



**West Lothian
Council**

STANDING ORDERS

for the

REGULATION OF CONTRACTS

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STANDING ORDERS for the REGULATION of CONTRACTS

PART 1

INTRODUCTION

1. **Legislation** regulates how contracts can be made by or on behalf of the council. In this context, “contract” means any agreement-
 - with an individual, company or other organisation
 - for the execution of building and civil engineering works or
 - for the supply of goods, materials or services, and
 - which is authorised to be entered into by the council or one of its committees or sub-committees, usually in writing, or
 - which is entered into, either in writing or verbally, by an officer of the council, acting under their delegated powers to do so, and
 - which commits the council to the outcome of the agreement and, therefore, is legally enforceable by either the council or the other party or parties to the agreement.

2. In particular, the **Local Government (Scotland) Act 1973, section 81** requires the council to make Standing Orders with respect to the making of contracts by or on behalf of the council for both works and for the supply of goods and materials. These Standing Orders must include provision for securing competition for such contracts and for regulating the manner in which tenders are invited by the council. But, section 81 allows the council to exempt any contract from this requirement for competition where the council decides that it is satisfied that the exemption is justified by special circumstances. However, this exemption from competition applies only to contracts where the aggregated estimated cost is less than the relevant EU threshold under the European Directives (see paragraph 5 below).

3. **Section 81** also defines “contract” in relation to the execution of works as including any arrangements for the execution of works for the council by persons employed by the council. This means that in-house services carrying out works for the council are also regulated by the council’s Standing Orders.

4. **Section 81** also gives the council the power to make, if it chooses, Standing Orders for contracts for the supply of services, as distinct from the supply of goods and materials.

5. **European legislation** also regulates the making of contracts by the council. The **Public Contracts (Scotland) Regulations 2006** and the **Utilities Contracts (Scotland) Regulations 2006** give effect in Scotland to the European Directive on Public Contracts [Directive 2004/18/EC] and the European Directive on Utilities Contracts [Directive 2004/17/EC]. These European Directives seek to ensure that public sector bodies such as the council award contracts in an efficient and non-discriminatory manner. The Regulations set out the procedures to be followed at each stage of the procurement process leading to the award of contracts above certain financial thresholds for works, supplies and services by the council and other public bodies. They take account of modern techniques such as e-procurement and the provision of framework agreements, as well as the extent to which social and environmental issues can be considered during the procurement process.
6. In addition, the **Local Government in Scotland Act 2003**, section 1 requires the council -
- to secure best value in the performance of its functions,
 - to balance the quality and cost of the performance of its functions and the cost of council services to service users,
 - to have regard to efficiency, effectiveness, economy and the need to meet equal opportunity requirements in maintaining that balance, and
 - to discharge its duty to secure best value in a way which contributes to the achievement of sustainable development.
7. The council's **Scheme of Delegation to Officers** sets out the powers which have been delegated by the council to senior officers. Subject to certain general conditions set out in this Scheme, such as the requirement to follow council policies, the day-to-day running of council services is delegated to the Chief Executive and Directors, and also to Head Teachers under the council's Scheme of Devolution of School Management. These senior officers are also authorised to delegate any of their authority to other officers under their direction and who are appropriately qualified and experienced. This means that, in the context of the making of contracts on behalf of the council, the Chief Executive and Directors, as well as Head Teachers, must ensure that those officers whom they authorise to let contracts on their behalf have sufficient knowledge and experience to determine relevant procurement issues such as –
- Is there an approved budget to meet the proposed expenditure, whether capital or revenue?
 - What is the best method to secure best value in procuring the need for the particular works, supplies or services required?
 - Can the need be met in-house?
 - Can it be bought off a current council contract?
 - Can it be bought from another authority's contract?
 - Is it covered by a framework agreement?

- Can the required need be defined clearly?
 - What are the relevant market conditions which will secure best value?
 - Is there likely to be sufficient competition?
 - What are the appropriate conditions of contract to be used?
 - Which council officer is authorised to sign the contract on behalf of the council?
 - Who will manage the contract to obtain the services as agreed in the contract and achieve value for money?
8. The council's **Scheme of Delegation to Officers** sets out which officers can sign formal deeds to which the council is a party. Apart from certain named officers for deeds dealing with particular council functions, the Chief Solicitor and senior colleagues in Legal Services are the officers designated to sign formal deeds on behalf of the council. This means that these officers must sign contracts where they are constituted on the basis of requiring formal execution, such as a minute of agreement. The majority of contracts, however, do not require such formal signature and can be signed by the Chief Executive, relevant Director, or Head Teacher, or any officer to whom they have delegated authority to do so.
9. The council's Procurement Policy and Strategy sets out the framework by which the council will ensure it maximises effective service delivery and the provision of best value for money through a strategic approach to procurement.

The Procurement Strategy underpins the Procurement Policy and is aligned to the pursuit of the Scottish Government's objectives of promoting collaborative procurement opportunities and the implementation of leading practice whilst promoting economic wellbeing and sustainable development.

A copy of the council's Procurement Policy and Strategy for 2008-2011 is available at -

<http://www.westlothian.gov.uk/business/tendersandcontracts/>

PART 2

STANDING ORDERS

FOR THE

PROCUREMENT OF BUILDING AND CIVIL ENGINEERING

CONSULTANCY SERVICES AND WORKS

1. General

- (1) The purpose of these Standing Orders is: -
 - to ensure that uniform contracting procedures of the highest standard are laid down for use throughout the council;
 - to secure competition with respect to contracts for the supply of consultancy services and/or for the execution of building and civil engineering works as required by the legislative framework.
 - to afford protection to the council and its staff.
- (2) Directors must ensure that all staff within their service understand and comply with these Standing Orders.
- (3) These Standing Orders shall apply to the placing of any contract for building or civil engineering consultancy services or works. All such contracts, and extensions to contracts, must be made within the terms of the relevant legislative framework, the EU procurement rules, these Standing Orders and the council's Procurement Procedures issued by the Head of Finance. The council's duty at all times will be to achieve best value.
- (4) With the exception of contracts which are subject to the EU procurement rules, the council or a committee may decide that these Standing Orders, or parts of them, shall not apply to a specific contract, if it is satisfied that there are special circumstances to justify the exemption.

2. Contract Documents

- (1) The relevant Director, in consultation with the Chief Solicitor as appropriate, will prepare tender documentation as necessary to obtain competitive tenders for building and civil engineering consultancy services and works. The documentation will be prepared and issued in accordance with the council's Procurement Procedures.
- (2) Tenders not received at the specified return address by the specified closing date and time will not be considered. Tenders must be submitted in the form specified in the contract documentation.

3. Unsatisfactory Performance

- (1) In the case of unsatisfactory performance or conduct by any tenderer submitting a tender during the tendering process, the relevant Director may reject the tender, after considering any representations on behalf of the person submitting the tender.
- (2) After due consideration, in the case of unsatisfactory performance or conduct by a contractor or consultant following the award of a contract, for example a breach of the relevant conditions of contract or failing to start work, the relevant Director shall report to the Council Executive which may decide to terminate the contractor's or consultant's contract.
- (3) After due consideration, the Council Executive may decide that a tenderer or contractor shall not be allowed to tender for any future building and civil engineering consultancy services or works for any part of the council.

4. Contract Performance Bonds for Building and Civil Engineering Works

- (1) If the estimated cost of carrying out work under any one contract is more than £1,000,000 the council shall ask for security for completing the contract. The conditions of contract shall set out the nature and amount of the security.
- (2) The council may ask for security on any contract where considered appropriate.

5. Contract Variations, Contract Extensions and Negotiations

Subject always to compliance with EU procurement rules and the council's Procurement Procedures, the council can alter, extend or re negotiate any part of a contract to achieve best value for the council. A written record justifying the reasons for this course of action together with Director's approval must be obtained before proceeding. A detailed written record of all negotiations and discussions with the contractors/consultants must be maintained and retained on file.

6. Issuing of Contract and Tender Documents

The relevant Director shall issue contract documents and invitations to tender for all building and civil engineering consultancy services and works contracts in accordance with the council's Procurement Procedures.

7. Competitive Tenders for Consultancy Services for Building and Civil Engineering Works

- (1) All competitive tendering shall be carried out in accordance with the council's Procurement Procedures.
- (2) In exceptional circumstances where the estimated cost of any one commission is less than £10,000, the Director may decide that a tendering process is not appropriate. However, the procurement process must still keep within the council's Procurement Procedures and duty to achieve best value.
- (3) Where the estimated costs of any one commission are greater than £10,000 but below the EU procurement threshold a minimum of three tenders shall be sought. The relevant Director shall select consultants, where possible, from the Constructionline National Register in accordance with the council's Procurement Procedures. In the case of projects of an unusual or specialist nature the Director may select tenderers using professional judgement and a knowledge of the specialisms required.
- (4) Where the estimated cost of any commission is above the EU procurement threshold a minimum of five tenders shall be sought. The relevant Director shall advertise the commission in the Official Journal of the European Union (OJEU) and ensure that the procurement process complies with the appropriate EU procurement rules and the council's Procurement Procedures.
- (5) Unless the relevant committee decides otherwise, all commissions over £10,000 shall be procured through a process of competitive tendering.

8. Competitive Tenders for Building and Civil Engineering Works

- (1) All competitive tendering shall be carried out in accordance with the council's Procurement Procedures.
- (2) Where the estimated cost of any contract is less than £10,000 and not covered by an existing contract, the Director may decide that a tendering process is not appropriate, however the procurement process must still keep within the council's duty to achieve best value.
- (3) If the estimated cost of any one contract is greater than £10,000 but less than £100,000 the Director must keep within the council's duty to achieve best value, and shall seek a minimum of three tenders. The relevant Director shall select contractors, where possible, from the Constructionline National Register and the Contractors Health and Safety Scheme (CHAS). The council shall deem its own workforce to be included in both Constructionline and CHAS and, where appropriate, may permit them to undertake works in accordance with the council's duty to achieve best value.

- (4) Where the estimated cost of any one contract is over £100,000 but less than the EU threshold, where possible, a minimum of four tenders shall be sought. The relevant Director shall select, where possible, from those included in both the Constructionline National Register and the Contractor's Health and Safety Scheme (CHAS). The council shall deem its workforce to be included in both Constructionline and CHAS and, where appropriate, may permit them to undertake works in accordance with the council's duty to achieve best value.
- (5) Where the estimated value of any one contract is equal to or above the EU threshold a minimum of five tenders shall be sought. The relevant Director shall advertise the contract in the Official Journal of the European Union (OJEU) and ensure that the procurement process complies with the appropriate EU procurement guidelines and the council's Procurement Procedures.
- (6) Unless the relevant committee decides otherwise, and subject to EU procurement rules, the procedure for placing a contract, where the estimated cost is £10,000 or more, shall be by a process of competitive tendering.

9. Receiving and Opening Tenders

All tenders shall be received and opened by the appropriate Director in accordance with the council's Procurement Procedures.

10. Evaluating Tenders

- (1) Competitive tenders shall be evaluated in consultation with the relevant Director in accordance with the council's Procurement Procedures.
- (2) Tenders shall be evaluated on the basis of establishing which offer is the most economically advantageous and provides 'best value' to the council. A written record must be maintained outlining the evaluation process and detailing the reasons for the decision.
- (3) The criteria used to determine that an offer is the most economically advantageous may include: price, period for completion, running costs, profitability, technical merit, benefit to the environment or any other permitted criteria which the council chooses to adopt.

11. Accepting Tenders for Consultancy Services for Building and Civil Engineering Works

- (1) If the amount of the tender is less than EU procurement threshold, the relevant Director will accept the tender for consultancy services.
- (2) The relevant Director may ask the relevant committee to choose the tender for acceptance for any contract if he believes there is good reason to do so.

- (3) Subject to EU procurement rules, if the amount of the tender is more than the EU procurement threshold the relevant Director shall ask the relevant committee to select the tender for acceptance.
- (4) Tenders shall be accepted by the relevant Director, in accordance with the council's Procurement Procedures.

12. Accepting Tenders for Building and Civil Engineering Works

- (1) If the amount of the tender for any one contract is less than £50,000 the relevant Director will accept the tender.
- (2) If the amount of the tender for any one contract is £50,000 or more and less than the EU procurement threshold the relevant Director will accept the tender.
- (3) The relevant Director may ask the relevant committee to choose the tender for acceptance for any contract if he believes there is good reason to do so.
- (4) Subject to the EU procurement rules, if the amount of the tender for any one contract is more than the EU procurement threshold the relevant Director shall ask the relevant committee to select the tender for acceptance.
- (5) Tenders shall be accepted by the relevant Director, in accordance with the council's Procurement Procedures.

PART 3

STANDING ORDERS FOR THE PROCUREMENT OF SUPPLIES AND SERVICES

1. Introduction

- (1) The purpose of these Standing Orders is: -
 - to ensure that uniform contracting procedures of the highest standard are laid down for use throughout the council;
 - to secure competition with respect to contracts for the provision of supplies and services as required by the legislative framework;
 - to afford protection to the council and its staff.
- (2) The Head of Finance is responsible for all purchasing and tendering arrangements for supplies and services.
- (3) The Head of Finance and the Directors must ensure that all staff within their service understand and comply with these Standing Orders.
- (4) These Standing Orders shall apply to the placing of any contract for supplies or services. All such contracts, and extensions to contracts, must be made within the terms of the relevant legislative framework, the EU procurement rules, these Standing Orders and the council's Procurement Procedures issued by the Head of Finance. The council's duty at all times will be to achieve best value.
- (5) Subject to the EU procurement rules, the council or a committee may decide, after considering a report from a Director, following consultation with the Head of Finance, that these Standing Orders, or parts of them, shall not apply to a specific contract, if it is satisfied that there are special circumstances to justify the exemption.
- (6) The Chief Executive, or the Depute Chief Executive in the absence of the Chief Executive, and no other officer, may in exceptional circumstances, such as arising from geographical, sole provider, technical, artistic or urgency factors, authorise a contract for supplies or services to be entered into without subjecting the requirement to competition where the estimated cost does not exceed the EU threshold. The Chief Executive, in consultation with the Head of Finance, must ensure compliance with the EU procurement rules for contracts below the EU threshold. The Chief Executive must approve a business case setting out the nature and scope of the supplies or services to be provided, the period for which the contract is to last, and the factors which demonstrate best value

for the council, and otherwise follow the council's Procurement Procedures for such contracts.

2. Documentation

- (1) The Head of Finance or the Standing Order (SO) 7(3) delegated Director in consultation with the Chief Solicitor as appropriate will prepare documentation as necessary to be issued when inviting quotes and tenders for supplies and services. The documentation will be prepared and issued in accordance with the council's Procurement Procedures.
- (2) Quotes and tenders not received at the specified return address by the specified closing date and time will not be considered. Quotes and tenders must be submitted in the form specified in the documentation.
- (3) The council may charge a fee, as determined from time to time by the Council Executive, for the issue of tender documentation.

3. Unsatisfactory Performance

- (1) In the case of unsatisfactory performance or conduct during the quoting or tendering process, the Head of Finance or the SO 7(3) delegated Director may reject the quote or tender, after considering any representations on behalf of the person submitting the quote or tender.
- (2) After due consideration, in the case of unsatisfactory performance or conduct by a contractor following the award of a contract, for example breaching the relevant conditions of contract or failing to provide supplies or services, the Head of Finance or the SO 7(3) delegated Director shall report to the Council Executive which may decide to terminate the contract.
- (3) After due consideration, and with the exception of contracts which are subject to the EU procurement rules, the Council Executive may decide that a tenderer or a contractor shall not be allowed to quote or tender for any future supplies or services for any part of the council.

4. Contract Performance Bonds

The council may ask for security on any contract where considered appropriate.

5. Contract Negotiations and Variation Orders and Contract Extensions

Subject always to compliance with the EU procurement rules and the council's Procurement Procedures, the council can alter, extend or renegotiate any part of a contract to achieve best value for the council. A written record, approved by the Head of Finance or the SO 7(3) delegated Director, must be compiled before proceeding. A detailed written record of all negotiations and discussions with the contractors/consultants must be maintained and retained on file.

6. Issuing Invitations to Quote and Tender Documents

The Head of Finance, or the SO 7(3) delegated Director, shall issue tender documents and invitations to quote.

7. Purchasing

- (1) The Head of Finance is responsible for all purchasing and tendering arrangements for supplies and services.
- (2) Framework Agreements set up by Procurement Services or another third party such as Procurement Scotland, Scotland Excel or any other approved third party, may only be used where approved by the Head of Finance and as required in accordance with the council's Procurement Procedures
- (3) Pilot Schemes set up in accordance with the council's Procurement Procedures may only be used where approved by the Head of Finance and only when a business case has been prepared and the Pilot Scheme provider has been identified following a competitive tender exercise.
- (4) The Head of Finance may utilise electronic tendering and electronic auction techniques where appropriate and as required in accordance with the council's Procurement Procedures.
- (5) The Head of Finance may delegate responsibility for purchasing and tendering arrangements for particular supplies and services, by agreement with the appropriate Director. The Head of Finance shall keep a list of all such delegations.
- (6) The Head of Finance, or the relevant Director for the delegations above, shall follow the relevant EU procurement rules, these Standing Orders, the council's Procurement Procedures and the council's duty to achieve best value.
- (7) Quotes and competitive tenders shall be undertaken in accordance with the council's Procurement Procedures.
- (8) Subject to Standing Orders 1(5) and 1 (6), any supplies or services requirement that cannot be satisfied from an existing council contract, will be subject to competition as detailed below: -

Aggregated Purchase Value

Between £1000 and £4,999

Between £5,000 and £29,999

Over £30,000 up to EU Threshold

Competition Sought

At least 2 written or electronic quotes are sought

At least 3 written or electronic quotes are sought

At least 4 tenders sought

Above EU Threshold

Advertisement in OJEU

- A minimum of five tenders shall be sought for open and restricted tenders
- A minimum of three tenders shall be sought for negotiated tenders

8. Quotes and Competitive Tenders

- (1) Quotes and competitive tenders shall be undertaken in accordance with the council's Procurement Procedures.
- (2) The Head of Finance, or the SO 7(3) delegated Director shall seek quotes or competitive tenders from either -
 - contractors who have responded to an invitation to quote or tender notice placed on the council's Business Portal, in a trade journal, local or national newspaper, the Official Journal of the European Union; or
 - contractors known to supply the goods or services required.
- (3) With the exception of contracts which are subject to the EU procurement rules, and unless the council or the relevant committee decides otherwise, the procedure for placing a contract, where the estimated cost is £10,000 or more shall be by competitive tendering.

9. Receiving and Opening Quotes and Competitive Tenders

- (1) All quotes or competitive tenders shall be received and opened by the Head of Finance, or the SO 7(3) delegated Director.
- (2) Where electronic tender submissions are utilised, the Head of Finance shall receive and open the electronic tender submissions.

10. Evaluating Quotes and Competitive Tenders

- (1) Quotes and competitive tenders shall be evaluated in consultation with the Head of Finance or the SO 7(3) delegated Director in accordance with the council's Procurement Procedures
- (2) Quotes and competitive tenders shall be evaluated on the basis of establishing which offer is the most economically advantageous and provides best value to the council.
- (3) The criteria used to determine that an offer is the most economically advantageous include: price, period for completion, running costs, profitability, technical merit, benefit to the environment or any other permitted criteria which the council chooses to adopt.

- (4) A written record must be maintained by the Head of Finance or the SO 7(3) delegated Director detailing the reason(s) for accepting the quote or competitive tender.

11. Negotiation before Acceptance of Quotes and Competitive Tenders

Subject always to the EU procurement rules, the council's Procurement Procedures, any aspect of a quote or competitive tender can be re-negotiated in consultation with the Head of Finance or the SO 7(3) delegated Director.

12. Accepting Quotes and Competitive Tenders

- (1) If the amount of a quote for any one contract is less than £10,000, the Head of Finance, or the SO 7(3) delegated Director, may accept the quote.
- (2) If the amount of the competitive tender for any one contract is £10,000 or more and less than the relevant EU procurement threshold, the Head of Finance, or the SO 7(3) delegated Director may accept the tender.
- (3) If the amount of a quote or competitive tender for any competitive tender is less than the relevant EU procurement threshold, the Head of Finance, or the SO 7(3) delegated Director may ask the relevant committee to choose the quote or tender.
- (4) If the amount of the tender for any contract is equal to or more than the relevant EU procurement threshold, the Council Executive shall choose the successful tender for acceptance.
- (5) If the estimated aggregate cost of any one contract for volatile commodities, such as gas or electricity, is equal to or more than the relevant EU Threshold, the Head of Finance shall choose the successful tender for acceptance without prior reference to the Council Executive and shall report this acceptance at the next meeting of the Council Executive.
- (6) The Head of Finance, or the SO 7(3) delegated Director, shall accept all quotes and competitive tenders in accordance with the council's Procurement Procedures

13. Disposal of Assets and Materials

- (1) The Head of Finance is responsible for disposing of assets and materials which are not needed on behalf of all council services, except for the disposal of:
- land and buildings which are the responsibility of the Director of Development and Environmental Services, and
 - IT hardware and software which are the responsibility of the Director of Customer and Support Services.

- (2) All disposals of assets and materials except for land and buildings and IT hardware and software shall be undertaken in accordance with the procedure issued by the Head of Finance.
- (3) All disposals of land and buildings shall be undertaken in accordance with the procedure issued by the Director of Development and Environmental Services.
- (4) All disposals of IT hardware and software shall be undertaken in accordance with the procedure issued by the Director of Customer and Support Services.