



**Burnley.gov.uk**

# **STANDING ORDERS FOR CONTRACTS**

***DRAFT Version 9.0***

*(April 2018)*

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## 1.1 Revision History

<b>Version</b>	<b>Date</b>	<b>Author</b>	<b>Description</b>
1.0	April 1994	Tom Forshaw	Original
2.1	17/10/2006	Chris Gay	Executive Approval
2.2	29/01/2010	Chris Gay	Updated EU Thresholds
3.0	14/07/2011	Chris Gay	Review of Constitution and e-tendering
4.0	17/09/2013	Chris Gay	Review of Constitution
5.0	10/04/2014	Chris Gay	Contractor pre-approval, New Thresholds
6.0	Nov 2015	Chris Gay	Council reorganisation & minor amends
7.0	Dec 2016	Eric Dickinson	Sealing of documents
8.0	Feb 2017	Eric Dickinson	Council reorganisation & Review
9.0	April 2018	Eric Dickinson	Amendments after Organisation Review

For the purposes of this document Chief Officers are defined as including only the Chief Executive and the Chief Operating Officer

## **2. 0 Standing Orders for Contracts: Context**

Local Authorities are required by law to maintain proper arrangements for the administration of financial matters. The following Standing Orders for Contracts (SOC) apply to the procurement of all supplies, services and works, and the disposal of assets on behalf of Burnley Borough Council. They provide the framework, with associated relevant policies<sup>1</sup>, to enable the Council to conduct financial matters to the highest standards of probity in a clear, visible and transparent way and ensure the fair selection of suppliers.

Equally important are the provisions of value for money through competition and the avoidance of practices which may restrict, prevent or distort competition. These Standing Orders facilitate delivery of value, competition and best practices.

Everyone involved in procurement and contracting on behalf of the Council, regardless of value, is required to comply with these Standing Orders. This includes any partnership or grant funded arrangements for which the Council is the accountable or host body.

Exceptions to these Standing Orders may be sought where expediency is required, for example in response to an emergency or due to the specialist nature of the supplies, services or works required. In such cases the use of 'emergency powers' as set out in the Council Constitution are to be followed.

Where these Standing Orders refer to action being taken by a Committee or Sub-Committee such action may require confirmation by the Executive or the Council unless authority has been delegated to that Committee or Sub-Committee.

The Council is committed to providing value for money in all it does; and recognises that this may involve following new and innovative ways of procurement. As such these standing orders will be kept under periodic review to ensure they remain fit for purpose and allow the flexibility to adopt new approaches.

NOTE: The word 'contract' includes any binding arrangement whether documented in a formal contract, an accepted order, or in correspondence. It also normally includes binding arrangements made verbally, however these Standing Orders prohibit the making of a verbal contract with a value greater than £1,000.

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<sup>1</sup> Such policies will be clearly identified where relevant within SOC

## 2. 1 Contract Value Thresholds

<b>Threshold</b>	<b>Summary procurement method</b>	<b>Go To:</b>
<b>Less than £2,000</b>	Verbal agreement with written or electronic record; market testing undertaken appropriate to the need or value of the contract/ purchase	<a href="#">Page 11</a>
<b>Above £2,000 and Below £20,000</b>	Market testing undertaken by the method deemed most appropriate by the relevant Head of Service (min 3 competitive quotes) or use available Framework	<a href="#">Page 12</a>
<b>Above £20,00 and Below £100,000</b>	Between three and five competitive quotes obtained. Supplier can be drawn from Open Tender or other procedures, a Framework, Pre - Approved Suppliers/ Select list. Contracts Finder website used to advertise opportunities	<a href="#">Page 12</a>
<b>Above £100,000</b>	Executive authority required. Tenders invited, public advertisement (Contracts Finder). Supplier can be drawn Open Tender or other procedures, a Framework, Pre - Approved Suppliers/ Select list. Compliance with EU Regulations required above appropriate thresholds	<a href="#">Page 14</a>

## 2. 2 European Union: Public Procurement Thresholds

<b>Contract</b>	<b>Threshold</b>	<b>For further Information go to:</b>
<b>Supplies*</b>	<b>£164,176</b>	Official Journal of the European Union (OJEU) <a href="#">Thresholds</a> See: 'Other public sector contracting authorities'  * <b>Thresholds from 1<sup>st</sup> January 2016</b> check website for further updates: web address on page 22, or click 'Thresholds' link above. Please note that thresholds are generally updated every 2 years – the next update is due in January 2018
<b>Services*</b>	<b>£164,176</b>	
<b>Works*</b>	<b>£4,104,394</b>	
<b>Concessions*</b>	<b>£4,104,394</b>	

As a Public Body the Council is required by law to comply with UK and EU procurement legislation. Standing Orders for Contracts identify these requirements and the subsequent actions needed as and when applicable.

In all cases where purchase or contract values are above EU thresholds the subsequent procurement activity must follow the prescribed EU procedures. Failure to comply with this may lead to a formal challenge of our procurement decisions that could result in severe penalties, including financial, being awarded against the Council.

## **2. 3 Contact Details for: Burnley Procurement Officer**

 **01282 425011 Ex 3116**

Standard tender documentation is available via the Procurement Officer. To prepare and publish an OJEU notice (see SOC 18i) the Council uses the TED e-Notices website for EU compliant procurement. For further detail, contact the Procurement Officer.

## **3. 0 Standing Orders Applicable to all Contracts: General Matters**

The following Standing Orders apply to all contracts and sales agreements or purchase orders:

### **SOC 1. Compliance with Contract Policies**

- i. Officers dealing with procurement and contracting must do so in accordance with Burnley Borough Council's Finance Procedure Rules and Guidance issued by the Head of Finance and Property for the operation of Procurement Systems, these Standing Orders for Contracts, UK Domestic Regulation (Public Contract Regulation 2015 or successor regulation) and European Procurement Directives
- ii. Unless specifically provided otherwise, they apply in the event of the Council or delegated officer acting as agent for another local or public authority or company or organisation. They also apply where the Council acts as the Accountable Body under any partnership or external funding arrangements
- iii. The Chief Officers and Heads of Service must ensure that these Standing Orders are observed throughout the Service(s) under their control. They must ensure that appropriate staff are aware and comply with these requirements.
- iv. That joint procurement contracts or purchasing frameworks established through collaboration, or other similar arrangements, must be used when procuring supplies, services or works that are the subject of those arrangements
- v. The potential for collaboration with other public bodies must be considered when planning a procurement exercise or changes in service provision, including use of existing framework opportunities
- vi. Once the need to procure supplies, services or works with a value of £20,000 or above has been established, the Council's Procurement Officer must be contacted to establish if collaborative opportunities or existing arrangements are available to avoid unnecessary cost, duplication and mobilisation

### **SOC 2. Value Added Tax**

- i. Amounts stated in these Standing Orders and within Tender documentation exclude Vat Added Tax (VAT)

### **SOC 3. Estimate of Costs (Market Testing and Request For Quotation)**

- i. A genuine estimated cost of supplies, services, works or income from sales should be obtained in line with the appropriate SOC thresholds prior to starting a procurement or contracting exercise (see also SOC 6 (ii) on whole life costs)
- ii. To stimulate competition approved e-procurement platforms (Including the Chest) may be used to advertise requests for quotation (RFQ) for purchases with an estimated value above £1,000 and up to £20,000
- iii. The RFQ must include a short written specification detailing the Council's requirement; a clear pricing schedule and details of what other information is to be returned. It must set out the evaluation criteria to be used
- iv. Subject to legislative compliance, the evaluation may include factors which demonstrably aim to achieve the delivery of value for money and provide opportunities for local business
- v. In some cases trading concessions may not match SOC threshold limits, in such cases consideration of value must be calculated in as required by the Concessions Directive

**SOC 4. Land Transactions** (*EU Directives do not apply here*)

- i. Land transactions are to be dealt with as set out in the Scheme of Delegation (Part 3 of the Council's Constitution). Where tenders are invited SOC 18, 20 and 21 will apply where legally possible, save that the highest bid will be accepted by the Head of Legal and Democratic Services or officer with delegated authority
- ii. The contract documentation in relation to land transactions shall be in such form as the Head of Legal and Democratic Services determines is sufficient to protect the Council's interests

**SOC 5. Disposal of Assets**

- i. Assets with a collective value below £500 may be disposed of by any means determined by the relevant Head of Service
- ii. Assets valued at between £501 and up to £50,000 must be disposed of by a method chosen by the Head of Service and a written justification of the choice retained
- iii. Assets valued over £50,001 including land and property must be disposed of in accordance with SOC 4 and the Council's Financial Procedure Rules

- iv In any disposal of assets confirmation must be obtained that any personal data or information has been removed or destroyed in confirmation with the Council's Records Management and Information Security Policies
- v Written records must be maintained of all actions relating to the disposal of assets.

### **SOC 6. Splitting of Contracts**

- i. Contracts cannot be artificially split with a view to bringing their value below any SOC threshold or Public Procurement (EU) threshold
- ii. The principle of aggregation must be applied to arrive at a total contract value in relation to meeting requirements within SOC and Public Procurement (EU) thresholds i.e. the total contract value is the sum of the annual values for the contracting period. i.e.. a five-year contract term at an annual value of £12,000 per annum, has a £60,000 contract value etc.

### **SOC 7. Contracts to be in Writing and in Official Systems**

- i. All contracts over £2,000 shall be in writing in advance using appropriate procedures (tender or purchase order). Contracts under £2,000 may be made verbally with a written record kept of the details of the contract
- ii. Purchase orders must be raised on the Civica Purchasing system for all supplies, services and works. Petty cash and p-cards may also be used up to their appropriate limits
- iii. The officer should ensure that there are appropriate contract arrangements in place prior to the supply of supplies, services or works; further guidance on this should be sought from the Council's Legal Department as required

### **SOC 8. Capital Expenditure**

- i Once allocated, capital expenditure will be included in the Capital Budget for approval and release by the Council
- ii Finance Procedure Rules provide further guidance and details on the requirements for capital Expenditure

### **SOC 9. Conditions to be included in Contracts**

- i. Officers must seek guidance from the Council's Legal Service as to any conditions that may need to be incorporated into contracts

- ii. Where possible all contracts must contain a clause on publication of payment and confidentiality terms highlighting the implications of Freedom of Information requests and publication of public spending information
- iii. Where contracts involve the handling of names and addresses or personal data of the public, service users, Councillors or employees of the Council or where confidential data is held or processed or where the contracting officer deems it appropriate, contractors shall be required to comply with UK Government Cyber Essentials scheme<sup>2</sup> or be part of the Public Service Network
- iv. Appropriate registration documentation must be provided prior to transfer of any personal or confidential data

### **SOC 10. Sub-Contractors**

- i. Where a contractor permits a sub-contractor to be appointed the contract shall ensure that the sub-contractor enters into a contract with the main contractor
- ii. The contracting officer shall consider the requirement of the terms of the sub contract indemnifying the contractor and the Council against any breach of their own obligations, after a risk assessment of the liability and the approval of the relevant Head of Service
- iii. The term 'Sub-Contractor' shall include a contractor who is party to a contract with the Council in respect of which an internal or external contractor acts as main contractor
- iv. Tender responses received from a third party must be rejected i.e. where a contractor or supplier has been invited to tender and they subsequently pass on the tender in order for a third party to respond

### **SOC 11. Contract Variations**

- i. All arrangements for variations to existing contracts shall be in writing and signed by the relevant Head of Service or by another responsible Officer as he or she may determine
- ii. Variations that would increase the contract cost in excess of an additional £50,000 shall not be made without the authority of the Executive, appropriate Council Committee or Sub-Committee or by use

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<sup>22</sup> <https://www.cyberaware.gov.uk/cyberessentials/>

of emergency powers as appropriate, and set out in the Council's Constitution

## **SOC 12. Exemptions** from Standing Orders

- i. Where the contract is of an estimated value up to and including £100,000 exceptions can be made by the relevant Head of Service, with the approval of the Head of Legal and Democratic Services or the Head of Finance and Property . The reason for the exception and the approval shall be recorded in writing and retained with the Council's copy of the contract
- ii. Where the contract is of an estimated value exceeding £100,000 exceptions from these Standing Orders can be made only by the Executive, the Council or the relevant Committee (determined by reference to Part 3 of the Constitution) and their reasons for making the exception shall be recorded in minutes
- iii. For the avoidance of doubt the provisions elsewhere in the Council's Constitution concerning Executive decision making by Individual Members of the Executive shall also apply to this part
- iv. Where expediency is required officer's should consider if they can comply with existing exceptions or if they need to invoke the use of emergency powers provided for in the Council's Constitution
- v. Approval of an Exemption to waive Standing Orders must be specific as to which Standing Orders are being waived
- vi. No exception can be made that would contravene any applicable UK or EU Procurement legislation
- vii. Any contracts entered into through collaboration with other public bodies, where a competitive process has been followed, that complies with the contract procedure rules of the leading organisation, will be deemed to comply with SOC (13 to 20 and 22) and no exemption is required
- viii. Where the supplies, services or works to be procured are funded, partially or fully, by an external funding body the Council may use pre-approved contractors not registered on Constructionline, or other pre approval organisations that the Council may choose to use from time to time, where the pre-approval process of the funding body has identified such contractors as meeting expected requirements of the funder and the Council; and where appropriate such requirements comply with UK and EU Procurement legislation.

### **3.1 For Contracts Less than £2,000**

#### **SOC 13. Letting Contracts less £2,000**

- i. Contracts or sales orders with a value below £2,000 may be made verbally, with a written or electronic record being kept within an official system i.e. purchasing system or p-card
- ii. Market testing may be carried out at the frequency and by the method deemed most appropriate by the relevant Head of Service, where this is undertaken a record of the method used must be kept

### **3.2 For Contracts between £2,000 and £20,000**

#### **SOC 14. Letting Contracts Above £2,000 and up to £20,000**

- i. For contracts above £2,001 and up to £20,000 the contracting officer must ensure that market testing is carried out so that the Council attains value for money in procuring supplies, services and works
- ii. Market testing should be carried out at the frequency and by the method deemed most appropriate by the relevant Head of Service, a record of the method used must be made
- iii. Recommended methods include:
  - At least three written competitive quotations or tenders should be invited from suppliers where practicable
  - E-tendering platforms such as “the Chest” may also be used to conduct the tender process electronically where practicable
- iv. The Government portal “Contracts Finder”<sup>3</sup> must be used to place a notice for all tenders or requests for competitive quotations for purchases above £25,000
- v. Contracts Finder may also be used for opportunities below £25,000
- vi. Pre-Approved contractors may be included in the market testing (see guidance at Appendix A)
- vii. If other than the lowest quotation is accepted the contracting officer shall record the reason in writing and that record must be kept with the Council’s copy of the contract or purchase order
- vi Subject to legislative compliance due consideration must be given to the appropriateness of local suppliers being provided with the opportunity to compete; using the principles of positive action (see guidance in Appendix

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<sup>3</sup> <https://www.gov.uk/contracts-finder>

A8).

### **3. 3 For Contracts Above £20,000 and up to £100,000**

#### **SOC 15. Letting contracts above £20,000 and up to £100,000**

- i. The Council's Procurement Officer should be consulted to ascertain if the need can be met through existing collaborative procurement arrangements or if there is an opportunity for joint procurement (See SOC 1.v)
- ii. Contracts estimated to be of a value above £20,000 and up to £100,000 must not be let unless a reasonable number of written competitive quotations or tenders have been received, usually between three and five
- iii. Quotes or tenders can be requested and obtained in writing or through an approved e-tendering platform, and the preferred method will be determined by the relevant Head of Service
- iv. Pre-Approved contractors may also be used (see guidance in Appendix A)
- v. Quote or tender documentation must state:
  - A short specification detailing the Council's expectation and requirement
  - A clear pricing schedule and details of what other information is to be returned
  - The criteria which the Council will use to evaluate the quotations
  - Subject to legislative compliance, factors which demonstrably aim to provide value for money and opportunities for local business to compete
  - The last date and time by which the quotation should be returned
  - The name of the officer to whom they should be returned
  - Written quotations must be returned in plain sealed envelopes which besides the addressee details, should bear only the word 'Quotation or Tender' and the subject to which it relates
  - All electronic quotations must be submitted through an approved e-tendering platform or portal

#### **SOC 16. Receipt of Quotations: contracts above £20,000 and up to £100,000**

- i. No written quotations or tenders shall be considered unless contained in an envelope marked with the words 'quotation/ tender' that are received within the specified time
- ii. Appropriate arrangements must be made to ensure quotations and tenders are kept secure until opening

- iii. All written quotations or tenders must be opened by the Head of Service (or authorised officer) and witnessed by an officer other than the contracting officer
- iv. Electronic quotations or tenders should be submitted through an approved e-tendering platform or portal; these will be into a secure designated e-mail address which will be accessible, at the designated opening time, only by the relevant Head of Service or authorised officer
- v. Once the submission deadline has passed a summary of quotations and tenders received shall immediately be recorded and initialled by officers present
- vi. If any quotation or tender other than the lowest is accepted the reasons for doing so shall be recorded by the person with authority to accept, and details should remain available for inspection for the life of the contract or a period of six years, whichever the longer
- vii. An appropriate contract will be formed either by using the Civica Purchasing System to place an order or other appropriate methods to form a contract with the required terms; refer to Legal Services for further advice

### **3. 4 For Contracts Above £100,000**

#### **SOC 17. Authorisation of Contracts Above £100,000**

- i. No tenders for:
  - Carrying out work
  - Sale or supply of goods or materials
  - Sale or supply of services
  - Disposals of any interest in land or property, (as set out in part 3 of the Constitution) subject to the application of the scheme of delegation

with an estimated cost in excess of £100,000 shall be sought except by authority of the Executive (or Committee, Sub-Committee or Council if appropriate)
- ii. The Executive or delegated officer has the power to accept a tender or quotation in accordance with these Standing Orders. Unless specified otherwise the default position is that the Executive accepts the tender. This is acceptance prior and subject to the formation of a formal contract

## **SOC 18. Contracts above £100,000 require Public Notices**

- i. No contract which exceeds an estimated £100,000 in value shall be entered into unless a public notice has been issued for the given opportunity.
- ii. This MUST be done through publication of a contract notice as follows:
  - On the Governments' Contracts Finder website
  - In the Journal of the European Union (OJEU) where the contract value exceeds the appropriate EU threshold
- iii. In addition to ii above a notice or advert may also be placed:
  - In one or more newspaper circulating in the district
  - Electronically on the the Council's website
  - In a relevant journal where the Head of Service deems it appropriate
- iv. The notice shall invite tenders and shall state the last date and time for receipt of tenders (not normally less than fourteen days from the date of publication, and longer if notice in OJEU is required)
- v. The notice shall state that no tender will be considered unless it is in a plain sealed envelope or parcel addressed to the Head of Legal and Democratic Services and bearing the words 'Tender for [*name of tender*]' with no other identifying mark OR that it is submitted and received within the appropriate time scales through an approved e-tendering platform
- vi. Where a contract value exceeds £100,000 or OJEU thresholds the Council may enter into an existing Framework Agreement; for example a framework set up by the Governments' Crown Commercial Service, without giving public notice or advertising in the Journal of the European Union. This is providing that the Framework Agreement has been set up in compliance with appropriate European Directives, that the Council is able to access the Framework services etc.; and that the Council complies with any competition requirements required by the framework as necessary

## **SOC 19. Contract Conditions for Contracts above £100,000**

- i. Every contract exceeding the value of £100,000 must state:
  - The work to be done or the services to be provided and/ or the materials to be supplied
  - The price and any discounts
  - The time within which the contract is to be carried out
  - Also, a determination should be made by the technical advisor, and agreed with Internal Audit, through assessment of the

relevant risks as to any requirements with regard to the provision and payment of liquidated damages where the contractor fails to meet the terms of the contract

- ii. That if the contract is not carried out properly or the time limit is not met, the Council can:
  - Cancel all or part of the contract
  - Complete the contract
  - Recover from the contractor, or parent company or insurance, any additional costs in completing the contract
  - Take other legal action against the contractor
- iii. In every formal contract for the execution of work or provision of supplies and services, the following clauses or a clause to similar effect shall be inserted:
  - Every contract must state that all supplies, services or works must comply with any relevant British Standards, British Code of Practice or European equivalent in force at the date of tender
  - Every contract must state that the Council can cancel the contract and recover any resulting losses if the contractor or their employees or agents, with or without his/ her knowledge:
    - a) Does anything improper to influence the Council to give them the contract OR
    - b) Commits an offence under the Bribery Act 2010 or under Section 117(2) of the Local Government Act 1972 and amendments or successor Acts
- iv. Where there are existing forms of contract available the contracting officer should consider their use, subject to meeting the above minimum requirements
- v. The Head of Service or delegated officer will determine, through assessing the risks relevant to the contract, if a Performance Bond is required, and the value and conditions to be met by such a Bond (see Financial Procedure Rules)

**SOC 20. Receipt of Tender for Contracts above £100,000**

- i. No tender above £100,000 shall be considered unless it is contained in an envelope or parcel and is received physically in the Head of Legal and Democratic Services's office OR received securely through an approved e-procurement platform or portal, as is described in Standing Order 16 iv, within the time specified in the public notice
- ii. All such tenders, however received, shall remain in the custody of the Head of Legal and Democratic Services until the time appointed for their opening

- iii. All such tenders shall be opened at the appointed time by a member of staff appointed by the Head of Legal and Democratic Services
- iv. Where a tender invitation provides for e-tendering, electronic tenders shall be opened at the appointed time by a member of staff appointed by the Head of Legal and Democratic Services For both paper and electronic tenders received a proforma should be completed identifying the tender name, tendering body and price offered. This record should be signed by those officers present identifying their official capacity. This register will be maintained by officers of Legal and Democratic Services The tender shall be passed to the relevant Head of Service or such other officer they may determine for evaluation and/ or the required pre-contract checks
- v. No person shall make public the contents of the tenders until the contract has been let. This shall not prevent the relevant Head of Service and Executive or Committee from seeking such legal, financial or technical advice on any tender, as they require for evaluation purposes

#### **SOC 21. Signing and Sealing of contracts**

- i. Contracts over an estimated value of £100,000 shall be submitted to the Head of Legal and Democratic Services or Senior Solicitor for approval and signature. They shall be accompanied by a certificate signed by the relevant Head of Service or such other senior officer as they may determine, stating that there is budget provision for the expenditure and that Standing Orders and appropriate Public Procurement Regulations have been complied with
- ii. Such contracts may be sealed where the Head of Legal and Democratic Services considers it appropriate. Any two persons will attach the seal from the group consisting of the Council's Solicitors and Fellows of the Chartered Institute of Legal Executives or by one of that group and the Chief Executive and the Chief Operating Officer
- iii. The appropriate officer is responsible for ensuring that a signed contract or other appropriate contact arrangements are in place in advance of the supply of goods, services or works. Refer to Legal Services for further advice

#### **SOC 22. Acceptance of Tenders - Contracts above £100,000**

- i. The Head of Service or the Officer to which power to accept was delegated by the Executive shall select a tender after evaluation. If he or she selects other than the most economically advantageous tender that fact and the reasons for it shall be reported to the next meeting of

the Executive, Council or relevant Committee and recorded in its minutes

- ii. Where the power to accept the contract still rests with the Executive, Council or Committee, the checked tenders shall be submitted to the Executive, Council or relevant Committee for evaluation and selection of the winning tender/contractor.
- iii. If the Executive, Council or Committee selects other than the most economically advantageous tender its reasons shall be recorded in the minutes.

### **SOC 23. Contract Register and Data Transparency**

- i. Details for all contracts above £5,000 should be maintained centrally within the Legal and Democratic Services office
- ii. Details of all contracts and expenditure above the limit defined in the Council's policy on Data Transparency should be available for publication as set out in the policy
- iii. The contract officer is responsible for informing the Head of Legal and Democratic Services of the details of the contract as required under the requirements on Data Transparency

## **Appendix A**

### **The Tender Process: Guidance to Maintain Compliance with Procurement Regulations**

#### **1. Invitation of Tenders: Steps to Follow**

The following sections identify steps that can be undertaken to invite a tender or quote, in all cases SOC and all Public Procurement Regulations applicable to local authorities must be followed. Tenders must be sought through, but are not limited to, the following procedures:

- Open Tender
- Restricted Tender
- Competitive Dialogue
- Competitive Dialogue with Negotiation
- Innovation Partnership
- Negotiated Procedure without Prior Publication

For further information please contact the Procurement Officer

## **2. Pre-Approved Contractor (Works)**

2a The Council can select pre-approved contractors to be invited to tender or quote for construction related works below the EU Works threshold as follows:

- i. A list of approved contractors must be drawn up using companies currently registered with ConstructionLine  
<http://www.constructionline.co.uk>
- ii. An advert for the opportunity must also be placed on the Contracts Finder website and contractors selected through a two-stage process using the PAS 91 PQQ. Those contractors selected to participate will then be included with those contractors identified through the Constructionline route
- iii. Where a contract is ABOVE the EU procurement threshold for Works pre-approved contractors can be invited to tender as above BUT the procurement procedure used MUST comply with EU Regulations
- iv. Where a contract is BELOW the EU procurement threshold for works between three and five contractors who are pre-approved through the above route to carry out contracts of the same type and up to the value for the contract which the Council proposes to enter into shall be invited to tender
- v. Where the works to be procured are funded, partially or fully, by an external funding body the Council may use pre-approved contractors not registered on Constructionline where the pre-approval process of the funding body has identified such contractors as meeting expected requirements of the funder and the Council; and where appropriate such requirements comply with EU legislation

N.B. The Council will promote Constructionline to contractors and suppliers as the contractor pre-approval route for Council works opportunities.

2b. When selecting pre-approved contractors invitations must be sent to:

- i. Those contractors identified at 2a i & 2 iii above, to participate in the given opportunity
- ii. If less than three contractors are identified as being pre-approved for the given opportunity then alternative tender procedures as prescribed within SOC should be considered

## **3 Absence of Pre-Approved Contractor (Works)**

3a. Below the EU Works threshold and where there are no registered contractors for a particular category of works on Constructionline then a Select List may be drawn up. However, the Open Tender route should be considered first. Where a Select List is to be drawn up, this can only be for opportunities below the EU Works threshold as follows:

- i. The method used should be through an advert for expressions of interest and for contractors to be selected through a two-stage process using the PAS91 PQQ
- ii. Expressions of interest for opportunities above £25,000 must be advertised on Contracts Finder; the Council Website, appropriate local newspaper or commercial journal may also be used
- iii. Only those contractors selected through the PAS 91 PQQ may be included on a Select List. In all cases there must be compliance to appropriate UK and EU procurement regulations.

#### **4. Open Tender Procedure**

4a. The following requirements apply where Open tenders are sought. The advertisement for the tender opportunity must be published appropriate to the contract value as described in SOC. The advertisement must:

- i. Invite tenders to be submitted
- ii. State the nature and purpose of the contract
- iii. State where further details may be obtained
- iv. State the date and time by which tenders must be received. This must be at least 14 days after the publication of the advertisement. For tenders with an estimated value above OJEU thresholds this date must be in accordance with EU procurement rules.

4b. Only in situations where the estimate is above the OJEU thresholds can a more than one stage procurement be followed. The use of an Selection Questionnaire (SQ) can be used with an Invitation to Tender (ITT) or similar. The SQ template is available from the Procurement Officer.

#### **5. Submission of Tenders: Steps to Follow**

5a. Invitations to tender must state that no tender will be received unless it is enclosed in a plain addressed sealed envelope. The envelope must bear the word 'Tender for [*name of tender*]'. The envelope must not bear any numbers or markings that would identify the sender.

- i. All tender envelopes received will be marked with the time and date of receipt and kept securely until they are opened

- ii. Tenders received through e-tendering will be automatically time and date 'stamped' when received, and will only be made available by the system for opening at the appointed time
- iii. Any and all tenders received after the time and date specified will be classed as a late tender, and should not be opened as part of the tender opening process or considered as part of the tendering process
- iv. Late tenders should be opened independently so that appropriate steps may be taken to return tenders to the sender
- v. A record must be kept of actions taken to return tenders and this must be retained with a photo copy of the original tender envelope for two years after the end of the contract period
- vi. All envelopes received should be retained with the tender details

## **6. Opening and Acceptance of Tenders**

- i. Tenders must be opened only by those officers or members authorised to do so, and who are not the contracting officers of the tender in question
- ii. All tenders, which are received, must be recorded on a proforma that identifies tender name, tendering body and price (see SOC 20 v)
- iii. Contracts may be awarded based on price alone or based on price and/ or other criteria, usually quality. If a contract is to be awarded solely on the basis of price then the tender accepted must be the lowest price OR the highest if payment is to be made to the Council
- iv. This general rule does not apply if the Executive has received a report from the appropriate officer recommending approval to the acceptance of a different tender where applicable and not in contravention of appropriate UK and EU legislation
- v. In some cases the lowest priced tender might not be the most acceptable to the Council because of other factors. An evaluation of additional criteria considered must be provided to either the responsible officer, the Executive or the Council. In such cases it is recommended that the principle of 'most economically advantageous' tender (MEAT) is considered
- vi. Where price is not the only consideration details of the evaluation used must be lodged with the Head of Legal and Democratic Services  
Tender sums, rates etc cannot be altered after receipt or during the evaluation process, unless all tenderers have been asked to reconsider and resubmit their tenders. Such action can only be taken with the prior

agreement of the Head of Service. Where resubmission is sought, the rules covering the receipt of tenders will apply, this must be applied equally to all bidders as appropriate

- vii. Where a successful tender is subsequently found to be erroneous the supplier must accept the consequences of their error and honour the tender or withdraw from the tender process. Based upon the selection criteria the next nearest competitive tender would be acceptable. Withdrawal from the tendering process is not possible once the contract has been accepted by the Council
- viii. The power to accept a tender rests the Head of service unless the contract value is above the OJEC thresholds where it rests with the Executive, Council or Scrutiny Committee, unless this has been delegated to an Executive Member, Head of Service or Officer. Without this delegation no tender above the OJEC thresholds can be accepted without an appropriate committee report being prepared, considered, approved and recorded in minutes

## **7. Nominated Sub-Contractors and Suppliers**

- i. These rules apply where the Council has the power to nominate a sub-contractor or supplier to a main contractor
- ii. Tenders shall be invited for the nomination unless the contracting officer records why it is not reasonably practicable to obtain competitive tenders and the estimated value of the contract is below £100,000
- iii. If tenders are invited one of the procedures set out in A2 or A3 above must be followed and rules covering receipt of tenders will apply

## **8. Principles of Positive Action in Providing Opportunities for Local Suppliers**

8a. To support the raising of awareness of Council purchasing procedures and provide opportunity for local suppliers to bid for work, contracting officers should:

- i. Have knowledge of the local market place for procurement
- ii. Make local suppliers aware of Council procurement procedures and contract opportunities
- iii. Suppliers/ bidders shall not be restricted by reference, in tender or quotation documentation, to geographical location
- iv. Evaluation must not be weighted in such a way as to give unfair advantage to local suppliers

- v. Officers cannot discriminate, but should ensure that they have taken reasonable steps to consider the local market place when procuring as well as the most economically advantageous tender
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**Reference:**

**TED e-Notices website :**

**<https://simap.europa.eu/enotices/Logout.do>**

**Crown Commercial Services:**

**<http://ccs.cabinetoffice.gov.uk/i-am-buyer/find-a-product-or-service/framework-summary-list>**

**<https://www.gov.uk/contracts-finder>**

**OJEU Thresholds:**

**<http://www.ojec.com/thresholds.aspx>**