



STANDING ORDERS FOR THE REGULATION OF CONTRACTS

Adopted 06 December 2022

PROCUREMENT PROCEDURES

1 General

- 1.1 These procedures apply to all orders and contracts issued by the Authority for the carrying out of works, the supply of goods and services and the acquisition and disposal of assets. These procedures must be read in conjunction with the Sustainable Procurement Policy, Financial Regulations, Standing Orders, the Scheme of Delegation, the Minimum Standards for Tenders and Contracts and any other procurement guidance notes issued by the Chief Financial Officer (CFO).
- 1.2 “Officer” means any person holding office under the Authority, employed or seconded by the Authority, working under a Service Level Agreement or contract, or working for the Authority in any paid or unpaid capacity.

2 Quotation and Tendering Procedures

- 2.1 The minimum required numbers of tenders or quotations to be invited from appropriate contractors for a given estimated value of contract (net of VAT) are:
- Up to £2,500 (£5,000 for works) officers are not obliged to seek more than one quotation but staff may still choose to, to seek the most competitive price and demonstrate best value;
 - Above £2,500 (£5,000 for works) and up to £20,000, Invite three organisations to submit written quotations;
 - Above £20,000 and up to £100,000, Invite three organisations to submit written formal quotations submitted by a specified date and time and based on a written specification and evaluation criteria (referred hereafter as “formal quotation”);
 - Above £100,000, and up to Public Procurement thresholds, invite four organisations to submit tenders;
 - Over Public Procurement thresholds, invite organisations to submit tenders in accordance with the requirements of the Public Contract Regulations.

The values are for single items or groups of items, which must not be disaggregated artificially.

From 1 January 2022 the sterling equivalents of Public Procurement thresholds (inclusive of VAT) are £213,477 for supplies and services and £5,336,937 for works. The Public Procurement thresholds are changed on 1 January of each even-dated year. The CFO will advise Heads of Service of these changes.

- 2.2 Where quotations apply, they should be sought from suitable contractors through open competition or can be selected from a standing list if one exists.

- 2.3 Where formal quotations are required, and if there is no standing list, formal quotations may be sent directly to a minimum of three organisations who have been selectively invited to bid, without recourse to open advertisement of the opportunity, or they may be selected through open competition.
- 2.4 Where tenders are required, Officers have a choice of tendering procedures. For contracts up to Public Procurement thresholds, organisations may be selected from a standing list. Where there is no standing list, and for contracts over Public Procurement thresholds, appropriate advertisement must be undertaken inviting suitable organisations to express an interest in tendering. Alternatively, a suitable Framework Agreement can be used (see para 3.2 below). Tenders may be received from either all who respond to an advertisement (open competitive tendering) and, for contracts over Public Procurement thresholds, from a selection of suitable contractors who have expressed an interest and who are invited by the Authority to tender (selective tendering). The number of tenderers to be invited to tender will depend on the particular market and the individual project procurement strategy.
- 2.5 If selection is to be from standing lists, arrangements for standing list compilation, maintenance, review and use must be approved in advance by the CFO.

Procurement Notification Process

- 2.6 Officers planning to carry out any procurement exercise with a value of £20,000 or more must submit an electronic procurement notification form to the Devon Procurement Service (DPS). This will be used to create an initial entry on the PNF Register held on the Sharepoint site.

Appropriate Advertising

- 2.7 Tenders up to the Public Procurement thresholds where there have been no selective invitations to quote or tender, and all tenders above the Public Procurement thresholds, will be advertised on the Authority's e-tendering system. Any opportunities that are advertised on the Authority's e-tendering system must also be advertised on the government's Contract Finder website (if they are over a value of £25k).
- 2.8 For services, supplies and works where the total contract value, including any options to extend the initial term of the contract are expected to exceed Public Procurement thresholds, a Find a Tender Service (FTS) notice must also be placed and must follow Public Procurement requirements with particular regard to be given to the timescale for such tenders.
- 2.9 Any formal quotation (i.e. over £20k up to £100k) following the open competition procedure will be advertised on the Authority's e-tendering system. Any opportunities that are advertised on the Authority's e-tendering system must also be advertised on the government's Contract Finder website (if over £25k). Officers will consult with the CFO and or DPS to determine if further advertising in relevant local newspapers and trade publications is also required.
- 2.10 Officers will ensure that the e-tendering system website address is publicised appropriately within the quotation/tender documentation.
[\[www.supplyingthesouthwest.org.uk\]](http://www.supplyingthesouthwest.org.uk)

Selective Tendering (i.e, above £100k)

- 2.11 Following advertisement of tenders above the Public Procurement thresholds for goods and services (whether in relation to goods, services or works), invitations shall be sent to the prospective tenderers who are best qualified to bid.

Invitation to Tender (i.e, above £100k)

- 2.12 Every invitation to tender must specify that the Authority's e-tendering system will be used to issue and receive tender documentation. The invitation must state the date and time by which the tender must be received by the e-tendering system and that the tender will be held in the secure area of the e-tendering system and cannot be accessed until after the deadline. Adequate time must be allowed for the preparation and return of tenders ensuring compliance where appropriate with Public Procurement requirements. Any exceptions to using the Authority's e-tendering system must be approved by the CFO and/or CEO.

Invitation to Quote (i.e. up to £100k)

- 2.13 The Authority's e-tendering system must be used for a formal quotation (i.e. over £20k & up to £100k), save for any exceptions approved by the CFO/CEO.

For quotations below £20,000 the e-tendering system may be used but in either case the invitation must state the place, date and time by which the quotation must be returned. Adequate time must be allowed for their preparation and return.

Certification notice by Tenderers

- 2.14 Tenderers shall certify and give undertakings that:

- the tender is genuine and intended to be competitive;
- they have not fixed or adjusted the amount of the tender by or under or in accordance with any agreement or arrangement with any other person*;
- they have not done and will not do, at any time before the time and date specified for the return of the tender, any of the following:
 - inform any person* the amount or approximate amount of the proposed tender, except where the confidential disclosure of the approximate amount of the tender was necessary to obtain insurance premium or other quotations necessary for tender preparation;
 - enter into any agreement or arrangement with any other person* with the aim of preventing tenders being made or as to the amount of another tender or the conditions on which the tender is made;
 - offer to pay or give or agree to pay or give any sum of money or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender for the Authority any of the actions specified and described in this section;
 - cause or induce any person to do any of these things.

* outside the consortium if a consortium tender

Receipt, Custody and Opening of Tenders and Formal Quotations

- 2.15 The Authority's e-tendering system will record the date and time of receipt of all tenders and formal quotations.

Quotations below the £20k threshold may be received and opened by the Project Officer/Team.

Formal quotations between £10-£100k (received via the e-tendering system) may be received and opened by the Project Officer/Team, once the closing date has passed.

Tenders over £100k (received via the e-tendering system) will require the opening and verification an officer who must be independent to the procurement taking place. All the submissions will then be released to the Project Officer/Team to continue with the process. The verifier will enter information about the submissions received into the tender register.

- 2.16 Tenders (over £100k) and any formal quotation (over £20k up to £100k) not received via the Authority's e-tendering system (as a result of an exception approved under paragraphs 2.12 or 2.13 or 2.21) shall be opened at one time and in the presence of at least two officers who shall be independent from the procurement. A record will be made of all tenders or formal quotations received, showing the date and time of opening and the bidder's name and the value in the tenders register. Any tender or formal quotation received after the specified time shall be recorded as such but must not be considered.

Contractor Vetting

- 2.17 Officers who procure the service of a contractor are responsible for checking the competency of that contractor to undertake the work. This may include evidence of relevant qualifications, financial stability, their Health & Safety policy, risk assessments and method statements, data protection and security arrangements, for example.

All such assessments must be made before any commitment is made or contract awarded and shall be in conformity with the Authority's Contractor Vetting Policy.

Acceptance of Single Quotation or Tender Received (See also paragraph 2.21)

- 2.18 This section deals with situations where either a single quotation or tender is received. For contracts up to £20,000, the appropriate Head of Service will determine whether or not to accept the quotation.

For contracts over £20,000, the CFO and the Head of Service shall jointly consider whether or not, in their professional judgement, best value would be obtained. The following provisions shall then apply: -

- (a) where the estimated value of the contract is between £20,000 and £100,000 if in their view best value would be obtained then the Head of Service will consult with the CFO and the CEO (the latter being able to accept the formal quotation). If in the view of the CFO and CEO value for money would not be obtained, or if there is any doubt, the procurement exercise should either be repeated or the matter referred to the Authority for consideration and decision.

- (b) where the estimated value of the contract is over £100,000 the matter must be referred to the Authority for consideration and decision, taking into account the views of the CEO, CFO and Head of Service as to whether to accept the tender or repeat the procurement exercise.

Financial Provision for Contracts

- 2.19 Where tenders or quotations received vary from the approved estimate, the procuring officer must identify the funding for any increase. Where the increase is up to £30,000, the funding must be approved by the CEO in consultation with the CFO before awarding the contract. Approval of the Authority must be obtained, before awarding the contract, where the variation exceeds £30,000.

Maintaining the Contracts Register

- 2.20 Upon the award of a contract with a value of £20,000 or more, the Officer will update and complete the entry in the Contracts Register in the e-tendering system. If the e-tendering system not used for the procurement, a record of the award will still be made in the contracts register on the e-tendering system. For contracts awarded over £25k, a record will also be entered on Contracts Finder (via the e-tendering system).

Exemption from the Tendering and Formal Quotation Process

- 2.21 Where the subject matter of a contract is of a specialised nature with only one or a limited number of possible contractors or where exceptional circumstances have arisen, the Officer shall submit a written report requesting an exemption from normal tendering or formal quotation rules to the CEO/CFO/Leadership Team for authorisation for the exemption.

Tenders subject to Public Procurement Regulations shall be subject to exemptions contained within those Regulations.

3 Particular Types of Contract

Acquisition (and Leasing) of Land, Buildings, Vehicles, Plant and Equipment

- 3.1 In order to ensure compliance with Financial Regulations and capital rules, all acquisitions made shall be in accordance with the Authority's Financial Regulations and Scheme of Delegation. Officers must consult with the CFO in the first instance; Authority approval may be required before embarking on this type of procurement.

Framework and Joint Procurement Arrangements

- 3.2 Framework Agreements set up by government offices or other public bodies may be used after consultation with the CFO/DPS. Call off contracts under a Framework Agreement will be governed by the terms of the Framework Agreement. Framework Agreements may also be established by Officers, in accordance with these Procedures (however prior advice must be sought from DPS).
- 3.3 Joint procurement arrangements with other local authorities or public bodies may take place where they represent best value. The CFO and DPS must be consulted before the start of the procurement of all such proposed arrangements especially if the Authority intends to act as the lead authority.

Disposal of Assets

- 3.4 All vehicles, plant, furniture, equipment or other goods shall be disposed of in accordance with the Authority's Financial Regulations, Scheme of Delegation and Disposals Policy. Officers should consult with the CFO in the first instance.

4 Contracts

Contents of Contract

- 4.1 Officers shall obtain the advice of the Authority's Legal Service on the contract terms to be agreed, including the Authority's terms and conditions of contract.
- 4.2 Every contract shall be in writing or confirmed in writing and shall specify:
- (a) the work, materials, supplies or services to be provided;
 - (b) the quality standards and or service specification to be adhered to;
 - (c) the price to be paid, with a statement of discounts or other deductions;
 - (d) the time or times within which the contract is to be performed;
 - (e) the procedures for variations, termination, or penalties for non-compliance, or security for the due performance of any contract including liquidated damages where works are not completed in the time specified;
 - (f) invoicing and payment arrangements as specified by the CFO;
 - (g) that the Authority shall pay valid and undisputed invoices within a 30 day period, consider and verify invoices in a timely fashion and impose a contractual obligation on the contractor to ensure that they abide by these conditions in relation to their own sub-contractors; and
 - (h) such other terms and conditions as are deemed necessary after having taken advice from the Authority's legal service provider.
- 4.3 Contracts (with Terms and Conditions) shall be signed (except where the seal of the Authority is to be applied) in accordance with the Authority's Financial Regulations and Scheme of Delegation.

Cancellation of Contracts

- 4.4 All written contracts shall contain a clause enabling the Authority to cancel the contract and recover from the contractor the amount of any resulting loss if:
- (a) the contractor has offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for:
 - (i) doing or not doing, or for having done or not done, any action in relation to the obtaining or execution of the contract or any other contract with the Authority;
 - (ii) showing or not showing favour or disfavour to any person in relation to the contract or any other contract with the Authority.
 - (b) the same things have been done by any person employed by the contractor or acting on his behalf (whether with or without the knowledge of the contractor);
 - (c) in relation to any contract with the Authority the contractor or any person employed by him or acting on his behalf has:

- (i) given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972;
- (ii) committed an offence under the Bribery Act 2010.

4.5 Every contract that has been tendered via the Find a Tender Service must also contain the right for the Authority to terminate the contract where:

- (a) there has been a modification of the contract which falls outside one of the permitted categories specified in Regulation 72 of the Public Contracts Regulations 2015 and which are summarised at paragraph 4.6 below;
- (b) the contractor should have been excluded on mandatory grounds under Regulations 57(1) and /or 57(2) of the Public Contracts Regulations 2015;
- (c) the contract should not have been awarded in view of a serious infringement under public procurement law which has been declared as such by a court of competent jurisdiction.

Variation of Contracts

4.6 All orders given to a contractor directing them to vary, in any respect, the subject of the contract must be in writing, signed by the authorised officer (in accordance with the Scheme of Delegation).

For variations of contracts Officers must first seek advice from the Authority's Legal Service. Written agreement must be obtained, before variation orders are issued, from the CEO (in consultation with the CFO) if the total value of the (originally) accepted tender will be exceeded by more than £1,000 and up to £30,000 and by the Authority for any amounts exceeding £30,000.

In addition to the above requirements, where a contract has been tendered via the Find a Tender Service (i.e. a contract above the relevant value threshold), a variation to the original contract terms will trigger a new procurement process unless it falls within one of the following permitted changes:-

- Modifications that are clearly provided for in the original procurement and contract documents; or
- Necessary modifications where a change of contractor cannot be made due to economic or technical reasons and would cause significant inconvenience or substantial duplication of cost and does not result in an increase in price of more than 50% of the original contract value; or
- Modifications to deal with unforeseen circumstances where the modification does not alter the overall nature of the contract and does not result in an increase in price of more than 50% of the original contract value; or
- Modifications to deal with a new contractor replacing the original contractor where the replacement is due to corporate restructuring and the new contractor meets the pre-qualification criteria and there are no other substantial amendments to the contract; or
- Modifications that are not substantial. The following will be considered substantial modifications:
 - modifications that render the contract materially different in character;
 - modifications that could have resulted in a different outcome in the procurement;

- modifications which shift the economic balance in favour of the contractor;
- modifications which extend the scope of the contract considerably; and
- where a new contractor replaces the old contractor other than in the circumstances permitted above.
- Low value modifications where the value attributable to the modification falls below the relevant Public Procurement threshold **and** is less than 10% of the initial contract value for supplies and services or 15% for a works contract.

Heads of Service must seek the approval of the Authority's Legal Service in relation to any proposed variation of a contract which has been tendered via the Find a Tender Service.

Payment for Contracts for Building or Civil Engineering Work

4.7 Each certificate for payment must show:

- (a) contract sum (usually tender total);
- (b) value of work to date;
- (c) total amount of certificates previously paid;
- (d) amount of the certificate;
- (e) retention amount (if any);
- (f) value of price fluctuations;
- (g) Value Added Tax (if any).

Monitoring of Contracts

4.8 Officers must monitor all contracts and report any significant exceptions to normal progress and cost variations to the CFO and Leadership Team. Significant exceptions include delay or advance in expenditure by more than £1,000 compared with expectations within a financial year and any critical delay in meeting target completion dates.

Relationships with Contractors

4.9 Officers who undertake procurement, engage, supervise or have an official relationship with contractors and have had, or currently have, a private or domestic relationship should declare it to their Line Manager, the CFO and the Monitoring Officer. An assessment will be made to ascertain the nature of the relationship and whether that Officer can continue to have any further involvement in the procurement or contract. Orders and contracts must be awarded on merit by fair completion and no favour will be shown to any person or businesses, especially those run by or employing relatives, partners or friends.

SUSTAINABLE PROCUREMENT CHECKLIST

1. Procurement is to be carried out in an environmentally responsible manner by working to:
 - Reduce the number of goods and services procured by cutting down on waste and repairing or reusing existing goods;
 - Purchasing products and services that use fewer natural resources in production and distribution and promote Fairtrade products;
 - Take account of whole-life costs, quality, environmental impacts and other benefits and not just the initial price;
 - Purchasing products that can be recycled or disposed of with minimal environmental damage;
 - Buy the most energy-efficient products where they give value for money, taking account of whole-life costs, using the UK's mandatory energy-labelling scheme;
 - Purchasing locally where possible, to reduce the impact of transport, as long as the criteria above are met; and
 - Promote equality and do not discriminate on the grounds of gender, disability and race.

while complying with the law, including presiding procurement rules/international agreements on trade.
2. Before procuring any goods or services, consideration will be given as to whether consumption can be reduced by reusing or repairing existing materials and goods or whether alternative procedures can be put in place to remove the need to buy goods and services.
3. Procurement decisions are to be based on environmental criteria along with other major factors such as value for money, quality and whole life costs. The Authority will assess whether goods and services:
 - Are durable, reusable, refillable or recyclable;
 - Contain reused, recycled or renewable raw materials;
 - Are energy and resource efficient;
 - Use minimum packaging and encourage waste reduction;
 - Are non (or minimum) polluting;
 - Are locally produced;
 - Are free from ozone depleting substances, solvents, volatile organic compounds and other substances damaging to health and the environment;
 - Are from certified sustainable sources;
 - Cause minimal damage to the environment in their production, distribution, use and disposal; and
 - Are on the most competitive terms having regard for Best Value.
4. The criteria by which environmental impact can be taken into account during tender evaluation to be included in tender documentation.

SUSTAINABLE BUILDING CHECKLIST

- ✓ **Sustainable**
- ✗ **Less desirable**
- **Neutral**

General

Repair or recycle if possible rather than buying new, but if you do have to buy something please check the list.

Other guides, such as the ENPA Design Guide give specific detailed advice for design aspects of building works.

1. **Timber**

- ✓ Forest Stewardship Council Certified Timber or equivalent
- ✓ Recycled
- ✓ Known local source (check with Woodland Team)
- ✗ Tropical hardwoods
- ✗ Unknown source/non FSC

If possible use UK hardwoods rather than softwoods – this encourages planting and management of broadleaved woodland. Many hardwoods (notably oak and chestnut) do not need paints and stains to preserve them when used externally. *Most* softwoods do.

2. **Roofing**

Slate

- ✓ - Recycled and local
- ✓ - Delabole
- ✓ - Welsh
- ✗ - Chinese / Brazilian / other non UK sources
- ✓ Thatch (also turf / bracken / heather)
- ✓ Timber shingles (FSC)
- ✓ Clay tiles
- ✗ Artificial tiles / concrete

3. **Walls / Structure**

- ✓ Local stone, cob, brick (preferably recycled / local)
- ✓ Lime mortar and plaster
- ✓ Timber cladding (FSC)
- ✓ Green oak framing
- ✓ Straw (bales)
- Concrete blocks

4. **Windows**

- ✓ FSC Timber
- ✗ UPVC

5. **Paint / Finishes**
- ✓ Lime wash
 - ✓ Lime plaster
 - ✓ Lime mortar
 - ✓ Natural/environmentally friendly paints (eg some of Farrow and Ball range)
 - ✓ Distemper (internal)
 - ✓ Natural oils / waxes such as linseed
 - ✗ Varnishes / chemical stains
6. **Gutters / downpipes**
- Direct rainwater into ground rather than drains if possible. Salvage and repair cast iron, copper or lead
7. **Flooring**
- ✓ Local / recycled / FSC timber
 - ✓ Wool carpet
 - ▣ Concrete
8. **Insulation**
- ✓ Wool
 - ✓ Recycled paper
 - ✓ Double / triple glazing
 - ✓ Shutters
 - ✓ Thick curtains
9. **Energy Efficiency / Renewables**
- ✓ Lights – low energy bulbs
 - Heating systems
 - ✓ Solar
 - ✓ Wood fuel
 - ✓ Hydropower
 - Energy Efficiency / Renewables *continued***
 - ✓ Windpower
 - ✓ Combined heat and power
 - ✓ Photo-voltaics
 - ✓ Condensing boilers
 - ✗ Electric (unless supplied by renewables)
 - ✗ Oil
 - ✗ Gas
10. **Electrical / Plumbing**
- ✗ PVC
 - ▣ Non PVC wire, copper or PE piping
 - ✓ Water saving taps / flush systems
11. **Landscape Works**
- Paving
- ✓ FSC Timber
 - ✓ Local stone
 - ✓ Woodchip bark
 - ✓ Local river aggregate/cobbles (if approved source)
- ✓ Hoggin
 - ✓ Grass

- Concrete, tarmac, block paving

External Structures (as above)

Soft landscape

- ✓ Locally sourced
- ✓ Natives
- ✓ Edible fruits

Weed Control

- ✗ Herbicides
- ✓ Biodegradable mulch mats
- ✓ Organic mulches

Soil Ameliorants

- ✗ Peat
- ✓ Farmyard manure
- ✓ Compost

Fencing

- ✓ FSC hardwood timber