

Appendix 16

CONTRACT STANDING ORDERS

Contents

1. Notice to external parties
2. Context
3. Interpretation
4. Responsibilities
5. Schemes of delegation
6. Applicability and scope
7. Choice of procurement process
8. Specialist Purchases and Corporate Contracts
9. Reserved contracts
10. Exemptions to these standing orders
11. Relevant considerations
12. Contracts and formalities
13. Contract management and variation
14. Grants
15. Conduct of tendering and competitive processes
16. Record keeping
17. Prevention of corruption and declaration of interests

1. Notice to external parties

- a. These Standing Orders shall not create or form a part of any contract or binding undertaking, express or implied, with any party outside the Council.
- b. The Council does not make any binding commitment to external parties about the conduct of procurement exercises, other than to abide by its statutory and common law obligations.
- c. In seeking quotations or inviting tenders, the Council is not making an offer to enter into any contract for the supply

2. Context

- a. The Council is a contracting authority for the purposes of public procurement law and is legally bound to comply with certain practices and procedures in the award, management and variation of contracts.
- b. The law requires the council to treat suppliers and potential suppliers equally and without discrimination and to act in a transparent and proportionate manner. Procurement activity is also subject to state aid law
- c. All procurement activity must comply fully with the requirements of the Public Contracts Regulations 2015, the Concession Contracts Regulations 2016 and other legislation.
- d. Procurement is subject to local government law, including the general duty of best value, and to equalities legislation.
- e. Certain procurement exercises are subject to the Public Contracts (Social Value) Act 2012.
- f. Procurement in specific fields – such as tendering for public transport and procurement undertaken on behalf of the NHS – is subject to specific legislation.
- g. Compliance with these standing orders does not of itself ensure compliance with all applicable law in every circumstance.

3. Interpretation

- a. In these standing orders:
 - i. “CCR 2016” means the Concession Contracts Regulations 2016;
 - ii. the “CCR award process” is the process set out in CCR 2016 for the award of concession contracts;
 - iii. “central purchasing body” has the meaning given to it in PCR 2015;
 - iv. “Contracts Finder” has the meaning given to it in PCR 2015;
 - v. a “controlled entity” is an entity which the Chief Legal Officer has determined to meet the conditions set out in regulation 12(1) of PCR2015 and has included in the list of controlled entities as required by paragraph 6 (k) of these standing orders;

- i. “Official Journal of the European Union” or “OJEU” means the supplement to that journal in which PCR 2015 states that notices concerning procurement processes are to be placed, or any successor publication designated for the same purpose after the UK leaves the European Union;
- i. “PCR 2015” means the Public Contracts Regulations 2015 (as amended);
- ii. the “PCR thresholds” means the threshold amounts set in regulation 5 of PCR 2015, or in the case of works or service concession contracts, the threshold amounts set in regulation 9 of CCR 2016;
- iv. “PCR tender processes” are the processes stipulated in PCR 2015 for advertising and conducting procurement processes where the value of the anticipated contract exceeds the relevant PCR threshold;
- v. a “relevant contract” is a contract for pecuniary interest between the Council and any other contracting party, except for
 - a. contracts relating to the lending of money by the Council and the raising of capital by the Council (but do include the procurement of financial services);
 - b. agreements regarding the acquisition, disposal, or transfer of land, leases of pre-existing property, and licenses – the rules governing these are outlined in the Hierarchy of Decision Making on Property Matters Under the Constitution of Norfolk County Council;
 - c. the award of grants by the Council;
 - d. the purchase of historical documents, works of art or museum specimens;
 - e. contracts of employment between the Council and an individual; and
 - f. contracts for loans.

4. Responsibilities

- a. The Head of Procurement has overall responsibility for procurement by the council and shall consult as necessary with the Chief Legal Officer and the Executive Director of Finance and Commercial Services.
- b. Chief Officers are responsible for compliance with these standing orders within their directorates.
- c. Officers shall comply with guidance issued by the Head of Procurement when undertaking procurement activities.
- d. Any duty or obligation stated in these standing orders to be the duty or obligation of the Head of Procurement or the Chief Legal Officer may be delegated by them to another officer provided that the delegation is in writing.
- e. The Head of Procurement authorises the placement of notices on Contracts Finder and in the Official Journal of the European Union.

- f. Invitations to tender may only be issued, and tender processes managed, by officers authorised to do so by the Head of Procurement, or by organisations approved by them to act as procurement agents on behalf of the council.

5. Schemes of delegation

- a. Chief Officers shall put in place schemes of delegation which identify which officers have responsibility (and the level of their financial delegation) for:
 - i. agreeing tender processes and procurement plans;
 - ii. approving tender and contract documents;
 - iii. awarding contracts;
 - iv. approving orders and the payment of invoices;
 - v. managing contracts, including performance monitoring and the agreement of specification and price variations.

6. Applicability and scope

- a. These standing orders apply to all officers of the Council. Officers must ensure that any agents, consultants or contractual partners they allow to act as procurement agents on behalf of the Council (e.g. Norse Group companies, when procuring on behalf of the Council) also comply with them.
- b. These standing orders do not apply to maintained schools, whose procurement activities are governed by the Council's Local Management of Schools Scheme.
- c. These standing orders apply to all relevant contracts made by, for, or on behalf of the Council, including when the Council is acting jointly or on behalf of other public bodies.
- d. Paragraph 14 of these standing orders applies to grants.

7. Choice of procurement process

This paragraph 7 is to be read in conjunction with paragraph 8 below.

Thresholds

- a. The nature of the procurement process to be followed is set out in the tables below, subject to paragraphs (d) to (k) and depends on the total value of the contract being procured.
- b. In exercising his discretion to approve a higher limit for awarding a contract without a competitive process or without a published competitive process, the Head of Procurement shall have regard to considerations including best value, compliance with state aid law and (for so long as the council is subject to EU procurement law or equivalent legal duties) the likely interest in the contract from suppliers based in other EU states.
- c. The Head of Procurement has the discretion to require any contract or class of contracts to be procured via a competitive process.

d. The total value of a contract is to be calculated in the manner prescribed by PCR 2015.

Table 1: social and other specific services listed in Schedule 3 to PCR 2015.

| | Process | Value limit (excluding VAT) | Higher limit if approved by the Head of Procurement | Additional requirements |
|---|--|---|---|---|
| A | Single quote (with evidence of value for money, such as research into typical prices or rates) | Up to £1,000 (or £10,000 if approved by an officer at grade N or above) | Up to £200,000 | Contract award notices must be published on Contracts Finder for contracts with a value of £25,000 or more. |
| B | <p>(a) Request for quotation issued to three or more capable bidders other than via a framework agreement or dynamic purchasing system, or</p> <p>(b) Request for quotation issued to all capable bidders in the relevant lot of a framework agreement or dynamic purchasing system; or</p> <p>(c) Allocation of work within a framework agreement or similar arrangement in accordance with procedures set out in that arrangement.</p> | Up to £50,000 | Up to PCR threshold | |
| C | Openly advertised competitive process below PCR threshold | Up to the relevant PCR threshold. | | Any call for competition must be advertised on Contracts Finder in addition to any other publication |

| | Process | Value limit (excluding VAT) | Higher limit if approved by the Head of Procurement | Additional requirements |
|---|---|---------------------------------|---|--|
| D | <p>(a) PCR tender process; or</p> <p>(b) competition under a dynamic purchasing system or framework let in accordance with PCR 2015; or</p> <p>(c) award under a single-operator framework agreement; or</p> <p>(d) award under a multi-vendor framework agreement without reopening competition subject to regulation 8(a) of PCR 2015; or</p> <p>(e) purchase of services from or via a central purchasing body in accordance with regulation 37 of PCR 2015; or</p> <p>(f) process complying with Section 7 of PCR 2015 advertised by means of a contract notice or a prior information notice complying with regulation 75.</p> | Over the relevant PCR threshold | | Appendix 15 of the Constitution sets out circumstances where a decision must be taken by the Full Council. These include any decision that commits the Council to revenue or capital expenditure of over £100m |

Table 2: other services, works, concession contracts and supplies

| | Process | Estimated total value (excluding VAT) | Higher limit if approved by the Head of Procurement | Additional requirements |
|---|--|---|--|---|
| A | Single quote (with evidence of value for money, such as research into typical prices or rates) | Up to £1,000 (or £10,000 if approved by an officer at grade N or above) | Up to £100,000 for supplies and services; £1,250,000 for works | Contract award notices must be published on Contracts Finder for contracts with a value of £25,000 or more. |
| B | (a) Request for quotation issued to three or more capable bidders other than via a framework agreement or dynamic purchasing system, or (b) Request for quotation issued to all capable bidders in the relevant lot of a framework agreement or dynamic purchasing system | Up to £50,000 | Up to PCR threshold | |
| C | Tender process below PCR threshold | Up to the relevant PCR threshold. | | Any invitation to tender must be advertised on the government's Contracts Finder website in addition to any other publication |

| | Process | Estimated total value (excluding VAT) | Higher limit if approved by the Head of Procurement | Additional requirements |
|---|---|---------------------------------------|---|---|
| D | <ul style="list-style-type: none"> (a) PCR tender process; or (b) CCR award process in the case of concession contracts; or (c) competition under a dynamic purchasing system or framework let in accordance with PCR 2015; or (d) award under a single-operator framework agreement; or (e) award under a multi-vendor framework agreement without reopening competition subject to regulation 8(a) of PCR 2015; or (f) purchase of services from or via a central purchasing body in accordance with regulation 37 of PCR 2015. | Over the relevant PCR threshold | | Appendix 15 of the Constitution sets out circumstances where a decision must be taken by the Full Council. These include any decision that commits the Council to revenue or capital expenditure of over £100m. |

Specific categories of expenditure

Highway works

- e. Where a third-party commissions works that tie into or modify the Council's highway and the Council sets the specification, PCR 2015 may apply. Such works may:
 - i. be undertaken by a highways contractor appointed by the Council under these standing orders; or
 - ii. where the relevant Chief Officer permits, and subject to requirements for the placing of contract award notices, and where the value is below the PCR threshold for works, be undertaken by another contractor appointed by the third party that meets the Council's reasonable requirements including professional and financial standing, insurance cover and technical competence.

Local bus services

- f. Where an officer wishes to let a contract for the purchase of season tickets on a local bus service registered as such with the local traffic commissioner, and only two bus operators have registered such services on the bus corridor concerned, the requirement at Row B of table 2 to obtain three quotations is to be read as requiring two quotations from the two operators concerned.

Legal services

- g. The Chief Legal Officer may commission legal services of the types set out in regulation 10 (d) of PCR 2015 without competition.

Software

- h. Where the Council has purchased perpetual software licences, the Head of Procurement in consultation with the Head of Information Management and Technology may authorise the purchase of software maintenance services without competition from the software licensor, where the provisions of regulation 32 (2) (b) (iii) PCR 2015 apply or the purchase is otherwise lawful.

Inter-authority cooperation

- i. The above requirements for competition do not apply if the proposed arrangement is within regulation 12 (7) of PCR 2015.

Controlled entities

- j. Where a supplier to the Council is a controlled entity, the above requirements for competition do not apply. However, there will be a need to ensure compliance with both Best Value and State Aid law (and any other relevant matters that may arise from time to time) before doing so.
- k. Only the Chief Legal Officer may decide whether a given entity is a controlled entity. The Chief Legal Officer shall maintain a list of controlled entities and publish it on the Council's intranet.

8. Specialist Purchases and Corporate Contracts

- a. Certain goods, services or works, because of their nature, require specialist skills and/or expertise to be procured effectively.
- b. The Head of Procurement may maintain and publish on the Council's intranet a list of these reserved areas of spend and the thresholds at which restrictions apply ("Specialist Purchases"). They may also specify on that list, the posts whose occupants are authorised to buy within those areas and thresholds ("Specialist Buyers").
- c. Only officers who are named Specialist Buyers shall have the authority to enter into contracts for these Specialist Purchases.
- d. The Head of Procurement may maintain and publish on the Council's intranet a list of contracts that are to be used exclusively for particular purposes ("Corporate Contracts"). No officer shall let or use any other contract for these purposes.
- e. Any exception to this paragraph 8 must be approved in advance by the Head of Procurement.

9. Reserved contracts

- a. The Council may restrict the right for organisations to participate in the award of a Contract to classes of organisation that meet the conditions of either regulation 20 or regulation 77 of PCR 2015.

10. Exemptions to these standing orders

- a. Exemptions may be granted as follows

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|--|
| i. Subject to the law, a Chief Officer may approve an exemption to any part of these standing orders that is necessary because of an emergency creating immediate risk to persons or property or causing serious disruption to Council services (including any emergency or disruption under the Civil Contingencies Act 2004). The Chief Officer must, as soon as possible, notify the Head of Procurement. |
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|--|
| ii. In exceptional circumstances and subject to the law, any requirement to seek more than one tender or quotation may be disapplied, subject to consultation in advance with the Leader of the Council (for exemptions valued over £100,000) and authorisation in advance by the Head of Procurement and Chief Legal Officer. |
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|---|
| iii. Any other exemption to these standing orders may only be made within the relevant law and with the authority of the Cabinet. |
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- b. The Head of Procurement shall ensure that all exemptions granted for the award of contracts valued in excess of £250,000 are reported to Cabinet within three months of their being granted.

11. Relevant considerations

- a. An officer proposing to undertake a procurement exercise shall:
 - i. appraise the need for the expenditure and its priority in light of budgetary constraints;
 - ii. confirm that there is Member, or delegated, approval for the expenditure;
 - iii. secure the involvement of the procurement team at an early stage;
 - iv. confirm that the proposed procurement complies with paragraph 7 (Specialist Purchases and Corporate Contracts) of these standing orders;
 - v. consider whether it is necessary to consult – whether as a matter of good practice, to comply with Best Value Statutory Guidance or the Public Contracts (Social Value) Act 2012, or to support compliance with the public-sector equality duty under the Equality Act 2010; and
 - vi. comply with the public-sector equality duty.
- b. In setting the specification, selection criteria and tender evaluation criteria, the relevant officer shall have regard to policy, reputational and legal considerations including:
 - i. alignment with the council's policies, priorities and objectives;
 - ii. minimisation of whole-life cost – not just initial costs;
 - iii. the requirements of the Public Contracts (Social Value) Act 2012;
 - iv. the public-sector equality duty;
 - v. the requirement to include accessibility criteria for disabled persons or design for all users (regulation 42 of PCR 2015);
 - vi. the need to deter crime and disorder (section 17 Crime & Disorder Act 1998);
 - vii. the criticality of the service and the need for assurances as to bidders' financial stability and/or business continuity arrangements;
 - viii. assessment and management of risks to health, safety and the environment;
 - ix. mitigation of modern slavery risks in the supply chain.

12. Contracts and formalities

- a. All contracts must be formally concluded in writing before the supply, service or work begins.
- b. A purchase order must be raised prior to any works or services commencing or goods being procured.
- c. Contracts shall be written in plain English and shall adopt either:
 - i. conditions of contract developed by or agreed by the Head of Procurement for specific types of procurement or specific procurement projects; or
 - ii. conditions of contract produced by professional bodies and agreed by the Head of Procurement; or

- i. conditions of contract within collaborative contracts let by other public contracting authorities; or
 - iv. the Council's General Conditions of Contract as a bare minimum; or
 - v. exceptionally, conditions of contract requested by suppliers; but only where the use of these conditions has been previously agreed by the Head of Procurement.
- d. All contracts, regardless of value, shall as a minimum clearly specify:
 - i. a full description of what is to be supplied or done;
 - ii. the quantities to be provided;
 - iii. the provisions for payment (i.e. the price to be paid and when);
 - iv. the time(s) and location(s) for delivery or performance;
 - v. the provisions for the Council to terminate the contract; and
 - vi. the provisions for indemnity (where required) and insurance.
- e. Conditions of contract shall require transmission of payment by the council within thirty days of a valid, undisputed invoice and shall incorporate the terms required by regulation 113 of PCR 2015 regarding prompt payment of sub-contractors.
- f. In accordance with regulation 71(3) of PCR 2015, in the case of works contracts and in respect of services to be provided at a facility under the direct oversight of the Council, the conditions of contract shall require that, no later than when the performance of the contract commences, the main contractor shall notify to the Council the name, contact details and legal representatives of its subcontractors, involved in such works or services, in so far as known at the time.
- g. The above conditions (12a to 12f) do not apply to low value, one-off retail purchases where a purchasing card is used.
- h. Where contracts are awarded which involve the transfer of Council staff, or of former Council staff who were previously the subject of an outsourcing of service by the Council, they shall include provisions to ensure that the relevant pension requirements are complied with and that the Council is indemnified. Where the Council is a third party to any transfer, the contract shall in addition ensure that the Council has access to staff and employee information on request.
- i. Contracts may be concluded by signature by an officer or officers approved to do so under the department's scheme of delegation, or under the Common Seal of the Council.
- j. Where two signatures are required under the scheme of delegation at least one must be that of a person not involved in the tendering or negotiation of the contract.
- k. Unless otherwise agreed by the Chief Legal Officer, a contract must be entered into as a deed where:
 - i. the Council may wish to enforce the contract more than six years after its end; or
 - ii. there is any doubt as to whether valid consideration is being created under the contract.

- I. Contract sealing shall be carried out by an officer authorised by the Chief Legal Officer. This can take place after a quotation or tender has been accepted provided that the completion of this requirement is made a condition of acceptance of the quotation or tender by the Council.

13. Contract management and variation

- a. The officer responsible shall ensure that all significant contracts have a suitable written contract management plan in place. Officers shall also manage each contract over its entirety, to a level of detail proportionate to the contract's risk and value.
- b. Where an existing contract remains subject to the former Code of Practice on Workforce Matters in Local Authority Service Contracts, the responsible officer shall ensure that compliance with that code is monitored.
- c. Officers shall consult with the Head of Procurement as soon as reasonably practicable when they become aware that any significant dispute or claim may arise in relation to a contract or procurement exercise.
- d. Chief Officers may agree variations to contracts provided that these are lawful under PCR 2015 and there is adequate approved budget provision. Before agreeing any variation, Chief Officers shall satisfy themselves that a contract variation offers comparable or better value for money than going out to competition or that a contract variation is the only possible approach by virtue of exclusive rights or for reasons of urgency. Any variation or variations to a contract which in aggregate result in additional costs exceeding 5% of the original contract value or £50,000 (whichever is the greater) shall be subject to the prior approval of the Head of Procurement.
- e. Where a Chief Officer becomes aware that any major contract will exceed by a significant margin the approved budget or time for completion, or is incurring significant risks not initially identified, this shall be reported at the earliest opportunity to the relevant Cabinet Member; if the additional costs cannot be accommodated within the service's budget this shall be reported to Cabinet as required by the Financial Control Standards.

14. Grants

- a. A grant may be made where the Council is not performing a statutory duty, but the provision can be demonstrated to assist with its wider aims and objectives. A grant need not be made via a competitive process.
- b. Officers must satisfy themselves, taking advice as necessary, that any proposed transaction is a grant rather than a contract for services before treating it as such.
- c. Where the Council is using grant monies itself or passing grant monies to a third party, the application of that money shall be subject to the requirements of the relevant grant funding body. The fact that a transaction is funded by a grant made to the Council does not automatically mean that that transaction is also a grant.
- d. When making a grant the relevant officer shall:
 - i. treat all potential grant applicants fairly;

- ii. act in a fair, transparent and consistent manner in relation to the making of the grant;
- iii. set out the terms of the grant, in writing;
- iv. ensure that best value is met and that there is no state aid infringement.

15. Conduct of tendering and competitive processes

- a. The appropriate competitive process must be chosen according to the requirement and the value of the contract over its full lifetime, including any possible contract extensions, as set out in paragraph 7.
- b. In order to secure best value, officers may make use of collaborative procurement arrangements, with the approval of the Head of Procurement. Such arrangements may include, for example, collaborative contracts let by
 - i. other local authorities, or
 - ii. ESPO, other public sector purchasing consortia, or other UK contracting authorities (e.g. central government departments or agencies), or
 - iii. controlled entities.
- c. When inviting tenders or quotations, officers must set out clearly:
 - i. the terms on which the tender or procurement process is being conducted;
 - ii. the deadline for response (which must be reasonable)
 - iii. the applicable conditions of contract;
 - iv. the specification;
 - v. how the tender or quotation will be evaluated.
- d. Technical specifications
 - i. Technical specifications shall be formulated in accordance with regulation 42 of PCR 2015.
- e. Receipt and evaluation of tenders
 - i. Officers shall use an electronic tendering and/or electronic auction system approved by the Head of Procurement to manage the tendering exercise, including the receipt of tenders.
 - ii. Subject to the law the Head of Procurement has discretion to deal with non-compliant tenders, including whether to accept tenders after the submission deadline has passed (where exceptional circumstances prevail) and whether to seek clarification of a response.
- f. Standstill period
 - i. Officers shall observe a standstill period between provisional award and award where the law requires.

- i. For those procurements above the PCR threshold where observance of a standstill period is voluntary, a standstill period shall nevertheless be observed unless the Head of Procurement decides otherwise.
- g. The European Single Procurement Document (ESPD)
 - i. The Council and its agents may receive a completed ESPD in place of published pre-qualifying questions or tender response which shall be accepted provided that it demonstrates that it is compliant, it demonstrates that the bidder meets the relevant requirements, it is submitted by the published deadline and through the required e-communications tool.
 - i. The Head of Procurement must be consulted prior to the rejection of any ESPD where the information contained in the ESPD or lack thereof is the reason for the rejection.

16. Record keeping

- a. Officers shall ensure that records of procurement activity are created and retained:
 - i. in all cases, sufficient to justify decisions taken in all stages of the procurement procedure and the subsequent creation and management of the contract;
 - ii. in accordance with the Council's retention policies; and
 - iii. for procurement exercises covered by Part 2 of PCR 2015, in accordance with regulations 22, 83 and 84 of PCR 2015.

17. Prevention of corruption and declaration of interests

- a. Officers shall comply with the Council's Code of Conduct for Employees. In particular:
 - i. no officer shall use or appear to use their position to obtain any personal or private benefit (including benefit accruing to connected third parties) from any contract entered into by the Council;
 - ii. officers' attention is drawn to the provisions of the Code of Conduct relating to the separation of roles during tendering;
- b. With regards to any contract that has been proposed or entered into by the Council, officers must disclose in writing to their Chief Officer any instances:
 - i. where they have any relationship with a supplier; or
 - ii. where they have any personal interest (financial or non-financial) which could reasonably be considered to conflict with the Council's interests or to favour or appear to favour one supplier over another.
- c. The Council's whistleblowing procedure applies to the letting, management and performance of contracts.