

CONTRACT REGULATIONS

1. BACKGROUND

1.1 Context and Purpose

~~Lincolnshire County Council's expenditure on goods, services and works is second only to expenditure on staffing in magnitude.~~ Each year, the Council procures goods, services and works to the value of hundreds of millions of pounds. These purchases can range from a multitude of transactions that are individually quite small (for example stationery) through to single major projects (for example infrastructure and asset acquisition). The norm is for these items to be obtained on the basis of a contract between the Council or one of its partner organisations and external suppliers.

Contract Regulations outline the general principles to be followed by Chief Officers in procuring goods, services and works from organisations external to the County Council. In association with the County Council's Financial Regulations and Scheme of Authorisation to Chief Officers they comprise a comprehensive control regime governing the financial affairs of the County Council.

1.2 General Requirements

Every contract entered into by the County Council ~~must~~ be within the Council's powers, in connection with the Council's functions and in line with the aims and objectives of the Council and ~~must~~ comply with:

- All relevant statutory provisions;
- The relevant European procurement rules (e.g. the EC Treaty, the general principles of EC law and the EC public procurement directives implemented by the UK Regulations);
- Best Value requirements;
- The Council's Constitution including these Contract Regulations, the Council's financial regulations and scheme of authorisation; and
- The Council's strategic objectives, Sustainable Procurement Strategy and policies ~~and the Contract and Procurement Procedure Rules.~~

The highest standards of probity are required of all officers and Councillors involved in the procurement, award and management of the Council's contracts and all officers should take into account, when procuring, the requirements of the Council's code of conduct.

1.3 Supporting Guidance

These Regulations are underpinned by Contract and Procurement Procedure Rules which relate to procurement activities and replaces previous individual Directorate Memoranda.

1.4 Authority

Any procurement carried out on behalf of the Council may only be undertaken with the appropriate authority of the Council. Chief Officers may have delegated authority under the Scheme of Responsibility for Functions set out in the Constitution. If not, then authority at Councillor level will need to be sought in accordance with the Constitution.

Where there is appropriate authority, procurement may be delegated in line with each Directorates scheme of authorisation. Authorised officers may then enter into appropriate contracts and place orders within approved budgets and in line with these Contract Regulations.

1.5 Scope

The following contracts are exempt from the requirements of these Contract Regulations as they are controlled via other regulations as stated:

- Employee Contracts (see Employment Manual);
- Contracts relating solely to disposal or acquisition of an interest in land (see Property Management Strategy/Financial Regulations)
- The provision of services to or by or the creation of partnerships with other public bodies (see Financial Regulations);

These Regulations apply to all service areas/directorates, units and establishments of the County Council. Where the County Council engages the services of an external private sector organisation to act as its agent in letting contracts on behalf of the Council, it is a requirement of the terms of engagement of the external organisation that they comply with these Regulations in letting contracts on behalf of the Council. Where the Council is working in partnership with another public body which procures goods, services or works as a lead authority on behalf of the Council, the Contract Regulations of the lead authority may be used. If the Council acts as the lead authority to procure goods, services or works on behalf of other bodies then these Contract Regulations must be followed.

These Regulations apply to schools except where they are incompatible with the Scheme for Financing Schools as required under the School Standards and Framework Act 1998 which shall take precedence. If clarification is required advice should be sought from the Executive Director of Finance and Public Protection.

2. GENERAL PRINCIPLES

2.1 Pre-Procurement Procedure

Before commencing a procurement, it is essential that the officer leading the procurement has identified the need and fully assessed any option for meeting those needs. Consideration shall be given to the Council's Sustainable Procurement Strategy as appropriate.

Before undertaking a procurement the officer shall:

- Consider all other means of satisfying the need (including recycling and re-use where appropriate);
- Take advice as necessary from the Council's Commercial and Legal teams

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- Consider whether there is a Partnership or Framework Agreement already in place that should be used;
- Consider external market capability;
- Establish a business case for the procurement (including costs involved in conducting the procurement);
- Be satisfied that a detailed specification and conditions forming the basis of the contract, and a detailed, full and reasonable estimate of the whole life cost of the contract, has been prepared; and
- Ensure all necessary approvals are in place.

2.2 Contracts Subject to the European Union Regulations

UK Public Contract Regulations, which enact EU Directives, apply to all contracts for goods, services or works as detailed in the UK Public Contract Regulations which exceed the EU financial thresholds.

Where an estimated value of a contract exceeds the current EU threshold then the contract shall be awarded in accordance with the above EU Regulations. Under these regulations, the contract may be awarded under the open or, restricted procedure; in exceptional-particular circumstances, other the negotiated procedures are available but suitability should be assessed by the Commercial Team and legal advice obtained as appropriate

Where the EU Regulations apply inclusion on any list does not automatically pre-qualify any firm and absence from the list does not automatically exclude any firm.

The EU Regulations set out the requirements for the publication of contract notices for goods, service, and works contracts and rules relating to technical specifications and the publication of contract award notices.

The EU regulations also set out minimum timescales for various processes, for example, receipt of expressions of interest and tenders.

Contract and Procurement Procedure Rules provide further explanation of the requirements of European Regulations. Commercial/-Legal advice shall be sought by any officer undertaking such a procurement to ensure all legal requirements are met.

2.3 SERCO and VINCI MOUCHEL

The County Council has entered into and invested capital in a wider contractual partnership with Serco which is providing services within the following areas:

- Information Technology
- People Management
- Customer Contact
- Financial Administration

It has entered into separate contractual partnership with Vinci Mouchel for Property Services including Facilities Management; Energy Management; support to Corporate Asset Management; Managed Services; Property Records; Valuations; Travellers Sites; Capital Project Services and Catering (main site and member services).

So that the Council enjoys the maximum benefit to be had from these contracts it is the responsibility of all Chief Officers in conjunction with the Chief Information and Commissioning Officer to ensure that all Officers are aware of when goods and services can and should be purchased directly from Serco and Vinci Mouchel.

Other goods, services and works may have been or may be procured as part of wider contractual relationships with partnering organisations including through frameworks, which have been set up as a result of EU compliant competition. Chief Officers shall ensure that all officers are made aware of when these organisations can and should be used together with written guidance on the process to be followed.

2.4 ESPO

The Council is currently a member of the Eastern Shires Purchasing Organisation (ESPO). Use of this purchasing consortium saves time and cost involved in tendering individual contracts. They can also provide support by undertaking competition on the Council's behalf. These services should be used where ever possible and Chief Officers shall ensure that officers make appropriate use of ESPO. The Commercial Team Procurement Lincolnshire will provide advice on this area of procurement.

2.5 Works Contracts

In the case of works contracts where Council funding is estimated to exceed £100500,000 the requirements relating to briefs and appraisals set out in Financial Regulations B9 should be followed.

2.6 Joint Procurement

Any joint procurement arrangements with other Local Authorities or public bodies including membership or use of Purchasing Consortia (other than ESPO) shall be approved at Councillor level in line with the Constitution prior to the commencement of any procurement on behalf of the Council.

European Regulations may apply to joint procurements and these shall be complied with. Legal advice should be sought.

2.7 Employment Considerations in Procurement

Any procurement which would involve a transfer of staff shall have regard to the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) and be in line with ODPM circular 03/2003 in relation to pensions the Best Value Authorities Staff Transfers (Pensions) Direction 2007. Where there is a TUPE transfer, the Council need to provide bidders with accurate and timely information on all relevant matters. Bidders must be able to demonstrate that they understand and can manage their obligations under TUPE. These requirements apply even if the contract is being re-let and even if any transfer of staff would be between external organisations. Further guidance is given in Financial Procedure 5 and legal guidance should always be sought.

3. CONTRACTING PROCESSES

3.1 Selection of Supplier

There are a number of routes by which the Council may choose to select its supplier for example through a framework; through existing contracts with Serco and Vinci Mouchel; through quotations or tenders. It is important that adequate consideration is given to the selection of the most appropriate route. Demonstration of competition is an integral part in achieving best value.

Advice is available from the Commercial Team~~The four different routes set out below are based on the estimated contract value.~~

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3.2 Estimating the Contract Value

Contract values should be calculated in accordance with the EU Regulations even when the regulations do not apply (further guidance is given in Contract and Procurement Procedure Rules) to ensure consistency. The Council shall make the best use of its purchasing powers by aggregating purchases wherever possible across the Council. Particular goods, services or works shall not be split in an attempt to avoid the applicability of these Contract Regulations or the EU Regulations.

3.3 Procurement Processes

For quotations below £25,000 there is a requirement to use a local supplier where this gives value for money.

Low Value Procurement (Below ~~£10,000~~£5,000)

For these purchases direct approach to a single supplier is acceptable, competitive quotations are not required. The purchasing officer should be satisfied that the costs are reasonable. It is expected that ESPO will be considered for the majority of this type of purchase.

A local supplier should be used where appropriate. Where a local supplier is not used the reason must be recorded in writing.

Medium Value Procurement (~~£10,000~~£5,000 to ~~£25,000~~£15,000)

For contracts or orders of medium value at least three written quotations should be sought based on a Request For Quotations document with appropriate terms and conditions. Where applicable, quotations should be sought from contractors on the Council's Approved List of Contractors. If an approved list is not available appropriate suppliers should be selected in line with the guidance provided by the Commercial team. Where it is not possible to obtain three competitive quotes the officer must keep a record of the reasons for this.

At least one of the quotations must be from a local supplier and a local supplier should be used where they provide the most economically advantageous offer. Where a local supplier is not used the reason must be recorded in writing.

High Medium Value Procurement (~~£2510,001~~15,001 to ~~£75,000~~the EU threshold for Services)

Where EU Treaty principles require advertisement (in accordance with the "EU Commission Interpretative Communication on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives") the contract must be advertised in Source Lincolnshire and Contracts Finder.

Otherwise unless a Chief Officer or his or her representative determines that such advertisement is appropriate to achieve value for money, high medium value contracts will be awarded without advertisement.

~~For contracts or orders of a high medium value~~Instead, at least ~~three~~four written quotations should be sought based on a Request For Quotations document with ~~simplified~~appropriate terms and conditions.

At least two of the quotations must be from local suppliers.

Where applicable, quotations should be sought from contractors on the Council's Approved List of Contractors. Where it is not possible to obtain ~~three~~four competitive quotes the officer must keep a record of the reasons for this.

High Value Procurement (~~£25k below~~Above the OJEU Threshold for Services) ~~but not subject to the EU Regulations~~

Contracts for services and supplies of a high value must be procured in accordance with EU procurement law as such contracts will be covered by the procurement regime.

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For works contracts of a high value but below the EU threshold for works at least ~~five~~six tenders should be invited. Invitation ~~can~~may be ~~by~~by direct invitation from a select list if the EU Treaty principles do not require advertisement.

If EU Treaty principles require advertisement tenders shall be sought by

- open competitive tendering via public advertisement (Contracts Finder and Source Lincolnshire) ~~and supplemented by advertisement in appropriate newspapers and journals if appropriate;~~ or
- a Framework let in accordance with EU legal requirements. ~~Alternatively competitive tendering following targeted invitations to at least six contractors can be used.~~

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Where it is not possible to obtain ~~five~~six competitive tenders the officer must keep a record of the reasons for this.

High Value Procurement subject to European Regulations

The EU Regulations shall be followed for all procurements subject to them. This may include the use of a Framework let in accordance with EU legal requirements. Contract and Procurement Procedure Rules provide further guidance.

3.4 Common Principles

The following principles should be borne in mind for all four procurement routes:

The Council shall only invite tenders from contractors if it is satisfied as to the contractors:

- Eligibility
- Financial standing
- Technical Capacity

Financial Standing

Where it is envisaged that the value of any contract shall exceed £150,000 in total or where a contractor is seeking access to a Standing List, or in other circumstances where a Chief Officer believes it necessary, the Executive Director of Finance and Public Protection shall be requested to vet the financial standing of the organisations being considered prior to the invitation to tender being issued.

Technical Capacity

This includes, but not exclusively, the Contractor's capability, quality management systems including human resources, health and safety, equality, sustainability issues and risk management where relevant to the performance of the contract.

Any procurement subject to EU Regulations shall comply with the appropriate pre-qualification criteria contained in these Regulations.

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3.5 Framework Agreements

Framework agreements are used where the Council wishes to aggregate demand for the supply of goods, services or works over a period of time without conducting a new procurement exercise for each individual contract.

Where the Council has entered into a Framework Agreement through procurement or is able to call off from existing Framework Agreements procured by other local authorities, groups of local authorities, appointed agents of local authorities, central government agencies or the Council's own procurement consortium ESPO, then the Council may benefit from using those contracts without entering into a separate procurement, provided that in procuring the Framework Agreements the appropriate EU Regulations were followed. Legal advice should be sought as appropriate.

3.6 Use of standing lists

This is the standard approach for Building, Civil Engineering and Related Services Contracts. The approach is also used for Social Services Care Contracts. Standing

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~~Lists of contractors should be established and tenderers invited from within those lists. The number to be invited will be dependent upon the likely value of the contract, as shown in the procurement values above.~~

~~3.7 — Post Quotation or Post Tender Negotiation~~

~~In any of the above routes the Chief Officer in consultation with the Executive Director of Finance and Public Protection, may negotiate with tenderers if the tender procedure has allowed for it and if this is considered appropriate in the interests of securing best value.~~

~~Where procurement is conducted pursuant to the EU regulations through either the open or restricted procedures, no post tender negotiations are permitted. The Council may seek clarification from suppliers where appropriate in conjunction with the Commercial Team.~~

~~At all times during the procurement the Council shall consider and implement the principles of non-discrimination, equal treatment and transparency.~~

3.8.3.4 Award of Contracts

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Tenders subject to the EU Regulations shall be evaluated in accordance with the relevant regulations and the award criteria. All tenders not subject to the EU Regulations shall be evaluated in accordance with the award criteria which must be ~~was~~ notified to potential tenderers.

Unless the award of the contract falls within the delegated authority of the Chief Officer, Councillor approval should be sought in line with the Council's Constitution.

The decision to accept a quote or tender in excess of the available budget will be subject to the rules relating to budget changes contained in the Financial Regulations.

3.9.3.5 Exceptions to Normal Routes

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In exceptional cases where a Chief Officer believes an alternative route to the four normal routes is required, (subject to the miscellaneous provisions in this document), the Chief Officer should comply with the requirements of this clause. For contracts with an estimated value of £250,000 and above, the proposal should be taken to the Executive for approval prior to the contract being entered into. For contracts with a value of between £75,001 and £250,000 the proposal should be taken to the relevant Executive Councillor for formal approval prior to the contract being entered into. For contracts with a value between £10,001 and £75,000 approval in writing can be given by the Chief Officer. The Chief Officer shall keep a register of contracts that they have approved as exceptions and the reasons why.

If public procurement (EU thresholds) rules apply this ~~shall~~may limit the ability to let contracts other than through competition. In this case ~~legal~~ advice should be sought from the Commercial team or Legal Services. Regardless of whether EU Regulations permit the use of direct negotiation, exception must be sought to the normal rules set out in these Contract Regulations in accordance with this section.

3.10 3.6 Electronic Tendering

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Requests for quotations ~~above £10,000~~ and invitations to tender ~~must~~may (other than in exceptional circumstances) be transmitted by electronic means using Delta. Quotations and tenders ~~may be~~ submitted by electronic means must ensure that provided that:

- Evidence that the transmission to the supplier was successful and is recorded;
- Each quote or tender submitted to the Council electronically is in the manner prescribed in the advertisement or the invitation to tender documents; and
- Electronic tenders are kept in a separate secure structure which cannot be opened until the deadline has passed for receipt of tenders. Electronic quotations are to be kept in a separate secure folder by the officer conducting the procurement.

4. CONTRACT MANAGEMENT (All Contracts - Revenue and Capital)

All contracts should be in writing and in place prior to receiving goods or commencement of the works or service. Contracts shall be entered into based on the

Council's relevant terms and conditions, which shall be included with each purchase order, invitation to tender or negotiation. In the case of medium and high value procurement where alternative terms and conditions are proposed, legal advice shall be sought.

All medium high value and high value contracts must be recorded on the Council's contract register and a copy stored electronically in the Council's contract database.

Contracts should be drawn up using the relevant professional advice and support. Contracts should be signed in accordance with the Directorates scheme of delegation. Where the value of the contract exceeds £75,000 legal advice should be obtained as to whether the contract is executed as a deed.

All variations to contracts shall be in writing.

When the total expenditure under any contract (as opposed to scheme) exceeds or is likely to exceed the original contract sum (adjusted for subsequent approved price increases) by 5% or more (except overspendings of less than £10,000) and the reasons for the excess have not been the subject of an earlier report, the responsible Chief Officer shall submit a written report to the relevant Executive Councillor. A report of all overspends will be submitted annually to the Value for Money Scrutiny Committee.

4.1 Contract Extension

Any contract may be extended in accordance with its terms. Approval for such extensions shall be sought at the relevant level in line with the Council's Constitution.

Where the terms do not expressly provide for extension, contracts subject to EU Regulations may be extended by negotiation in accordance with the rules set out in the EU Regulations. Such extensions and extensions of all other contracts should be treated the same as procuring with a single supplier and the requirements set out in the Exceptions to Normal Routes in these Contract Regulations should be applied.

4.2 Records of contracts, quotes and tenders

The officer with delegated authority in respect of a particular procurement shall maintain a list of all quotations and tenders received. In addition the officer shall follow the relevant opening procedures contained in Financial Procedure 5.

Each Corporate Director shall ensure that the Council's contract register is maintained at all times and reflects the his/her own register of all medium ~~and~~ high value and high value contracts entered into by his/her department.

~~For every individual contract a Contracts file shall be maintained.~~

4.3 Termination of Contract

For all medium and high value contracts, termination shall be approved in line with the delegations contained in the Council's Constitution. Legal advice should be sought as appropriate.

5. MISCELLANEOUS PROVISIONS

5.1 Pension Fund Managers & Associated Professional/Technical Service Providers

Responsibility for these contract arrangements rest with the Pensions Committee and is covered under Article 7 of the Constitution.

5.2 Local Authority Companies

Where consideration is being given to the establishment of a local authority company or involvement in other companies, even where they are not regulated under the Local Government and Housing Act 1989 the relevant Chief Officer must consult the Executive Director of Finance and Public Protection and the Chief Legal Officer on all aspects of the proposal (i.e. financial, legal and personnel related) prior to seeking approval from the Executive.

5.3 Charging for discretionary services

~~The Local Government Act 2003 allows best value authorities~~ Council has power to charge for discretionary services

A discretionary service is one that the authority is authorised, but not required, to provide. The income generated from such charges should not exceed the cost of service provision.

The rates set for such services, and the manner in which the income is collected, will be in line with the Financial Procedure for Income.

Where consideration is being given to the introduction of charges for discretionary services the relevant Chief Officer must consult the Executive Director of Finance and Public Protection and the - Chief Legal Officer on all aspects of the proposal (i.e. financial, legal and personnel related) prior to seeking approval from the Executive.

5.4 Powers to Trade

~~The Local Government Act 2003 provides powers for the Secretary of State to make an order enabling best value authorities to trade in any of their ordinary functions.~~

~~The Local Government (Best Value Authorities) (Power to Trade) (England) Order 2004 permits best value authorities to trade in function related activities through a company.~~

The authority ~~can~~ has power to perform, for commercial purposes, anything it is normally authorised to do for the purpose of carrying out its normal functions but only if it does so through a company.

The authority cannot perform, for commercial reasons, its ordinary functions that it is already required to carry out.

Where consideration is being given to ~~utilise the trading power~~ performing functions for a commercial purpose the relevant Chief Officer must consult the Executive Director of Finance and Public Protection and the Chief Legal Officer on all aspects of the proposal (i.e. financial, legal and personnel related) prior to seeking approval from the Executive.

5.5 Review Arrangements

The Executive Director of Finance and Public Protection shall review these Regulations annually.

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