

# Part 3 Chapter 6

## Contract Standing Orders

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## **Contract Standing Order 1: Interpretation**

1.1 In these Contract Standing Orders, the following terms have the following meanings:

“Advance Works Order” means an advance works order issued under CSO 11.10

“Area of Responsibility” means the function and area of responsibility for a Chief Officer as detailed in Part 1, Chapter 13, Paragraph 1.2, and Part 2, Chapter 4 of the County Council’s Constitution

“Chief Officer” means any of the posts identified at Part 1 Chapter 13, Paragraph 1.2 of the County Council’s Constitution

“Contract” means

(i) any agreement for the supply of goods, services, or the execution of works to or for the Council including the use of consultants;

(ii) any Framework Agreement; or

(iii) any agreement where no payment is made by the County Council but which is of financial value to the Contractor (e.g. a catering concession)

but does not include (without exception)

(iv) an employment contract: or

(v) a Grant Agreement

"Contract Lead Officer" means a County Council officer nominated to deal with Contracts in accordance with CSO 3.3

“Contractor” means the party or potential party to a Contract

“Contracts Finder” means a web-based portal provided for the purposes of the UK Regulations by or on behalf of the Cabinet Office

“County Council” means Hampshire County Council

“CSO”/ “CSOs” means Contract Standing Order/ Contract Standing Orders

“EC Treaty” means the Treaty establishing the European Community signed on 25 March 1957 as amended by subsequent treaties

“EU Public Procurement Directives “ means EU Directive 2014/24/EU and European Council Directive 89/665/EEC any Directives and Regulations by which it is applied, extended, amended, consolidated or replaced and any re-enactment thereof

“EU Thresholds” means the thresholds for public advertisement of goods, works and services contracts as provided for in the EU Public Procurement Directives and advised by the Government

“Evaluation Report” means a report on the evaluation of tenders prepared under CSO 11

"Framework Agreement" means an agreement between one or more contracting authorities (bodies governed by public law) and one or more Contractors as defined in CSO 5.1

“Grant Agreement” means an agreement giving financial assistance to an individual or organisation with no supply of goods or services, or execution of works, in return

"OJEU" means the Official Journal of the European Union

“Procurement Network” means a formal group of officers of the County Council representing all departments and procurement teams whose main purpose is to provide leadership on procurement matters for the County Council

“Senior Officer” means a County Council officer on Grade H or above

“UK Regulations” means the Public Contracts Regulations 2015

“works” “supplies” & “services” are as defined in the EU Public Procurement Directives

## **Contract Standing Order 2: Status of, and Compliance with, Contract Standing Orders**

- 2.1 By law, the County Council is required to make standing orders with respect to contracts for the supply of goods or services or for the execution of works which provide for securing competition and regulation of the manner in which tenders are invited.
- 2.2 The County Council is a contracting authority for the purposes of the EU Public Procurement Directives, and is thereby legally bound to comply with certain practices and procedures in the award of Contracts.
- 2.3 The County Council has therefore adopted these Contract Standing Orders (CSOs), setting set out the procedures that must be followed in relation to the procurement and award of a Contract. CSOs provide a framework to ensure that the County Council uses its resources efficiently in making purchasing decisions to obtain best value in public services. CSOs also provide a means of safeguarding the reputation of the County Council and its staff from any implication of dishonesty or corruption.
- 2.4 The Chief Finance Officer and Head of Law and Governance and Monitoring Officer are the joint custodians of these CSOs and are responsible for keeping them under review. This includes giving advice on their implementation and interpretation.
- 2.5 Every Contract made by the County Council or on its behalf (irrespective of the source of funding) shall comply with the EC Treaty, the EU Public Procurement Directives, all other applicable EU and domestic legal requirements, CSOs and Financial Regulations. In the event that there is any conflict or inconsistency between the provisions of CSOs and any legal requirement, the legal requirement shall apply.
- 2.6 The EC Treaty provisions and Treaty-based principles, including non-discrimination, equal treatment, transparency and proportionality, apply generally in the award of public contracts – including those of a value below the EU Thresholds. Care must be taken at all times to ensure that nothing is done which is discriminatory, improper or which distorts competition.
- 2.7 It is the role of the Director of Transformation and Governance to publish the [Corporate Procurement Strategy](#) and to maintain a Procurement Network on behalf of the County Council.
- 2.8 These CSOs are supplemented by the [Procurement Best Practice Guide](#) maintained by the Director of Transformation and Governance. In the event that there is any conflict or inconsistency between the provisions of the Procurement Best Practice Guide and CSOs, CSOs shall apply.

- 2.9 These CSOs supplement the Officers' Code of Conduct and a failure to comply will normally be regarded as a disciplinary offence. Where a person who is not a County Council employee is contracted to a position where they are authorised to carry out purchasing functions, it is a condition of their contract that they comply with CSOs.
- 2.10 These CSOs shall always be interpreted and applied in a way that supports the achievement of the County Council's identified business objectives, within relevant legal frameworks.
- 2.11 Any contracts procured and awarded by way of collaboration with other public bodies where a competitive process has been followed that complies with the equivalent of these CSOs of the leading organisation will be deemed to comply with these CSOs and no waiver in accordance with CSO 12 will be required.

### **Contract Standing Order 3: Approval to spend**

- 3.1 The procurement of a Contract (not including a Framework Agreement) is subject to the approval of the relevant decision maker who has the authority to give approval for the relevant expenditure under the Constitution. The giving of approval is subject to the expenditure involved having been included in approved estimates and sufficient budgetary provision having been made in the County Council's capital programme or revenue budget.
- 3.2 In estimating the value of the Contract, the principles of CSO 4 shall be applied
- 3.3 In all cases, the Chief Officer within whose Area of Responsibility the Contract falls shall designate a Senior Officer as Contract Lead Officer for the Contract. It shall be the responsibility of the Contract Lead Officer to ensure that the processes followed in relation to the procurement and award of the Contract are compliant with these CSOs.

## **Contract Standing Order 4: Contract Value and Aggregation**

- 4.1 The estimated value of a Contract shall be the total value of the Contract net of VAT. This is the total consideration estimated to be payable over the full term of the Contract by the County Council to the Contractor which shall include any option to extend the term under the contract. Where the Contract is one where no payment is made by the Council (e.g. a concession) a best estimate of the financial value to the Contractor shall be ascertained.
- 4.2 Where the Contract period is indefinite or uncertain, the estimated value shall be calculated on the basis that the Contract will be for a period of four years.
- 4.3 The estimated value of a Framework Agreement is the total value of all the Contracts which could be entered into by the County Council and other contracting authorities, further to that Framework Agreement.
- 4.4 Purchases of the same or similar goods or services must be aggregated wherever practicable. Contracts must not be artificially separated so as to circumvent the application of any part of CSOs, the EU Public Procurement Directives or UK Regulations.
- 4.5 Contracts which are each of a value below the relevant EU Threshold may nevertheless be subject to full EU Public Procurement Directives tendering requirements, where they constitute a series of related or repeat purchases. Advice should be sought where this is the case, in order that the relevant procurement route can be adopted.

## **Contract Standing Order 5: Framework Agreements and Suitability of Contractors**

- 5.1 A Framework Agreement is an agreement between one or more contracting authorities (bodies governed by public law) and one or more Contractors, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged. Framework Agreements may be established by the County Council, or by other public bodies, or public sector buying consortia, as arrangements through which the County Council, along with other public bodies, may make specific purchases.
- 5.2 Where appropriate a Framework Agreement that has been approved as suitable by the Director of Transformation and Governance should be used for the making of the proposed purchase. A suitable Framework Agreement shall be appropriate for the specific requirement and procured in compliance with the UK Regulations, and the terms and conditions applicable shall meet the minimum requirements of the County Council.
- 5.3 Provisions contained in the UK Regulations which govern Framework Agreements must be complied with when concluding a Framework Agreement or awarding a contract based on a Framework Agreement.
- 5.4 In all cases where a Contract is awarded under these CSOs, a Contractor can only be appointed who, as a minimum:
  - a) meets the County Council's insurance requirements for the Contract ( in respect of public liability, product, professional indemnity and/or employer's liability as appropriate, based on an assessment of risk for the Contract)
  - b) is registered for tax and holds a valid certificate ( where appropriate)



## **Contract Standing Order 6: Publication of Notices**

- 6.1 In all cases where, by virtue of these CSOs or by UK Regulations, a public notice is required, it shall be placed on the corporate tendering opportunities portal on Hantsweb and on Contracts Finder.
- 6.2 Where the estimated total value of a proposed Contract is £100,000 or above, the notice shall additionally be placed in at least one relevant local publication and/or journal circulating among Contractors who undertake Contracts of that nature. However, this is not required where the relevant Chief Officer is satisfied that to do so would not be value for money.
- 6.3 Where the value of the contract is £25,000 or greater the information regarding the Contract award is required to be placed on Contracts Finder.
- 6.4 Where the value of the Contract exceeds the relevant EU Threshold, the Contract notice and Contract award notice shall also be placed in the OJEU in accordance with the UK Regulations.

## **Contract Standing Order 7: Purchasing Procedures for Contracts of a Value less than £100,000**

- 7.1 Where the estimated value of the Contract, calculated in accordance with CSO 4, is less than £100,000 and there is a suitable Framework Agreement approved by the Director of Transformation and Governance under CSO 5.2, that Framework Agreement shall be used.
- 7.2 Where no suitable Framework Agreement is available, and the estimated value of the Contract, calculated in accordance with CSO 4, is less than £1000, then one written quotation should be obtained.
- 7.3 Where no suitable Framework Agreement is available, and the estimated value of the Contract, calculated in accordance with CSO 4, is £1,000 or greater and less than £100,000 three written quotations should be obtained against the same written request for quotation in accordance with the procedure set out in the Procurement Best Practice Guide
- 7.4 In the selection of the Contractor, the Contract Lead Officer shall bear in mind the need to seek best value for money and be able to demonstrate that they have achieved this.
- 7.5 The Contract shall be evidenced in writing, by submission of an order in accordance with the Framework Agreement or, where a Framework Agreement is not used, by the placing of an order on the basis that the price in the written quotation received shall apply.

## **Contract Standing Order 8: Tendering Procedures for Contracts of a Value of £100,000 or greater but less than relevant EU Threshold**

- 8.1 Where the estimated value of the Contract, calculated in accordance with CSO 4, is £100,000 or greater but less than the relevant EU Threshold, and there is a suitable Framework Agreement approved by the Director of Transformation and Governance, under CSO 5.2, that Framework Agreement shall be used.
- 8.2 Where no suitable Framework Agreement is available, tenders shall be invited using a procedure comparable/similar to the open procedure under the Public Contract Regulations.
- 8.3 The procedure requires the publication of a notice in accordance with CSO 6. The public notice shall specify (i) a time period within which interested parties may express an interest in tendering and (ii) the method by which such interest shall be expressed. At the end of this period, an invitation to tender shall be sent to all parties who have expressed an interest, specifying a reasonable period for tenders to be returned.
- 8.4 In all cases, every invitation to tender shall include the following:
  - A statement that the tendering process will be conducted within the County Council's corporate electronic tendering system;
  - Full instructions on how to submit their tender to this system;
  - Advice that tenders, once received in the system, will be anonymous until the time specified for their opening;
  - Advice as to the deadline for submission of tenders to this system
- 8.5 In exceptional circumstances, and with the prior approval of the Director of Transformation and Governance, an invitation to tender may be sent to tenderers in hard copy paper form, rather than through the electronic tendering system.
- 8.6 The invitation to tender shall state the evaluation criteria, including sub-criteria and sub-sub-criteria (where used), weightings and scoring criteria that will be applied in the award of the Contract. These criteria must be capable of objective assessment, include price and any other relevant factors, and be weighted by relative importance. The invitation to tender shall also include the terms and conditions that will apply to the Contract.
- 8.7 The Contract shall be evidenced in writing by the completion of a formal written Contract, the terms of which have been approved by the

Head of Law and Governance and Monitoring Officer or other person authorised by him for this purpose.

## **Contract Standing Order 9: Tendering Procedures for Contracts above EU Thresholds**

- 9.1 The EU Public Procurement Directives set a financial threshold beyond which prescribed tendering procedures must be followed. The EU Thresholds are reviewed every two years, and the updated figures can be found in the Best Practice Guide.
- 9.2 Where the estimated value of the Contract is in excess of the relevant EU Threshold, the procedures set out in the EU Public Procurement Directives must be followed. In most cases, the open procedure, restricted procedure or competitive procedure with negotiation will be used, but in certain specialist cases, the negotiated procedure without prior publication, competitive dialogue procedure or innovation partnership procedure shall apply. Advice on which procedure is appropriate to the specific case should be sought from the Head of Law and Governance and Monitoring Officer.
- 9.3 Where the estimated value of the contract is £100,000 or greater but less than £1 million approval of the Head of Law and Governance and Monitoring Officer shall be sought to the use of the negotiated procedure without prior publication, competitive dialogue procedure or innovation partnership procedure.
- 9.4 Where the estimated value of the contract is £1 million or greater approval of the Executive or, in respect of Non-Executive matters, the Committee with delegated responsibility for the relevant service area shall be sought to the use of the negotiated procedure without prior publication, competitive dialogue procedure or the innovation partnership procedure.
- 9.5 Any proposed modifications to existing contracts which have not been provided for in the initial procurement documents in clear, precise and unequivocal review clauses shall be approved by the Head of Law and Governance and Monitoring Officer where the value of the modification is less than £1 million and by the Executive where the value of the modification is £1 million or greater prior to agreement of such modification.

## **Contract Standing Order 10: Receipt and Opening of Tenders**

- 10.1 Subject to CSO 10.2 – 10.3, all tenders shall be opened at the same time, by an officer appropriately trained to open tenders on the electronic tendering system as soon as reasonably practicable on or after the date for return of tenders. People under contract to the County Council, but not permanent employees of the County Council shall not open tenders unless approved by a Chief Officer or Head of Law and Governance and Monitoring Officer.
- 10.2 For a Contract of a value of £100,000 or greater, the officer opening tenders shall be certified as having completed the required training and the officer's name shall appear on a list held by the Head of Law and Governance and Monitoring Officer and authorised for that purpose.
- 10.3 The officer opening tenders shall record, in respect of each tender opened, the name of the tenderer and, where applicable, the total value.

## **Contract Standing Order 11: Evaluation of Tenders and Award of Contract**

- 11.1 The Contract Lead Officer (who should normally be an employee of the County Council) shall ensure that the tenders received are evaluated in accordance with the evaluation criteria that have been adopted for the Contract, and stated in the invitation to tender. These criteria must be capable of objective assessment, include price and other relevant factors, and be weighted by relative importance.
- 11.2 The Contract Lead Officer shall produce a written report evaluating each tender received against the evaluation criteria. The report shall identify the tenderer who has submitted the most economically advantageous tender i.e. the tender that achieves the highest score in the evaluation, and recommend the award of the Contract to that tenderer. This report shall be submitted to the person authorised to award the Contract under CSO 11.4.
- 11.3 No contract may be awarded unless the expenditure involved has been included in approved estimates and sufficient budgetary provision made in the County Council's capital or revenue accounts in accordance with CSO 3.1. The Evaluation Report shall confirm how this requirement is met.
- 11.4 Each Chief Officer is authorised to award and sign any contract entered into on the County Council's behalf, where it relates to their Area of Responsibility, and where the value of the Contract is less than £100,000. The Contract may be awarded and signed by a Senior Officer who is authorised to do so on behalf of the Chief Officer as documented in that Chief Officer's scheme of financial delegation. All other Contracts shall be awarded by the Head of Law and Governance and Monitoring Officer or a Senior Officer nominated by the Head of Law and Governance and Monitoring Officer for this purpose, and signed by or on behalf of the Head of Law and Governance and Monitoring Officer in accordance with Part 1, Chapter 16 of the Constitution.
- 11.5 Where the value of a Contract is above the relevant EU Threshold, the Contract shall be awarded in accordance with the UK Regulations and in particular the requirements relating to a "standstill" period prior to the Contract being entered into.
- 11.6 All Contracts, including an arrangement subject to a purchase order, must be made in writing under English Law, and must clearly and carefully specify the supplies, services or works to be provided, the agreed programme for delivery and the price and terms for payment together with all other terms and conditions.

- 11.7 Where purchases of a value less than £100,000 are made for which standard terms and conditions have been approved by the Head of Law and Governance and Monitoring Officer those standard terms should be used. Where a Contract is estimated at a value £100,000 or above or is of an unusual or complex nature, the Head of Law and Governance and Monitoring Officer shall be consulted to produce a suitable set of conditions of contract or to advise on existing conditions for use under a Framework Agreement
- 11.8 Every contract must also include certain clauses, in a form approved by the Head of Law and Governance and Monitoring Officer, to protect the County Council from fraud and to ensure that Contractors understand their responsibilities when they are acting on the County Council's behalf as well as clauses required to comply with the UK Regulations.
- 11.9 The Chief Officer within whose area of responsibility the Contract falls shall allocate to a Senior Officer responsibility for the ongoing management of the Contract.
- 11.10 In exceptional circumstances, where a Contract has been awarded under CSO 11.4, but it is considered necessary in the best interests of the County Council to initiate the provision of goods or services under that Contract prior to the Contract being signed, the issue of an Advance Works Order by the Head of Law and Governance and Monitoring Officer may be requested. Issue will be subject to confirmation that a decision to award the Contract has been made in accordance with CSOs, the necessary funding for the Contract having been approved, and the value of the Advance Works Order not exceeding £100,000.



## **Contract Standing Order 12: Waiver of Contract Standing Orders**

12.1 Any of the requirements of these CSOs may be waived in an individual case, by the person authorised as follows:

- Where the estimated value of the Contract is less than £100,000, the Chief Officer within whose Area of Responsibility the Contract falls
- Where the estimated value of the Contract is £100,000 or greater but less than £1m, the Head of Law and Governance and Monitoring Officer
- Where the estimated value of the Contract is £1m or greater, the Executive or, in respect of Non-Executive matters, the Committee with delegated responsibility for the relevant service area

12.2 A request for the issue of a waiver must be made in writing to the person authorised under CSO 12.1, with full reasons as to why the waiver is required, and evidence that the issue of a waiver will not prevent best value from being obtained. The decision in response to the request must also be in writing. No action shall be taken to enter into the Contract until such request has been submitted and the decision made.

12.3 The County Council is subject to legal requirements to ensure fair competition for Contracts of a value exceeding the EU Thresholds, and subject to obligations under the EU Treaty to ensure that all Contracts (regardless of value) are awarded having regard to the need to avoid any action that is discriminatory, improper or which distorts competition.

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