

Appendix 2: Schools Contract Standing Orders 2018/19 (Consultation)

Definitions

- 'Aggregation' is the combining together of the total contract value from separate contracts where they meet a single requirement for works, goods or services or where a series of contracts within a twelve month period are for the same type of goods or services.
- 'Authorised Officer' is any officer (an employee of the School or the Council) permitted by the Headteacher, within powers delegated by the Governing Body, to authorise orders and contracts in accordance with clause 2.6.
- 'Best Value for Money' is the optimum combination of whole life costs, quality and benefits, including economic, environmental and social value to meet the customer's requirements.
- 'Bradford District' is the geographical area administered by the Council.
- 'Call Off' is a separate purchase from an existing framework agreement that creates a binding contract. The framework agreement sets out: terms and conditions, standards and prices, although further competition may be permitted.
- 'Construction Industry Scheme: Under the Construction Industry Scheme (CIS), contractors deduct money from a subcontractor's payments and pass it to HM Revenue and Customs (HMRC).
- 'Contract' means a formal agreement between the School and any Contractor made by issue of a letter of acceptance or official order for:
 - the supply of works, goods or services including consultants.
 - a call-off from a framework agreement.
 - an arrangement where no payment is made but there is financial value to the Contractor e.g. a catering concession.

It does not include employment and property contracts or grant agreements.

- 'Contract Value' is the total monetary value over its full duration including any extension options (not the annual value).
- 'Contractor' an individual or organisation that contracts with the School to provide works, goods or services.
- 'Council' means the City of Bradford Metropolitan District Council.
- 'DPS or Dynamic Purchasing System' is an electronic process for commonly used purchases that are generally available and is open throughout the contract period to any new supplier that meets the selection criteria.
- 'Electronic Auction' is a process whereby suppliers who have submitted admissible tenders can revise their original prices or values during the period of the auction.

- 'EU Procurement Rules' are the Regulations implemented by the UK to set out the law on public procurement.
- 'EU Thresholds' means the financial threshold at which the EU Procurement rules are applicable.
 - As of 1st January 2018 these are: Works (maintenance and construction) £4,551,413, Services and Supplies £181,302, and
 - Health, social and some other specific services have a threshold of £615,278, referred to as the 'light touch regime' as listed in Schedule 3 of the Public Contracts Regulations.
- 'Exception to Competition Log' is the record held by the Governing Body of all contracts awarded without competition because the contract meets one or more of the requirements listed in CSO 9.1.
- 'Framework Agreement' is an agreement, which sets out the terms and conditions under which the School can make specific purchases ("call-off") from a Contractor(s) to provide services, goods or works at agreed standards and prices. If the School calls off services, goods or works from the Contractor then a binding contract comes into place.
- 'Local Supplier' is any supplier that provides works, goods or services from a location within the Bradford District or where a substantial number of any employees working directly on the contract are resident in the Bradford District.
- 'Officer' means an employee of the School.
- 'OJEU' is the Official Journal of the European Union, which is the publication in which all tenders from the public sector above relevant financial thresholds must be published.
- 'Quotation' is a formal written offer to execute works, purchase supplies, or provide services at a stated price of a value less than £75,000.
- 'School' is a school maintained by the Council that is covered by the Scheme for Financing Schools.
- 'SIRO' Senior Information Risk Owner is the person with overall accountability and responsibility for information governance.
- 'Tender' is a written offer to supply or purchase goods, execute works or provide services at a stated price of a value more than £10,000.
- 'TUPE' means the Transfer of Undertakings (Protection of Employment) Regulations 2006.
- 'Whole Life-Cycle Costs' is an estimate of the total costs of works, goods or services over their life. It is a combination of the purchase price, implementation and operating

costs, procurement and contract management costs, disposal costs less any residual value.

1 Introduction

- 1.1 The purpose of Contract Standing Orders is to set clear rules by which the School spends money on works, goods and services. The rules apply to any contract that results in payment being made by the School.
- 1.2 Public procurement must be undertaken in accordance with the principles enshrined in EU and national legislation. The School must always act to promote competition and to ensure that each procurement is conducted as an open, transparent and fair competition. The School must avoid practices, which may restrict or distort competition.
- 1.3 All amounts quoted in these Standing Orders are exclusive of recoverable VAT.
- 1.4 Any dispute or difference as to the interpretation of these Standing Orders shall be resolved by the Council's City Solicitor.

2 Compliance

- 2.1 Failure to comply with these Contract Standing Orders may result in disciplinary action being taken against the officers concerned. Failure to comply may also constitute grounds for the Council's use of its formal powers of intervention as set out in the Scheme for Financing Schools.
- 2.2 Every contract made by or on behalf of the School for works, goods and services, and all School employees engaged to act in any capacity to manage or supervise a contract, must comply with:
 - EU Procurement Directives.
 - All relevant statutory provisions including the Public Contracts Regulations 2015, competition law and Public Services Acts (e.g. Social Value, Care Act 2014).
 - The Council's Financial Regulations for Maintained Schools.
 - The Scheme for Financing Schools, and
 - These Standing Orders.
- 2.3 All School employees and organisations engaged on the School's behalf shall ensure that all procurement activity is undertaken with regard to high standards of probity and in a manner, which avoids any conflicts of interest. Any conflicts of interest that do arise shall be dealt with in accordance with the School's Code of Conduct for its employees.
- 2.4 In applying these Standing Orders, all school employees shall have regard to the duty of Best Value under the Local Government Act 1999.
- 2.5 The Governing Body must specify limits within which it authorises the Headteacher to authorise orders, invoices and contracts in their own names on behalf of the

School. All orders, invoices or contracts shall remain the responsibility of the Governing Body.

- 2.6 Within the limits of financial powers delegated by the Governing Body, the Headteacher may permit other officers (employees of the Council or the School) to authorise orders, invoices and contracts in their own names on behalf of the School. Orders, invoices or contracts made under these circumstances remain the responsibility of the Headteacher and, through the Headteacher, the Governing Body (see 2.5). The Headteacher must maintain an up to date record of authorised officers.
- 2.7 All orders for works, goods or services must be placed using the School's approved systems (e.g. official order form / formal written contract / approved E-procurement process) in advance of the invoice being received and must be coded to the appropriate account codes on the school's financial system.
- 2.8 The Headteacher is responsible for ensuring compliance by their staff and shall report all breaches of these Standing Orders to the School's Governing Body.

3 Social, Economic, Environmental and Ethical Considerations

- 3.1 In formulating proposals for a services contract, the Authorised Officer must consider the Public Services (Social Value) Act implications and whether and to what extent any ethical, social or environmental aspects of procurement should be taken into account.
- 3.2 Where appropriate, and always subject to EU law and Public Contract Regulations, the Authorised Officer should ensure tenders or quotes are framed in such a way to encourage bids from local suppliers, small and medium sized companies (SME's) and third sector organisations such as social enterprises. This may include dividing the contract into lots.

4 Pre-Contract Requirements for all Contracts

- 4.1 Existing Arrangements should be considered and used where it can be evidenced that these provide best value for money:
 - Contracts, framework agreements or DPS established by central purchasing bodies (Crown Commercial Services, YPO etc.) or other public body.
 - Collaborative or shared service arrangements with another public body.
- 4.2 Before inviting tenders or quotations, the Authorised Officer must:
 - 4.2.1 be satisfied that a written and clear specification has been prepared, which will form the basis of the contract.
 - 4.2.2 consider at the outset any equality and diversity implications that may require an equality impact assessment to be undertaken.
 - 4.2.3 consider at the outset any TUPE implications.

- 4.2.4 consider at the outset any data protection, information security or data processing implications that may require additional schedules or terms and conditions and need the School's SIRO and Data Protection Officer to be notified.
 - 4.2.5 prepare and document an estimate of the whole life-cycle costs including where appropriate any on-going costs and/or disposal costs and ensure that the cost is within the approved current and future budget provision for both capital and revenue expenditure.
 - 4.2.6 ensure that all evaluation criteria including sub-criteria have been determined in advance, put in order of relative importance or weighting and published in the tender documentation. Selection criteria must be relative and proportionate following statutory guidance issued by the Secretary of State.
 - 4.2.7 ensure that electronic versions of all the appropriate and approved forms of procurement documentation is available through an internet portal immediately on publication of any advert.
- 4.3 Before entering into any contract, the Authorised Officer must:
- 4.3.1 be sure that they have the necessary authority to enter into the contract, that these Standing Orders and the Financial Regulations for Maintained Schools have been complied with, and that the proposed contract represents best value for money,
 - 4.3.2 be satisfied about the technical capability of such proposed contractor, and
 - 4.3.3 where there is a significant supply risk, and for all contracts that exceed £75,000, undertake a suitable check of the financial and resource capacity of the contractor to perform the contract.
- 4.4 Authorised Officers are responsible for arrangements to ensure proper control and use of the School's ordering and contracting systems and procedures.

5 Contracts under £10,000

- 5.1 The Authorised Officer must be able to demonstrate best value for money, which may include inviting written quotes. The Authorised Officer must invite local suppliers where a local supply base is available. All quotations should be in writing.
- 5.2 Officers shall retain a written record of actions taken and the reasons.

6 Contracts between £10,000 and £75,000

- 6.1 The Authorised Officer must seek at least 4 written quotations or tenders and invite local suppliers where a local supply base is available.

- 6.2 If 4 quotations or tenders cannot be obtained, owing to insufficient suitable suppliers prepared to quote or provide tenders, then the Authorised Officer must keep a record of this.

7 Contracts over £75,000

- 7.1 Where the contract value is likely to exceed the EU threshold, taking account of the rules of aggregation, it must be tendered in accordance with the relevant EU procurement rules, unless this rule is met through an existing framework or DPS agreement that has been established via a compliant EU procurement process.
- 7.2 For contract values of £75,000 or more, contractors must be appointed by one of the procedures under Contract Standing Order 8.

8 Procurement Procedures

- 8.1 The **open procedure** under which all those interested may respond to the advertisement by submitting a tender. This is often the most expedient system and enables all the suppliers in the market that wish to engage in the process to submit a tender. There is no pre-qualification questionnaire (PQQ) or short-listing stage prior to invitation to tender (ITT). Under the open procedure, an advertisement, saying what the contract is for and inviting applications for tender documents to be completed, must appear in a local newspaper. The advertisement must also appear in an appropriate trade journal where, in the opinion of the Governing Body, this is likely to be to the School's advantage. The advertisement must give a closing date and time for the return of completed tender documents at least 2 weeks away. Specific EU procurement rules must be followed where the open procedure is used to procure works, goods or services above the EU Threshold.
- 8.2 The **restricted procedure** under which a selection is made of those who respond to the advertisement and only they are invited to submit a tender. This procedure can only be used for tenders above the EU threshold for goods and services and EU procurement rules must be followed in these circumstances.
- 8.3 More complex procedures (such as negotiated tendering), generally applying to more strategic contracts, are available, but appropriate expert advice should be sought as the Public Contracts Regulations only permit such procedures in limited and specific circumstances.

9 Exceptions to Requirements of Competition

- 9.1 Subject to the statutory requirements for procurement processes above EU thresholds, and where it can be demonstrated that departure from a competitive process is justifiable and provides overall value for money, a competitive procurement process is not required where one or more of the following exceptions apply:

- 9.1.1 the purchase of proprietary or patented goods or materials or services, which, in the opinion of the Authorised Officer, are obtainable only from one supplier, and where no reasonably satisfactory alternative is available.
- 9.1.2 the execution of works or the supply of goods or services that are controlled by a statutory body.
- 9.1.3 the execution of works or supply of goods or services that are of a specialised nature, which, in the opinion of the Authorised Officer, in consultation with the Headteacher, are carried out by only one supplier and no reasonably satisfactory alternative is available.
- 9.1.4 the execution of works or supply of goods or services for which the Authorised Officer can demonstrate that no genuine competition can be obtained.
- 9.1.5 the purchase of a named product required to be compatible with an existing installation.
- 9.1.6 procurements made through or on behalf of any consortium, local authority, statutory or similar body, provided that tenders or quotations are invited and contracts placed in accordance with national or EU legislation.
- 9.1.7 special education, health or social care contracts, if in the opinion of the Authorised Officer it is considered in the School's interests and to meet its obligations under relevant legislation.
- 9.1.8 the execution of works or the supply of goods and services that are required so urgently as not to permit compliance with the requirements of competition.
- 9.2 The Authorised Officer must retain written reasons justifying the decision to use Standing Order 9.1 and must be able to demonstrate that best value for money has been obtained.
- 9.3 The Headteacher must maintain an 'exception to competition log' of all contracts awarded without competition under clause 9.1. The exception to competition log should be reported to the Governing Body on at least a quarterly basis.

10 Submitting and Opening Tenders and Quotations

- 10.1 Every invitation to tender or request for a quotation must state that a tender or quotation will only be considered if it is received by the specified closing date and time.
- 10.2 All tenders or quotations for each contract must be opened in the presence of 2 officers appointed by the Authorised Officer at a prescribed time.
- 10.3 The Authorised Officer must keep a record of all tenders and quotations.

- 10.4 The Authorised Officer shall disqualify a tender or quotation, which fails to comply with the requirements of these Standing Orders and must return the tender or quotation to the tenderer or quotation provider stating the reason for the disqualification.

11 Errors in Tenders and Quotations

- 11.1 Prior to acceptance of any tender or quotation received, any arithmetic error or other minor discrepancy made in good faith can be corrected by the Authorised Officer in one of the following two ways:

11.1.1 The tenderer shall be given details of the error(s) found during the examination of the tender and shall also be given the opportunity of confirming without amendment or withdrawing the tender; or

11.1.2 Amending the tender to correct genuine arithmetic error(s) provided that in this case, apart from these genuine arithmetic errors, no other adjustment, revision or qualification is permitted.

- 11.2 A written record must be kept of all such amendments.

12 Post Tender and Quotation Negotiations

12.1 In the interests of ensuring an open, fair and transparent process, negotiation following receipt of tenders is only permissible in limited circumstances.

12.2 The Authorised Officer may, where it is intended to obtain better value for money, authorise negotiations with one or more tenderers or quotation providers where they consider that none of the tenders or quotations are acceptable and it is in the School's interests to do so. Clear written records must be kept of the reasons for negotiation and what negotiation has taken place with which providers.

12.3 No negotiation is permitted following receipt of final tenders where the tender was subject to EU procurement rules.

13 Accepting Tenders and Quotations

13.1 Prior to accepting a tender or quotation the Authorised Officer must evaluate all tenders and quotations received in accordance with the evaluation criteria issued with the tender documentation.

13.2 The Authorised Officer can only accept the most economically advantageous tender or quotation and must record the reasons for acceptance.

13.3 The Authorised Officer must investigate any tender considered to be abnormally low.

13.4 All suppliers who submit a tender or quotation should be notified in writing of their success or failure in a timely manner and offered feedback.

- 13.5 For all tenders covered by the EU procurement rules, the minimum statutory standstill period is required between notification of the award decision and final contract award.
- 13.6 All contracts above the EU threshold must also be published in OJEU.

14 Contract Extensions, Variations or Novation

- 14.1 The Authorised Officer can extend a contract by any value subject to the extension being permitted within the scope and terms of the original procurement and contract and before the expiry date.
- 14.2 An options appraisal must be undertaken to determine if it represents best value for money to extend the contract and any approval required must be sought in a timely manner.
- 14.3 The Authorised Officer must make every effort to negotiate improved terms with regard to the cost and quality of the goods or services.
- 14.4 No extension shall be made until funding has been secured in accordance with the Financial Regulations for Maintained Schools (paragraph 9) or any other similar requirement.
- 14.5 All contract variations must be carried out within the scope of the original contract and must not materially affect or change the contract.
- 14.6 A new procurement will be required if the proposed variation has a material change where one or more of the following are met:
- 14.6.1 the variation introduces new conditions, which had they been part of the original procurement procedure would have allowed other candidates to be selected to bid or the contract to be awarded to another tenderer.
 - 14.6.2 the variation changes the economic balance in favour of the contractor.
 - 14.6.3 the variation extends the scope of the contract considerably.
- 14.7 In the event that a Supplier ceases to provide the work, goods or services whether as a result of insolvency, company restructuring, company purchase, termination of the contract or any other reason then the Authorised Officer must be consulted before novating or assigning the contract to a new Supplier. The new Supplier must meet the requirements of the original tender.

15 Written Contracts

- 15.1 The Authorised Officer must ensure every contract is in writing.
- 15.2 Every contract shall be signed by two Authorised Officers, other than when the basis of the contract is only an order recorded on an official order form when one signature will suffice.

16 Professional Services, Consultants and Intermediary Employment

16.1 In line with HMRC IR35 and CIS (Construction Industry Scheme), rules the Authorised Officer must identify the employment status of workers providing works or services in instances including the following:

- Consultancy work.
- Self employed contractors.
- The engagement of a worker through a limited company or other body.
- The use of a Personal Services Company.
- The engagement of a CIS registered contractor.

17 Contract Conditions

17.1 Schools are encouraged to use the Council's standard terms and conditions templates for contracts. In doing so, Schools must always amend these templates so that contracts are in the School's name.

17.2 The above shall not apply to:

- UK government standard documentation or government sponsored schemes, and amendments may be made for best value for money or project specific reasons.
- Construction and/or engineering contracts where bespoke conditions based on accepted industry practice are used e.g. JCT, NEC3 or ICE.

17.3 Every contract the School enters into must state:

- The works, goods, services, materials, matters or things to be carried out or supplied.
- The price to be paid and / or the amounts and frequency or the method of calculation of contract payments with a statement of discounts or other deductions.
- The time (s) within which the contract is to be performed.

18 Payment for Work on Account

18.1 Payment for goods, works and services should not be made in advance of delivery other than in low contract value and low risk situations.

19 Contracts Where School Governors or Staff Have an Interest

19.1 A School Governor or member of School staff must not subordinate their duty to the Local Authority and School to their private interests or put themselves in a position where their duty and private interest conflict.

- 19.2 School Governors and School employees must declare any and all relevant private interests that may potentially conflict with the interests of the School before procurement commences.
- 19.3 Suitable measures must be taken by the Governing Body to ensure the probity of the School's procurement activity. This includes the exclusion of any School Governor or School employee from the procurement of goods, works and services where there is a conflict with their private interests or those of their family and / or friends.
- 19.4 The Headteacher must keep a record of the notification of interests and the exclusion of interested parties from procurement.

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