

H. Standing Orders Relating To Contracts

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1. INTERPRETATION & ABBREVIATIONS

In these Contract Standing Orders the following terms have the following meanings:-

Acquisition of Land	The purchase or entry into a lease or sub-lease or rental of land by the Council.
Best Consideration	The best consideration that can reasonably be obtained for the land as required by Section 123 of the Local Government Act 1972.
Bidder	A person, company or firm, who has made an offer by way of quotation or tender to supply the Council with works, supplies or services.
The Chest	North West England's local authority procurement e-portal.
Chief Officer	Chief Executive, Directors and Assistant Directors or any delegated officer authorised to act on their behalf.
Contract	Any agreement for the execution of works or the provision of supplies or services, or the disposal of assets.
Contracting Authority	As defined in the Public Contract Regulations 2015 (as amended or replaced).
Contractor	A party to an agreement with the Council to provide works, supplies or services to the Council or to acquire assets from the Council.
Contracts Finder	a web-based portal provided for the purposes of Part 4 of the Public Contracts Regulations 2015 by or on behalf of the Cabinet Office
CFO	Chief Finance Officer.
CPS	Corporate Property Services.
CSO	Contract Standing Order(s).
Disposal of Land	The sale of land, or the grant of a lease, sub-lease or development agreement for land by the Council.
Estimated Value	This is the total estimated value of the contract net of VAT, over the full term of the proposed contract including any possible extensions. Contracts shall not be split to avoid compliance with these CSOs.
Land	Any interest in land (freehold, leasehold, right or easement) including any buildings or premises on the land.
Law	any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body
Partnering	A form of collaborative working between the Council and a Contractor, based upon a formal contract. Usually this is a long-term arrangement.

Procurement Legislation	The Public Contracts Regulations 2015, the Concession Contracts Regulations 2016, the Utilities Contracts Regulations 2015 and any other legislation governing public procurement.
EU Threshold(s)	The financial thresholds which apply to the application of procedures for the award of a Contract under the Procurement Legislation.
Purchasing Guide	The Council's internal guide to purchasing works, supplies and services published on the Council's Intranet.
Procurement	The acquisition of supplies, works and services which meet the Council's and service user's' needs, whilst ensuring value for money throughout the life of the product including disposal.
Quotation	A submission by a contractor for the execution of works or for the provision of supplies or services under the quotation procedures below £50,000.
Sale Tender	A submission by a contractor to acquire assets from the Council.
Scheme of Delegation	This is the part of the Council Constitution, which sets out the delegated powers of Executive Members and officers. A copy of the scheme is available on the intranet.
Tender	A written submission by a contractor for the execution of works or for the provision of supplies or services above £50k under the tender procedures outlined.

2. INTRODUCTION

- 2.1 It is the responsibility of Chief Officers to ensure that all procurement activity within the Council (and bodies where the Council is the accountable body) complies with these CSOs.
- 2.2 The CSOs apply to all Council Directorates, Schools (via the Scheme of Delegation), Executive Partnerships, and External Agencies where the Council is the accountable body.

Procurement Plan

- 2.3 The Council has a responsibility to maintain a central register of contracts, which is available for scrutiny by officers and members, and which is published on the Authority's website.
- 2.4 Prior to the start of each financial year, each Chief Officer shall prepare a procurement plan setting out the Contracts which their departments anticipates it will procure during that financial year, and where possible forthcoming years. This information should be passed to the Corporate Procurement team.

2.5 Pre-Purchase steps to be followed

The Council's Purchasing Guide must be followed. Lead officers should consider the complexity and value of the proposed works supplies or services and the period over which they are required (include any possible extension period), and undertake the following steps:

- 2.5.1 Satisfy themselves that they have the necessary authority to deal with the purchase and that there is budget provision for the purchase.

- 2.5.2 Authority is obtained under the Scheme of Delegation or by an approved report to the relevant Executive Cabinet Member of the Cabinet (as appropriate).
- 2.5.3 Identify the purchasing objectives, including internal and external sourcing or partnering/collaborative procurement arrangements.
- 2.5.4 Take into account the requirements from any Best Value review and the best value duty to consult on continuous improvement in the delivery of Council functions under section 3 Local Government Act 1999.
- 2.5.5 Take into account the requirements of The Public Services Social Value Act 2012.
- 2.5.6 Assess the risks (if any) associated with the proposed purchase and how to manage them.
- 2.5.7 Consider which procurement method would be most appropriate, in accordance with CSO4 below.
- 2.5.8 Contact the Council's Corporate Procurement team or inspect the current list of Corporate contracts, which is available on the Council's website, in order to establish whether there is an existing contract available for use.
- 2.5.9 Where relevant, draft a detailed specification for the works, supplies and services required. Advice on drafting a specification can be obtained from the Corporate Procurement team or Legal Services.
- 2.5.10 Undertake a Data Protection Impact Assessment, where required.
- 2.5.11 Inform the Corporate Procurement team about the proposed contract and request Corporate Procurement and/or Legal Services to advise, where appropriate. All advertised proposed contracts with an estimated value/amount of £30,000 or over must be advertised by the Corporate Procurement team on Contracts Finder and those with a contract value/amount of £50,000 or over must be advertised by Corporate Procurement (via the Chest using the Council's standard tender documentation) and managed by the relevant department and Corporate Procurement.

3. LEGAL REQUIREMENTS AND RESPONSIBILITIES OF CHIEF OFFICERS

- 3.1. These CSOs are issued in compliance with Section 135 of the Local Government Act 1972.
- 3.2 Every tender, quotation and contract shall comply with these CSOs as a minimum requirement, provided always that:
 - (1) Where there are additional requirements for example under some Grant regimes, then these should be adopted; and
 - (2) Contracts subject to Procurement Legislation must comply with that legislation.
- 3.3 The Council is committed to promoting Equality and Diversity, which it regards as being fundamental to its activities. Throughout its contractual and partnership working, the Council shall ensure that equality and diversity are appropriately integrated into the procurement activity and the proposed contract and that it shall implement the principles of non-discrimination, equal treatment and transparency in accordance with the Law and EU Procurement Legislation.
- 3.5 Guidance on Equality and Diversity can be obtained from the Chief Executive's Department.

4. COMPLIANCE WITH STANDING ORDERS

BEFORE LETTING A CONTRACT IN COMPLIANCE WITH THESE CSOs CHIEF OFFICERS MUST IDENTIFY THEIR AUTHORITY TO TENDER UNDER:

- (a) **THE SCHEME OF DELEGATION; OR**
- (b) **AN APPROVED REPORT TO THE RELEVANT EXECUTIVE CABINET MEMBER OR THE CABINET.**

Contracts may be for supplies, works or services.

Supply Contracts - contracts for the purchase or hire of goods, and for any siting or installation of those goods.

Service Contracts - contracts under which the purchaser engages a contractor to provide a service. This includes the provision of consultancy services.

Works Contracts - contracts for the carrying out of civil engineering or building works.

The procedure to be followed is dependent on the estimated aggregate value/amount of the contract (including any potential extension), as set out in the table below.

Estimated Value/Amount	Contracts	Invitation	Method / Process
Up to £15,000	Supply Contracts Service Contracts Works Contracts	Decision whether to invite tenders/quotations to be made by Chief Officer, or designated officer. No company should be awarded business in excess of £75k by the Council in any one year, unless this has been subject to quotation or tender exercise, as relevant.	Purchasing decision to satisfy Best Value criteria.
£15,001-£49,999	Supply Contracts Service Contracts Works Contracts Concession Contracts	Requirements should be specified in writing, and wherever possible, a minimum of three written quotations obtained, by a specified time and date.	Quotations should remain sealed until after the closing time and date. Electronic quotations may be acceptable, at the discretion of the relevant Chief Officer. Quotations shall be kept for 3 years for audit purposes. All advertised requests for quotations with a value of £30,000 or

			more should be published on Contracts Finder by the Corporate Procurement Team.
Over £50,000 Threshold	Supply Contracts Service Contracts Works Contracts Concession Contracts	Tenders must be invited - by advertisement via the Chest and Contracts Finder	Request Corporate Procurement to invite tenders. A tender notice providing at least 10 days' notice for suppliers to request tender documents should be published on the Chest and Contracts Finder. The tender process should follow set out in these CSOs.
Procurement Thresholds under Procurement Legislation and above	Supply Contracts Service Contracts Works Contracts Concession Contracts	Where the estimated expenditure of the total contract, is likely to exceed the relevant Procurement Threshold, the Council shall procure in accordance with Procurement Legislation and procedures Where intention to tender is identified at the start of the year, then Chief Officers must inform the Corporate Procurement team, so that a Prior Information Notice may be published.	Request Corporate Procurement to invite tenders in compliance with Procurement Legislation and these CSOs.

The above does not apply in respect of Supply Contracts, Service Contracts and Works Contracts in the following circumstances, although Officers should note that the Council cannot be exempted from compliance with Procurement Legislation.

- Where the Council joins a framework agreement procured by another Contracting Authority (such as the Crown Commercial Service, ESPO, the YPO or an AGMA authority) provided there is delegated authority or an approved report to the relevant Executive Cabinet Member or the Cabinet authorising the Council to join the framework agreement and the Contracting Authority procured the framework agreement in compliance with its own procurement rules and, where applicable, the Public Contracts Regulations 2015.
- Where supplies/services/works are purchased under a framework agreement which was procured in accordance with these CSOs.
- Where tenders have been invited by any consortium, or similar body, of which the Council is a member, in accordance with any method adopted by such a body provided the proposed purchase is authorised under the Scheme of Delegation or an approved report of the Executive Cabinet Member or the Cabinet.

- Where the contract is for the purchase or production of a work of art, or a museum specimen.
- Where the contract is for the engagement of external solicitors or barristers and is procured or approved by Legal Services.
- Where the contract is for the engagement of an artiste or performing company.
- Where the contract is for personal services for individuals assessed as requiring services under the National Assistance Act 1948, the NHS and Community Care Act 1990, the Children Act 1989, the Care Act 2015 or under any other relevant legislation.

5. WAIVING STANDING ORDERS

A CSO may be waived by:-

- The appropriate Chief Officer where the estimated aggregate value/amount of the proposed contract (excluding VAT but including any extension to the initial term of the proposed contract) does not exceed £50,000.
- The Cabinet / relevant Executive Cabinet Member, where the estimated aggregate value/amount of the proposed contract (excluding VAT but including any extension to the initial term of the proposed contract) exceeds £50,000.

Exemptions may only be sought in special circumstances as determined by the Borough Solicitor in consultation with the Head of Internal Audit.

All exemptions to these CSOs for Contracts valued above £50,000 shall be reported to the next formal meeting of the appropriate Executive Cabinet Member and the decision recorded.

Exemptions may not be sought where the estimated value of the proposed contract will exceed the relevant Procurement Threshold.

6. POWERS OF CHIEF OFFICERS - Opening and acceptance of Tenders

6.1 Save where a tender has not been advertised on the Chest and Contracts Finder and opened in accordance with CSO14, Chief Officers shall have the power to open tenders and quotations (requested in accordance with these CSOs) where the estimated aggregated value/amount of the proposed contract (including any extension) does not exceed £50,000 and,

- (1) in respect of items of revenue expenditure where budget provision has been made in the current financial year; and
- (2) in respect of items of capital expenditure where particulars are shown in the approved capital programme for the current financial year provided the CFO confirms the capital expenditure and provided that in the exercise of this power the Chief Officer complies with all relevant CSOs.

6.2 The process to be followed when opening tenders is set out below.

7. POWERS OF EXECUTIVE CABINET MEMBERS - Opening and acceptance of tenders

Save where a tender has been advertised on the Chest and opened in accordance with CSO 13, Executive Cabinet Members, in the presence of an officer of Legal Services, and the officer leading the tender, have the power to open tenders and quotations and to accept tenders and quotations for the provision of supplies and/or services, or the execution of any works over a value of £500,000. Contracts of this value should be under seal and copies held by Legal Services.

8. CAPITAL EXPENDITURE

8.1 Before incurring capital expenditure the relevant Chief Officer must ensure that:-

- (1) Save where there is delegated authority under the Scheme of Delegation, the appropriate Executive Cabinet Member has approved the capital expenditure.
- (2) An estimate of the capital expenditure has been prepared, including any revenue implications.
- (3) The approved funding is identified in the Capital Programme. If the proposed capital expenditure is more than the Capital Programme provision, or there is a fundamental change in the proposed financing of the capital expenditure, the approval of the relevant Executive Cabinet Member, and the CFO, must be obtained by the relevant Chief Officer, prior to awarding the contract.

9. DISPOSAL OF LAND

9.1 CPS shall take the following steps:-

- (i) produce a qualified valuer's certificate as to the best consideration, or
- (ii) where it is not proposed to obtain the best consideration ensure that:
 - the General Disposal Consent 2003 relating to Part II of the Local Government Act 2003 applies or
 - the Secretary of State's specific disposal consent has been obtained.
- (iii) where a disposal for less than best consideration is proposed, there is a report to the Executive Cabinet Member for decision.
- (iv) without prejudice to the Council's duties as Local Planning Authority, obtain the most valuable planning permission that can be obtained, prior to disposal.
- (v) where there have been negotiations with several prospective purchasers of the land, properly document discussions and meetings and provide all parties with the same information.
- (vi) where land is to be sold by auction, an appropriate reserve price is attached to it.
- (vii) where a sale is by private treaty make a record of all negotiations.

Method of Disposal

9.2 CPS shall identify the most appropriate method of disposal. Sealed bids may still be used.

Procedure for Sealed Bids

9.3 The disposal of the land shall be advertised in one or more local newspapers. Where the estimated value of the land exceeds £100,000 the land shall also be advertised in the property pages of appropriate newspapers or journals.

- 9.4 The advertisement shall give at least 14 days' notice and shall state the nature of the contract, where further details may be obtained, invite offers and state the last date and time when sealed bids may be received.
- 9.5 Details of the disposal and the conditions of sale shall be made available to all bidders, on application to CPS. The conditions of sale shall include the criteria approved by the Executive Cabinet Member for evaluating sealed bids.
- 9.6 Sealed Bids shall be opened at one time and in the presence of the appropriate Executive Cabinet Member (over £500,000), or in the presence of the Chief Officer and representative of the CFO where the value is below £500,000. There may be exceptional circumstances when the highest bid is not acceptable, e.g. bids are below an undisclosed reserve figure, or the highest bidder cannot perform a key covenant.

Acceptance of Sealed Bids

- 9.7 A sealed bid for the disposal of land may be accepted by CPS if it accords with the conditions of sale. If it does not accord with the conditions of sale CPS shall consult with the Executive Cabinet Member before accepting the bid.
- 9.8 Reports on the sealed bids accepted shall be submitted to the Executive Cabinet Member at regular intervals either specifically or as part of an operational review report.

10. FRAMEWORK AGREEMENTS

- 10.1 Save where stated to the contrary in these CSOs, Framework Agreements must be let in accordance with CSO4.
- 10.2 The Corporate Procurement team must be informed of an intention to let a Framework Agreement or to purchase supplies, works and services under a framework arrangement.
- 10.3 Unless otherwise agreed by the Borough Solicitor, the term of a Framework Agreement must not exceed four years.
- 10.4 A Framework Agreement shall contain the terms under which Contractors will provide services, supplies or works, if and when clients order these subsequently.
- 10.5 The Crown Commercial Service provides centralised commercial and procurement services for Government and the public sector. For more information on the products and services available via the Crown Commercial Service please contact the Corporate Procurement team.
- 10.6 Where the Council concludes a Framework Agreement the Council must comply with the terms and conditions of the Framework Agreement when calling off contracts under the agreement.

11. TENDER DOCUMENTS

- 11.1 Where the anticipated aggregate value/amount of the proposed contract exceeds £50,000 (and a suitable Framework Agreement is not in place) the business opportunity must be tendered in accordance with these CSOs and, where appropriate the Public Contracts Regulations 2015.
- 11.2 The steps to be followed are detailed in CSO 2.4 above.
- 11.3 The tender documentation to be issued includes the following:

11.3.1 Introduction (including Bolton's priorities)

11.3.2 Brief description of the contract, including the contract term

11.3.3 Bidder Questionnaire covering the following:

- Bidder details
- Financial Information
- Technical Capacity
- Health and Safety
- Equality
- Environmental Issues
- Business Continuity

11.3.4 The price schedule on which bids will be submitted

11.3.5 A specification for the required works, supplies or services

11.3.6 Details of the evaluation process to be carried out, including the criteria, sub-criteria and weightings to be applied

11.3.7 Details of the closing date and time of the tender

11.3.8 Either the Council's standard terms and conditions of contract, which are available from Corporate Procurement or the Council's bespoke form of contract which is available from Legal Services Contact details for the lead officer taking responsibility for queries

11.3.9 Form of tender

11.4 The Council's standard terms and conditions of Contract shall be used (available from Legal Services) unless overridden by other relevant forms approved by professional bodies or bespoke terms and conditions are required.

11.5 Corporate Procurement will advertise the tender in accordance with these CSOs and the Procurement Legislation.

11.6 All tender documentation will be supplied electronically to bidders.

12. SUBMISSION AND RECEIPT OF TENDERS

12.1 All tenders must be submitted in electronic format via The Chest and in accordance with the tender documentation.

12.2 All tenders are to be treated as an "offer" to deliver works supplies or services to the Council.

13 OPENING QUOTES AND TENDERS

13.1 All submissions made by the advertised closing date and time in response to an invitation to quote or an invitation to tender which was advertised via the Chest will be opened at the same time by the nominated officer (as nominated by the CFO).

- 13.2 All submissions made by the advertised closing date and time in response to an invitation to quote which was not advertised via the Chest will be opened by the nominated officer as nominated by the CFO.
- 13.3 All documentation submitted by unsuccessful bidders shall be retained by the Council for a period of 3 years from the relevant closing date.
- 13.4 All documentation submitted by successful bidders shall be retained by the Council in accordance with the Council's Corporate Records Management Policy and the relevant limitation period under the Limitation Act 1980 (as advised by Borough Solicitor).

14 EVALUATING QUOTES AND TENDERS

- 14.1 All quotations opened in compliance with these CSOs shall be evaluated on price, fixed price and quality only or on a price / quality ratio in accordance with the award criteria, sub-criteria and weightings detailed in the invitation to quote or invitation to tender documentation.
- 14.2 All tenders opened in compliance with these CSOs shall be evaluated on fixed price and quality only or on a price/ quality ratio in accordance with the award criteria, sub-criteria and weightings detailed in the invitation to quote or invitation to tender documentation.
- 14.3 On completion of the evaluation, the results of the evaluation shall be reported to the relevant Executive Cabinet Member unless authority to appoint the highest scoring bidder has been delegated to an officer of the Council.
- 14.4 All successful and unsuccessful bidders shall be informed of the result of the tender/quotation exercise in writing and in compliance with these CSOs and, where appropriate, the Public Contracts Regulations 2015.

15 ERRORS IN TENDERS

- 15.1 Where a tender has an error or discrepancy which may affect the tender figures, the tenderer shall be given details of the error or discrepancy and be offered an opportunity to confirm or withdraw the offer. If the tenderer withdraws, the remaining tenders shall be considered for acceptance in the normal manner.
- 15.2 If the procedure mentioned in the previous paragraph is exercised, details shall be recorded within the decision notice accepting the tender.

16. AWARD OF CONTRACT

- 16.1 Once the winning quotation or tender has been selected, the relevant authority to award the contract should be sought and details of the contract should be sent to the Corporate Procurement Team to be published on the Council's Contracts Register via The Chest. The successful bidder/tenderer should be notified in writing.
- 16.2 If the successful tenderer chooses to withdraw before the contract is completed, they should be requested to confirm this in writing, and the next best tender may be selected. This requires the approval of the Executive Cabinet Member where the contract is above the value for which Chief Officers are authorised to accept tenders.
- 16.3 For Contracts governed by Procurement Legislation, there must be a standstill period of 10 working days between choosing the winning tender and awarding the contract.
 - When the winning tender is selected, the successful tenderer must be informed that the award of the contract is conditional on there not being a successful challenge to it during the standstill period.

- The losing parties must also be notified in writing of the proposed award, and given any scores achieved in the tendering exercise. The losing parties are also entitled to a fuller debrief, if they wish.
- The standstill period must be at least ten working days, and may have to be extended if the losing parties request further information.

16.4 Officers should provide feedback to unsuccessful bidders if requested to do so.

17. THE FORM AND CONTENT OF CONTRACTS

17.1 Every contract with a value of £15,000 and over shall be in writing.

17.2 Subject to CSO 17.3 below, contracts with a value of £500,000 and over shall be in writing and expressly entered into as a Deed, and

(a) executed under the common seal of the Council.

(b) recorded in a register kept open for inspection by all members of the Council.

17.3 Contracts entered into with NHS bodies may be entered into as simple contracts under the hand of a Chief Officer where authorised by The Borough Solicitor.

17.4 Contracts which have standard conditions and where the value does not exceed £50,000 may be signed by officers so nominated by the appropriate Chief Officer.

17.5 Every contract in writing shall be entered into using the Council's standard forms of Contract which are available from Corporate Procurement Team (unless other relevant bespoke forms of contract have been agreed with Legal Services).

17.6 The Council will not require or take security for the due performance of any contract for the execution of works unless the responsible Officer, having regard to all the circumstances, considers it necessary and the Executive Cabinet Member has been informed.

17.7 The Council will enter into a collateral warranty, if the relevant Chief Officer, having regard to all the circumstances, considers it necessary and the approval of the appropriate Executive Cabinet Member has been sought.

17.8 Any contract entered into by the Council may be executed using an electronic Council seal and / or by way of electronic signature of an authorised Officer and these methods of execution / signature shall be conclusive of the Council's intention to be bound by the contract as if manually sealed and / or signed by an authorised Officer by way of manuscript signature.

18 VARIATION IN CONTRACTS

18.1 Contract variations shall only be made where permitted under the terms of the relevant contract and in relation to minor amendments.

18.2 The Council shall not agree a contract variation if it:

18.2.1 introduces conditions which, had they been part of the initial contract award procedure, would have allowed for the admission of contractors other than those initially admitted, or would have allowed for the acceptance of a quote or tender other than the one initially accepted; or

- 18.2.2 extends the scope of the contract considerably to encompass works, supplies or services not initially covered; or
- 18.2.3 changes the economic balance of the contract in favour of the contractor in a manner which was not provided for in the terms of the initial contract.
- 18.3 Some variations to contracts above the Procurement Legislation Threshold should be advertised on The Chest in compliance with Procurement Legislation. Legal advice should be sought.
- 18.4 Variations to contracts which result in material financial implications for the Council will require approval in accordance with authorised delegations.

19. EXTENSION OF CONTRACTS

Contracts may be extended beyond the contract term, providing that provision for such extension was included in the original tender documents, the contract and in the report detailing the recommendations for accepting the tender

20. MONITORING OF CONTRACTS

- 20.1 The lead officer will be the contract manager for all new contracts. All contracts must have a Council contract manager for the entirety of the contract. All Contracts shall be monitored throughout the period of the Contract, and the performance of suppliers/contractors should be reviewed regularly (the period to be determined based on the judgement of the officer responsible for the administration of the contract).
- 20.2 Contracts should be monitored against agreed price, performance criteria, which should include, sustainability, equality and diversity, and whole life costs.

21. PARTNERING ARRANGEMENTS

- 21.1 It may be appropriate to manage specific Contracts on a partnering basis. Approval should be obtained from the CFO and Borough Solicitor to ensure that the proposed form of partnering is appropriate, and that the partnering arrangements are robust.
- 21.2 Partnering may be suitable where
 - it is difficult to specify requirements
 - cost is not the primary consideration
 - innovation is required, the future of the service is uncertain, or new methods of service delivery need to be developed
- 21.3 Unless otherwise agreed with the Borough Solicitor, partnering arrangements shall be tendered in accordance with these CSOs.
- 21.4 No partnering arrangements shall be finalised until approved by the relevant Executive Cabinet Member at a formal meeting.
- 21.5 Where a partnering approach is followed, an appropriate form of contract should be entered into. Standard forms of partnering contract should be used where possible.

- 21.6 In partnered projects, it is important to understand the cost structure, including the agreed level of contractors' profit and overheads. Target prices should be agreed, along with mechanisms for sharing savings and additional costs. Suppliers and sub-contractors should be managed to minimise costs to the Council. Arrangements for agreeing charges should be supported by open book accounting.