mark indicating the sender. In cases where in accordance with CSO1.5 it has been decided that electronic means of communication may or shall be used, tender forms may be accepted by e-mail or other form of electronic communication provided all appropriate safeguards ensuring probity and anonymity have been put into place and have been complied with by the economic operator.



- 10.3 Every tender shall be addressed to the Chief Executive of the Council and the tender shall remain in the custody of the Democratic Services Officer until the time appointed for its opening.

## **CSO11 OPENING OF TENDERS**

- 11.1 All tenders for a contract shall be opened at the same time and in the presence of the following persons:
- 11.1.1 in respect of tenders invited by the Chief Executive or a Head of Service in accordance with CSO2.1 above, the Chief Executive and the appropriate Head of Service or such officer as each respectively shall have designated for the purpose;
  - 11.1.2 in respect of tenders invited in accordance with CSO2.2 above, the Leader or other member of the Executive, the Chairman or other member of the appropriate Committee together with the Chief Executive and the appropriate Head of Service or such officer as each respectively shall have designated for the purpose.
- 11.2 The Democratic Services Officer shall prepare and maintain a register of tenders received and shall record in that register the following particulars:
- 11.2.1 the last date and time for the receipt of tenders;
  - 11.2.2 the date and time upon which the tender was actually received;
  - 11.2.3 the estimated tender price;
  - 11.2.4 the name of the economic operator and the total amount of the tender;
  - 11.2.5 the date upon which they were opened;
  - 11.2.6 the signature of the officer to whom the tenders were handed after opening together with details of the number of tenders and identity of the economic operators.
- 11.3 All persons required by CSO11.1 above to be present at the opening of tenders shall immediately thereafter sign against the relevant particulars in the register as evidence of such tenders having been opened by them or in their presence and shall initial each of the tender documents.
- 11.4 Any tender received after the specified time shall be returned promptly to the economic operator by the Democratic Services Officer. The tender may be opened to ascertain the name and address of the economic operator but no details of the tender shall be disclosed.



## **CSO12 ALTERATIONS TO TENDERS**

- 12.1 If an error in the specification is identified before the closing date for return of tenders, all economic operators shall be apprised of the error and invited to adjust their tenders.
- 12.2 If an error in the specification is identified after the closing date for return of tenders all economic operators shall be given details of the error and afforded the opportunity of withdrawing the offer, or submitting an amended tender.
- 12.3 Where examination of tenders reveals omissions, errors or discrepancies which would affect the tender figure in an otherwise successful tender, the economic operator shall be given details of such omissions, errors and discrepancies and afforded an opportunity of confirming correcting or withdrawing its offer. If the economic operator withdraws, the next tender in competitive order is to be examined and dealt with in the same way.
- 12.4 If the provisions of CSO12.3 above are invoked in respect of any tender where the tender sum exceeds £100,000, the appropriate Head of Service shall report to the Executive, Cabinet Member or appropriate Committee.
- 12.5 Where a economic operator is invited to adjust, amend, confirm, correct, or withdraw a tender, any submission shall be made in accordance with and subjected to the same safeguards as the original offer.

## **CSO13 AWARD OF CONTRACTS**

- 13.1 The Council shall award a contract on the basis of the offer which:-
  - 13.1.1 is the most economically advantageous to the Council, or
  - 13.1.2 offers the lowest price.
- 13.2. The criteria which the Council may use to determine that an offer is the most economically advantageous include quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost effectiveness, after sales service, technical assistance, delivery date and delivery period, and period of completion.
- 13.3. Where the Council intends to award a contract on the basis of the offer which is the most economically advantageous it shall state the criteria on which it intends to base its decision, where possible in descending order of importance and the appropriate weighting, in the notice seeking expressions of interest or in the contract documents.



- 13.4. Where the contract is to be awarded on the basis of an offer that is the most economically advantageous, the tender shall be evaluated on the basis of the published criteria and shall (if the Council is minded to accept any tender) be accepted on that basis unless it is abnormally low or the Executive, Cabinet Member or the appropriate Committee decides otherwise after having considered a report thereon from the appropriate Head of Service.
- 13.5. Where the contract is to be awarded on the basis of price, no tender other than the lowest tender, if payment is to be made by the Council or the highest tender if payment is to be received by the Council, shall be accepted except by the Executive, Cabinet Member or the appropriate Committee after having considered a report thereon from the appropriate Head of Service.

## **CSO14 CONTRACTS TO BE IN WRITING**

- 14.1 Subject to CSO4.6, every contract shall be in writing in a form approved by the Head of Financial and Legal Services.
- 14.2 Every contract shall unless the Head of Financial and Legal Services agrees otherwise specify among other things:
- 14.2.1 the services, supplies or works, to be provided;
  - 14.2.2 the price to be paid with a statement of discount or other deductions;
  - 14.2.3 where applicable the time or times within which the contract is to be performed;
  - 14.2.4 where appropriate, provision for the payment of liquidated damages where the economic operator fails to complete the contract within the specified timescales in accordance with CSO15;
  - 14.2.5 a clause empowering the Council to cancel the contract in circumstances of corruption and to recover any loss resulting from such cancellation in accordance with CSO17;
  - 14.2.6 a requirement for compliance with current legislation relating to health and safety at work and equality including sex, race, disability discrimination, religion or belief, sexual orientation and age;
  - 14.2.7 a clause requiring appropriate insurance cover;
  - 14.2.8 a clause requiring economic operators to warrant that performance and functionality will not be affected by date or other information technology functions;



- 14.2.9 a clause which reflect the Council's environmental and sustainability policies;
- 14.2.10 a clause permitting the use of information for preventing and detecting fraud;
- 14.2.11 a clause requiring the economic operator to supply sufficient information in a timely manner to enable the Council fully and properly to comply with requests for information under the Data Protection Act 1998, the Freedom of Information Act 2000 and/or Environmental Information Regulations 2004;
- 14.2.12 a clause requiring the economic operator to keep details of the contractual arrangements confidential and not to disclose the same without the consent of the Council;
- 14.2.13 a clause requiring economic operators to co-operate with enquiries by the Scrutiny and Overview and Standards Committees, Ombudsmen, the Standards for England, the Council's internal and external auditors, Government departments and the European Commission and other legally-empowered persons;
- 14.2.14 a clause detailing the liabilities and responsibilities relating to workforce matters where the Transfer of Undertakings (Protection of Employment) Regulations 2006 apply;
- 14.2.15 in the case of the engagement of professional advisers, a requirement that the adviser shall at all times be fully covered by professional indemnity insurance and that, in relation to that contract, he or she shall conform to the requirements of these Contract Standing Orders, the Council's Financial Regulations and any direction from the Council, the Executive, a Committee or duly authorised officer.
- 14.3 The Head of Service shall ensure that where the standard clauses referred to in CSO14.2 are not incorporated specifically, the reasons for such omission are recorded in file.
- 14.4 Subject to CSO14.5 and CSO14.6 every contract exceeding £50,000 in value not required or intended to be made under seal (except those contracts referred to in CSO4.2.5) shall be signed on behalf of the Council by two officers of the Council being the Head of Financial and Legal Services and one of the following the Chief Executive, any Deputy Chief Executive or other officers authorised by the Chief Executive or under the Scheme of Delegation to Officers and the details recorded in the signature register held by the Head of Financial and Legal Services.



- 14.5 Every contract which is a lease finance agreement shall be signed by both the Head of Financial and Legal Services and Director of Corporate Resources.
- 14.6 Every contract required or intended to be made under seal shall be sealed on behalf of the Council by the Chief Executive, any Deputy Chief Executive or the Head of Financial and Legal Services and the details recorded in the seal register held by the Head of Financial and Legal Services.
- 14.7 Every contract document shall bear its original date and not that ascribed by automatic updating means.

## **CSO15**

### **LIQUIDATED DAMAGES AND SECURITY**

- 15.1 Except where the Head of Financial and Legal Services advises otherwise, every contract which exceeds £50,000 shall provide for liquidated damages to be paid by the economic operator in cases where the terms of the contract are not duly performed, save that in contracts for supply of goods or materials the appropriate Head of Service shall have a discretion as to whether provision for liquidated damages should be made.
- 15.2 The Council shall require and take sufficient security for the due performance of every contract estimated to exceed £1,000,000.

## **CSO16**

### **SPECIFICATION AND STANDARDS**

- 16.1 All contracts where a specification issued by the British Standards Institution or a European Standard is current at the date of the tender and is relevant, shall require as a minimum that services, supplies or works shall be in accordance with that specification.

## **CSO17**

### **PREVENTION OF BRIBERY CLAUSE**

- 17.1 There shall be inserted or implied into in every contract a clause empowering the Council to cancel the contract and to recover from the economic operator the amount of any loss resulting from such cancellation if the economic operator shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract with the Council, or for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Council or if like acts shall have been done by any person employed by him or her or acting on his or her behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916, or shall



have given any fee or reward, the receipt of which is an offence under the Local Government Act 1972, Section 117.

## **CSO18 NOMINATED SUB-ECONOMIC OPERATORS**

- 18.1 Where a sub-economic operator or supplier is to be nominated to a main economic operator the following provisions shall have effect.
- 18.2 Where the estimated amount of a sub-contract exceeds £50,000 then, unless the appropriate Head of Service, or Executive or Committee as the case may be certifies that it is not reasonably practicable to obtain competitive tenders, tenders for the nomination shall be invited and dealt with in accordance with these Contract Standing Orders as if they were for a contract with the Council.
- 18.3 The terms of an invitation for nomination in accordance with CSO18.2 shall require an undertaking by the person submitting a tender that, if he is selected, he will be willing to enter into a contract with the main economic operator on terms which indemnify the main economic operator against its own obligations under the main contract in relation to the services, supplies or works included in the sub-contract.

## **CSO19 CONTRACT MANAGEMENT**

- 19.1 No contract shall commence unless and until the procurement procedures and contract documents have been completed in accordance with these Contract Standing Orders and the Council's Financial Regulations. Where this cannot be effected, the fact of and the reasons for such action shall be recorded on file.
- 19.2 All contracts shall be managed in accordance with the Council's approved methodology of the type of contract. In particular any contract significantly affecting the way in which the Council works and all contracts having a value exceeding £50,000 shall be managed in accordance with PRINCE2 LITE methodology.
- 19.3 The authorised officer or contract administrator named in the contract shall:
  - 19.3.1 authorise in writing any variations to contracts before they are carried out;
  - 19.3.2 ensure that a record is kept of all certificates and instructions issued under the contract;



- 19.3.3 keep documents in support of each payment showing how the payment amount has been valued and maintain a record of all such payments including professional fees;
- 19.3.4 apply price fluctuation clauses in contracts;
- 19.3.5 levy liquidated damages unless circumstances properly dictate otherwise;
- 19.3.6 prior to terminating any contract (other than by effluxion of time) and particularly for breach consult the Council Secretary and Solicitor;
- 19.3.7 resolve all contractual matters and contractual claims and issue any final account and final certificate in accordance with the terms of the contract taking advice from the Council Secretary and Solicitor;
- 19.3.8 ensure that any consultants are properly and adequately managed so as to carry out their contractual obligations with the Council in relation to a economic operator.

## **CSO20 RETENTION OF DOCUMENTS**

- 20.1 Contract documents including expressions of interest, invitations to tender, tender documents and contracts shall be retained for the following minimum periods:
  - 20.1.1 for contracts under hand not less than six years from the completion of the services, supply or works;
  - 20.1.2 for contracts under seal not less than 12 years from the completion of the services, supply or works.

## **CSO21 CONTRACTS REGISTER**

- 21.1 Immediately upon completion of every contract:
  - 21.1.1 in respect of contracts having a value of less than £10,000 the relevant Head of Service shall enter the details in a contracts register held by him or her;
  - 21.1.2 in respect of contracts having a value of £10,000 or more the relevant Head of Service shall supply to the Head of Financial and Legal Services the details of the contract for inclusion in the central contracts register maintained by the Head of Financial and Legal Services;



21.1.3 in respect of contracts of whatever value handled by the Head of Financial and Legal Services, the Head of Financial and Legal Services will enter the details in the central contracts register;

21.1.4 the Head of Service shall send the original of any contract having a value of £10,000 or more (unless entered into by way of an official order form) to the Head of Financial and Legal Services, keeping a copy for his or her own departmental records;

21.1.5 the Head of Financial and Legal Services shall send a copy of any contract which he has completed to the relevant Head(s) of Service.

21.2 The details to be entered in the central contracts register are those required by the Head of Financial and Legal Services and include:

21.2.1 type of contract

21.2.2 contract category

21.2.3 contract details (e.g. specifying the nature of the procurement and the services, supplies, or works procured)

21.2.4 name of economic operator(s)

21.2.5 department

21.2.6 department contact

21.2.7 department ref

21.2.8 date of contract

21.2.9 term of contract

21.2.10 contract start date

21.2.11 contract finish date

21.2.12 leasing contract?

21.2.13 fixed term contract

21.2.14 option to extend contract

21.2.15 periodic contract

21.2.16 annual value

21.2.17 total contract value



- 21.2.18 contract subject to indexation?
- 21.2.19 payment frequency
- 21.2.20 notice period
- 21.2.21 basis (price/meat)
- 21.2.22 EU tender
- 21.2.23 tender register number
- 21.2.24 Council/cabinet authority
- 21.2.25 minute number
- 21.2.26 date
- 21.2.27 finance approval
- 21.2.28 finance officer
- 21.2.29 date
- 21.2.30 contract sealed/signed
- 21.2.31 signatory
- 21.2.32 contract location
- 21.2.33 insurers
- 21.2.34 insurance indemnity
- 21.2.35 bond agreement
- 21.2.36 guarantor/parent company name
- 21.2.37 contact name
- 21.2.38 contact number
- 21.2.39 e-mail address

21.3 The central contracts register shall be available on the Council's intranet and an edited version on the Council's website.



## APPENDIX 1

### The Public Works Contracts Regulations 2006

Threshold for public contracts with effect from 1<sup>st</sup> January 2010 TO 31<sup>st</sup> December 2011 net of VAT.

	<b>SUPPLIES</b>	<b>SERVICES</b>	<b>WORKS</b>
General applicability	£156,442 €193,000	£156,442 <sup>1</sup> €193,000	£3,927,260 <sup>1</sup> €4,485,000
Indicative notices	£607,935 €750,000	£607,935 €750,000	£3,927,260 €4,485,000
Small lots	£64,846 €80,000	£64,846 €80,000	£810,580 €1,000,000

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<sup>1</sup> Including subsidised public works contracts and public services contracts under Regulation 34 of the Public Contracts Regulations 2006.



## APPENDIX 2

### PART 4

#### SELECTION OF ECONOMIC OPERATORS<sup>1</sup>

##### **Criteria for the rejection of economic operators**

**23.** —(1) Subject to paragraph (2), a contracting authority<sup>2</sup> shall treat as ineligible and shall not select an economic operator in accordance with these Regulations if the contracting authority has actual knowledge that the economic operator or its directors or any other person who has powers of representation, decision or control of the economic operator has been convicted of any of the following offences—

(a) conspiracy within the meaning of section 1 of the Criminal Law Act 1977 where that conspiracy relates to participation in a criminal organisation as defined in Article 2(1) of Council Joint Action 98/733/JHA;

(b) corruption within the meaning of section 1 of the Public Bodies Corrupt Practices Act 1889 or section 1 of the Prevention of Corruption Act 1906;

(c) the offence of bribery;

(d) fraud, where the offence relates to fraud affecting the financial interests of the European Communities as defined by Article 1 of the Convention relating to the protection of the financial interests of the European Union, within the meaning of—

(i) the offence of cheating the Revenue;

(ii) the offence of conspiracy to defraud;

(iii) fraud or theft within the meaning of the Theft Act 1968 and the Theft Act 1978;

(iv) fraudulent trading within the meaning of section 458 of the Companies Act 1985;

(v) defrauding the Customs within the meaning of the Customs and Excise Management Act 1979 and the Value Added Tax Act 1994;

(vi) an offence in connection with taxation in the European Community within the meaning of section 71 of the Criminal Justice Act 1993; or

(vii) destroying, defacing or concealing of documents or procuring the extension of a valuable security within the meaning of section 20 of the Theft Act 1968;

(e) money laundering within the meaning of the Money Laundering Regulations 2003; or

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<sup>1</sup> For Economic Operator read “Contractor”

<sup>2</sup> i.e. the Council



(f) any other offence within the meaning of Article 45(1) of the Public Sector Directive as defined by the national law of any relevant State.

(2) In any case where an economic operator or its directors or any other person who has powers of representation, decision or control has been convicted of an offence described in paragraph (1), a contracting authority may disregard the prohibition described there if it is satisfied that there are overriding requirements in the general interest which justify doing so in relation to that economic operator.

(3) A contracting authority may apply to the relevant competent authority to obtain further information regarding the economic operator and in particular details of convictions of the offences listed in paragraph (1) if it considers it needs such information to decide on any exclusion referred to in that paragraph.

(4) A contracting authority may treat an economic operator as ineligible or decide not to select an economic operator in accordance with these Regulations on one or more of the following grounds, namely that the economic operator—

(a) being an individual is bankrupt or has had a receiving order or administration order or bankruptcy restrictions order made against him or has made any composition or arrangement with or for the benefit of his creditors or has made any conveyance or assignment for the benefit of his creditors or appears unable to pay, or to have no reasonable prospect of being able to pay, a debt within the meaning of section 268 of the Insolvency Act 1986, or article 242 of the Insolvency (Northern Ireland) Order 1989, or in Scotland has granted a trust deed for creditors or become otherwise apparently insolvent, or is the subject of a petition presented for sequestration of his estate, or is the subject of any similar procedure under the law of any other state;

(b) being a partnership constituted under Scots law has granted a trust deed or become otherwise apparently insolvent, or is the subject of a petition presented for sequestration of its estate;

(c) being a company or any other entity within the meaning of section 255 of the Enterprise Act 2002 has passed a resolution or is the subject of an order by the court for the company's winding up otherwise than for the purpose of bona fide reconstruction or amalgamation, or has had a receiver, manager or administrator on behalf of a creditor appointed in respect of the company's business or any part thereof or is the subject of the above procedures or is the subject of similar procedures under the law of any other state;

(d) has been convicted of a criminal offence relating to the conduct of his business or profession;

(e) has committed an act of grave misconduct in the course of his business or profession;

(f) has not fulfilled obligations relating to the payment of social security contributions under the law of any part of the United Kingdom or of the relevant State in which the economic operator is established;



(g) has not fulfilled obligations relating to the payment of taxes under the law of any part of the United Kingdom or of the relevant State in which the economic operator is established;

(h) is guilty of serious misrepresentation in providing any information required of him under this regulation;

(i) in relation to procedures for the award of a public services contract, is not licensed in the relevant State in which he is established or is not a member of an organisation in that relevant State when the law of that relevant State prohibits the provision of the services to be provided under the contract by a person who is not so licensed or who is not such a member; or

(j) subject to paragraphs (7), (8) and (9), is not registered on the professional or trade register of the relevant State specified in Schedule 6 in which he is established under conditions laid down by that State.

(5) The contracting authority may require an economic operator to provide such information as it considers it needs to make the evaluation in accordance with paragraphs (1) and (4) except that it shall accept as conclusive evidence that an economic operator does not fall within the grounds specified in paragraphs (1) and (4)(a), (b), (c), (d), (f) or (g) if that economic operator provides to the contracting authority—

(a) in relation to the grounds specified in paragraphs (1) and (4)(a), (b), (c) or (d)—

(i) an extract from the judicial record; or

(ii) in a relevant State which does not maintain such a judicial record, a document issued by the relevant judicial or administrative authority;

(b) in relation to the grounds specified in paragraphs (4)(f) or (g), a certificate issued by the relevant competent authority; and

(c) in a relevant State where the documentary evidence specified in paragraphs (5)(a) and (b) is not issued in relation to one of the grounds specified in paragraphs (1),(4)(a), (b), (c), (d), (f) or (g), a declaration on oath made by the economic operator before the relevant judicial, administrative or competent authority or a relevant notary public or Commissioner for oaths.

(6) In this regulation, "relevant" in relation to a judicial, administrative or competent authority, notary public or Commissioner for oaths means an authority designated by, or a notary public or Commissioner for oaths in the relevant State in which the economic operator is established.

(7) An economic operator established in the United Kingdom or Ireland shall be treated as registered on the professional or trade register for the purposes of paragraph (4)(j) if the economic operator —

(a) is established in Ireland and is certified as registered with the Registrar of Friendly Societies; or



(b) is established in either State and is either —

(i) certified as incorporated by their respective Registrar of Companies; or

(ii) is certified as having declared on oath that it is carrying on business in the trade in question in the State in which it is established at a specific place of business and under a specific trading name.

(8) In relation to procedures for the award of a public services contract, an economic operator established in Greece shall be treated as registered on the professional or trade register for the purposes of paragraph (4)(j)—

(a) when the services to be provided under the contract are specified in category 8 of Schedule 3 and when Greek legislation requires persons who provide those services to be registered on the professional register (Μητρώο Μελετητών and Μητρώο Γραφείων Μελετών), if it is registered on that register; and

(b) in any other case, in accordance with paragraph (9).

(9) An economic operator established in a relevant State, other than the United Kingdom or Ireland, which either has an equivalent professional or trade register which is not listed in Schedule 6 or which does not have an equivalent professional or trade register shall be treated as registered on a professional or trade register for the purposes of paragraph (4)(j) on production of either a certificate that he is registered on the equivalent professional or trade register or where no such register exists, a declaration on oath, or in a relevant State which does not provide for a declaration on oath a solemn declaration, made by the economic operator before the relevant judicial, administrative or competent authority or a relevant notary public or Commissioner for oaths, that he exercises the particular profession or trade.

#### **Information as to economic and financial standing**

**24.** —(1) Subject to regulation 27 and paragraph (2), in assessing whether an economic operator meets any minimum standards of economic and financial standing required of economic operators by the contracting authority—

(a) for the purposes of regulation 15(11), 16(7), 17(9) or 18(10)<sup>1</sup>; and

(b) in selecting the economic operators to be invited to tender for or to negotiate the contract in accordance with regulation 16(8), 17(10) or 18(11);

a contracting authority may take into account any of the following information—

(i) appropriate statements from the economic operator's bankers or where appropriate, evidence of relevant professional risk indemnity insurance;

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<sup>1</sup> These refer to the open procedure, the restricted, the negotiated procedure and the competitive dialogue i.e. the usual methods of competitive procurement



(ii) statements of accounts or extracts from those accounts relating to the business of the economic operator where publication of the statement is required under the law of the relevant State in which the economic operator is established; or

(iii) where appropriate, a statement, covering the 3 previous financial years of the economic operator, of—

(aa) the overall turnover of the business of the economic operator; and

(bb) where appropriate, the turnover in respect of the work, works, goods or services which are of a similar type to the subject matter of the public contract.

(2) Where the information specified in paragraph (1) is not appropriate in a particular case, a contracting authority may require an economic operator to provide other information to demonstrate the economic operator's economic and financial standing.

(3) A contracting authority which requires information to be provided in accordance with paragraph (1) or (2) shall specify in the contract notice or in the invitation to tender the information which the economic operator must provide.

(4) Where appropriate—

(a) an economic operator or a group of economic operators as referred to in regulation 28<sup>1</sup> may rely on the capacities of other entities or members in the group, regardless of the legal nature of the link between the economic operator or group of economic operators and the other entities; and

(b) the economic operator or the group of economic operators shall prove to the contracting authority that the resources necessary to perform the contract will be available and the contracting authority may, in particular, require the economic operator to provide an undertaking from the other entities to that effect.

(5) Where an economic operator is unable for a valid reason to provide the information which the contracting authority has required, the contracting authority shall accept such other information provided by the economic operator as the contracting authority considers appropriate.

#### **Information as to technical or professional ability**

**25.** —(1) Subject to regulation 27<sup>2</sup>, in assessing whether an economic operator meets any minimum standards of technical or professional ability required of economic operators by the contracting authority—

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<sup>1</sup> Regulation 28 refers to consortia

<sup>2</sup> Regulation 27 refers to official lists of approved contractors



(a) for the purposes of regulation 15(11), 16(7), 17(9) or 18(10)<sup>1</sup>;  
and

(b) in selecting the economic operators to be invited to tender for  
or to negotiate the contract in accordance with regulation 16(8),  
17(10) or 18(11);

a contracting authority may have regard to any means listed in paragraph  
(2) according to the purpose, nature, quantity or importance of the  
contract.

(2) The means referred to in paragraph (1) are—

(a) in the case of a public services contract, a public works  
contract or a public supply contract requiring the siting or  
installation of work, the economic operator's technical ability,  
taking into account in particular that economic operator's skills,  
efficiency, experience and reliability;

(b) a list of works carried out over the past 5 years together with  
(unless the contracting authority specifies that the following  
certificate should be submitted direct to the contracting authority  
by the person certifying) certificates of satisfactory completion for  
the most important of those works indicating in each case—

(i) the value of the consideration received;

(ii) when and where the work or works were carried out;  
and

(iii) specifying whether they were carried out according to  
the rules of the trade or profession and properly  
completed;

(c) a statement of the principal goods sold or services provided by  
the supplier or the services provider in the past 3 years and—

(i) the dates on which the goods were sold or the services  
provided;

(ii) the consideration received;

(iii) the identity of the person to whom the goods were  
sold or the services were provided;

(iv) any certificate issued or countersigned by that person  
confirming the details of the contract for those goods sold  
or services provided; and

(v) where—

(aa) that person was not a contracting authority;  
and

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<sup>1</sup> These refer to the open procedure, the restricted, the negotiated procedure and the competitive  
dialogue i.e. the usual methods of competitive procurement



(bb) the certificate referred to in sub-paragraph (c)(iv) is not available;

any declaration by the economic operator attesting the details of the goods sold or services provided;

(d) a statement of the technicians or technical services available to the economic operator to—

(i) carry out the work under the contract; or

(ii) be involved in the production of goods or the provision of services under the contract;

particularly those responsible for quality control, whether or not they are independent of the economic operator;

(e) in relation to the goods to be purchased or hired or the services to be provided under the contract, a statement of the supplier's or services provider's—

(i) technical facilities;

(ii) measures for ensuring quality; and

(iii) study and research facilities;

(f) where the goods to be sold or hired or the services to be provided under the contract are complex or, exceptionally, are required for a special purpose, a check carried out by the contracting authority or on its behalf by a competent official body of the relevant State in which the supplier or services provider is established—

(i) on the technical capacity of the supplier or services provider in relation to the goods to be purchased or hired or the services to be provided under the contract; and

(ii) if relevant, on the supplier's or services provider's study and research facilities and quality control measures;

(g) the services provider's or economic operator's educational and professional qualifications where the services provider or economic operator is an individual and—

(i) if any, those of the services provider's or economic operator's managerial staff; and

(ii) those of the one or more persons who would be responsible for providing the services or carrying out the work or works under the contract;

(h) the environmental management measures, evidenced in accordance with paragraph (4), that the services provider or economic operator is able to apply when performing the contract, but only where it is necessary for the performance of that contract;



(i) a statement of the services provider's or economic operator's average annual number of staff and managerial staff over the previous 3 years;

(j) a statement of the tools, plant and technical equipment available to the services provider or economic operator for performing the contract;

(k) a statement of any proportion of the contract which the services provider intends to sub-contract to another person;

(l) any samples, descriptions and photographs of the goods to be purchased or hired under the public supply contract and certification of the authenticity of such samples, descriptions or photographs;

(m) certification by official quality control institutes or agencies of recognised competence, attesting that the goods to be purchased or hired under the public supply contract conform to standards and technical specifications (within the meaning of regulation 9(1)) identified by the contracting authority;

(n) a certificate—

(i) attesting conformity to quality assurance standards based on the relevant European standard; and

(ii) from an independent body established in any relevant State conforming to the European standard concerning certification; or

(o) any other evidence of conformity to quality assurance measures which are equivalent to the standards referred to in sub-paragraph (n)(i).

(3) Where appropriate—

(a) an economic operator or a group of economic operators as referred to in regulation 28 may rely on the capacities of other entities or members in the group, regardless of the legal nature of the link between the economic operator or group of economic operators and the other entities; and

(b) the economic operator or the group of economic operators shall prove to the contracting authority that the resources necessary to perform the contract will be available and the contracting authority may, in particular, require the economic operator to provide an undertaking from the other entities to that effect.

(4) The evidence referred to in paragraph (2)(h) is—

(a) a certificate—

(i) attesting conformity to environmental management standards based on—



(aa) the Community Eco-Management and Audit Scheme; or

(bb) the relevant European or international standards; and

(ii) from an independent body established in any relevant State conforming to Community law or the relevant European or international standards concerning certification; or

(b) any other evidence of environmental management measures which are equivalent to the standards referred to in sub-paragraph (a)(i).

(5) A contracting authority which requires information to be provided in accordance with paragraph (2) shall specify in the contract notice or in the invitation to tender the information which the economic operator must provide.

#### **Supplementary information**

26. Subject to regulation 27<sup>1</sup>, the contracting authority may require an economic operator to provide information supplementing the information provided in accordance with regulations 23, 24 or 25 or to clarify that information, provided that the information so required relates to the matters specified in regulations 23, 24 or 25.

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<sup>1</sup> Regulation 27 refers to official lists of approved contractors

