

EAST AYRSHIRE COUNCIL

STANDING ORDERS RELATING TO CONTRACTS

Extent, Variation and Revocation

1. These Standing Orders are made under Section 81 of the Local Government (Scotland) Act 1973 and shall apply, unless otherwise stated, to the making by the Council or on their behalf of all contracts for the supply of goods or materials or for the provision of services or for the execution of works. These Standing Orders shall be read in conjunction with the provisions of the Council's Scheme of Delegation.

2. (1) These Standing Orders may be varied or revoked by the Council and any motion to vary or revoke these Standing Orders (which motion shall conform to the requirements of Standing Order No. 10 of the Standing Orders for regulating the meetings and proceedings of the Council) shall, when proposed and seconded, stand adjourned without discussion to the next ordinary meeting of the Council.

(2) These Standing orders shall apply to all contracts which are subject to UK legislation or European Union rules on public procurement provided that, where there is any conflict between (a) these Standing Orders and (b) such legislation or rules, the latter shall take precedence.

Exemptions

3. (1) There shall be exempted from the provisions of these Standing Orders any contract for the supply of goods or materials or for the provision of services or for the execution of works which, in the opinion of the appropriate Executive Director/Executive Head of Service/Head of Service are required in an emergency situation which would preclude the adoption of normal procedures.

(2) The Council may exempt from the provisions of these Standing Orders or any part of them, any contract when they are satisfied that the exemption is justified by special unforeseen circumstances.

- (3) Goods, supplies and services obtained through any corporate or inter-authority agreement which may be entered into from time to time by the Council are exempted from these Standing Orders.
- (4) There shall be exempted from the provisions of these Standing Orders any contract of employment.
- (5) Contracts for the purchase, sale or lease of Heritable Property are governed by separate procedures and are exempt from these Standing Orders.
- (6) Except where specific provisions are made within these standing orders contracts for the supply of goods or materials or for the provision of services or for the execution of works where the estimated value does not exceed £30,000 are exempt from the provisions of these Standing Orders. The relevant Executive Director/Executive Head of Service/Head of Service shall make arrangements to ensure value for money is obtained. Where possible quotations for goods or tenders for works and services should be sought from at least three persons in respect of each contract.
- (7) There shall be exempt from the provisions of these Standing Orders any contract for the engagement of Consultants where the estimated cost of services does not exceed £10,000. The relevant Executive Director/Executive Head of Service/Head of Service shall make arrangements to ensure value for money is obtained.
- (8) There shall be exempted from the provisions of these Standing Orders Contracts for the disposal of all surplus moveable assets which will be disposal or in accordance with separate arrangements approved by the Council from time to time.

Additional Requirements and European Thresholds

4

- (1) The Council shall comply with all statutory and other legal requirements including when procuring supply, service or works contracts the relevant European Union Directives. The current threshold values prescribed by the European Union as at January 2004 are as follows:

- (a) contracts for the supply of goods or materials £153 376
- (b) contracts for the provision of services £153 376
- (c) contracts for the execution of works £3 834 411

- (2) These Standing Orders shall be supplemented by the Procurement Protocol approved by the Council. The Procurement Protocol shall be complied with as if it formed part of these Standing Orders.

Standing Restricted List

- 5. (1) This Standing Order shall apply to all contracts where the appropriate Executive Director/Executive Head of Service/Head of Service considers that invitation to tender should be restricted to persons whose names appear on a restricted list.

- (2) The lists shall -

- (a) be compiled and maintained by the appropriate Executive Director/Executive Head of Service/Head of Service.

- (b) No person shall be included in a list unless his technical capability, health and safety and financial standing have been satisfactory investigated.

- (3) Before a list is compiled, notices inviting applications for inclusion in it shall be published in such trade journals and/or appropriate newspapers as the appropriate Executive Director/Head of Service may consider necessary.

- (4) Each list may be amended at any time and shall be reviewed at intervals of not more than three years. At least four weeks before each review, each person whose name appears on the list shall be asked whether he wishes his name to be considered for inclusion thereon and notices inviting applications for consideration to be included in the list shall be published in the manner provided for the paragraph (3) of this Standing Order.

- (5) An invitation to tender for a contract shall be sent to at least six persons whose names appear on the appropriate list or, if there are fewer than six persons to all such persons.
- (6) A formal policy on the selection of tenderers should be produced by each Council Department for use where the Standing Restricted List is used. The policy will recognise the need for the systematic rotation of tenderers.

Ad Hoc Restricted List

6. (1) This Standing Order shall apply to all contracts where the appropriate Executive Director/Executive Head of Service/Head of Service considers that invitation to tender shall be limited to persons who reply to a public notice.
 - (2) Public notice shall be given in such trade journals and/or appropriate newspapers as the appropriate Executive Director/Executive Head of Service/Head of Service may consider necessary, setting out particulars of the contract and inviting persons interested to apply within such period, as may be specified, for permission to tender.
 - (3) After the expiration of the period specified in the public notice, invitations to tender shall be sent to at least six persons who are considered competent to carry out such a contract or, if there are fewer than six persons, to all such persons.

Open Tendering

7. (1) This Standing Order shall apply to all contracts where the appropriate Executive Director/Executive Head of Service/Head of Service considers that invitation to tender shall be open to all persons who may wish to tender.
 - (2) Public Notice shall be given in such trade journals and/or appropriate newspapers as the appropriate Executive Director/Executive Head of Service/Head of Service may consider necessary, expressing the nature and purpose of the contract, inviting tenders for its execution and stating the last date and time (in all cases being twelve noon) when tenders will be received.

Ad Hoc List

8. This Standing Order shall apply to contracts where the appropriate Executive Director/Executive Head of Service/Head of Service considers that the use of restricted lists or open tendering to be inappropriate. In such circumstances, the appropriate Executive Director/Executive Head of Service/Head of Service shall invite tenders from at least six persons who are considered competent to carry out such a contract, or if there are fewer than six persons to all such persons.

Serial, Two Stage and Negotiated Tenders and Existing Contracts

9. (1) Where the appropriate Executive Director/Executive Head of Service/Head of Service considers that tenders should be obtained for a series of projects or in two stages for any proposed works, he/she shall first obtain the approval of the appropriate Committee to that course, both in respect of the tendering procedures and the execution of works.
- (2) Where the appropriate Executive Director/Executive Head of Service/Head of Service considers that a tender should be negotiated with one person, he/she shall, before entering into negotiations, obtain the approval of the appropriate Committee, both in respect of the negotiation and of the person with whom the tender is to be negotiated.
- (3) Where the appropriate Executive Director/Executive Head of Service/Head of Service considers that an existing contract should be extended (except by the exercise of a pre-existing contractual option to extend the contract) with the existing contractor/supplier, he/she shall obtain the approval of the appropriate Committee, both in respect of the extension and of the terms agreed with the existing contractor/supplier.

Periodic Supplies

10. Where a contract is for the supply of goods or materials which will require to be delivered from time to time during a specific period the requirements of these Standing Orders shall be carried out only once prior to the commencement of such period.

Issue and Return of Tenders

11. (1) Every set of tender documents shall state:-
 - (a) The nature and purpose of the Contract for which tenders are invited.
 - (b) The latest date and time (in all cases being twelve noon) when tenders must be received.
 - (c) The location where tenders are to be returned (in all cases to Executive Director of Corporate Support, Council Headquarters, London Road, Kilmarnock KA3 7BU)
 - (d) That the tender shall remain open for acceptance for the period specified in the tender documents.
 - (e) That the Council is not bound to accept the lowest or any tender received.

- (2) At the time of issue of tender documents to contractors/suppliers for the purposes of obtaining an offer from them, a Tender Record Sheet shall be prepared and approved by the appropriate Executive Director/Executive Head of Service/Head of Service and a copy passed to the Executive Director of Corporate Support. The Tender Record Sheet shall contain the following information:-
 - (a) Project Title and Reference.
 - (b) Budget Allocation.
 - (c) List of Contractors/Suppliers invited to submit an offer.
 - (d) Tender return date and time.

- (3) For projects having an estimated tender value in excess of £30,000, the Executive Head of Administrative and Legal Services shall arrange for the

opening of Tenders in accordance with the procedures described in Standing Order 14 hereof.

- (4) Where tenders are issued for projects having an estimated tender value not exceeding £30,000, the Executive Head of Administrative and Legal Services shall record the receipt of tenders and shall thereafter pass the tenders received unopened, together with the Tender Record Sheet to the appropriate Executive Director/Executive Head of Service/Head of Service who shall arrange for the opening of tenders in accordance with the procedures described in Standing Order 14(2) hereof.
- (5) Tender Documents issued shall be accompanied by a suitable envelope for their return by post or by hand, which is clearly marked to indicate that enclosed is a tender and for what purpose. The envelope shall be addressed to the Executive Director of Corporate Support, East Ayrshire Council, Council Headquarters, London Road, Kilmarnock, KA3 7BU. In addition, the date and time for receipt of offers shall be indicated on the envelope, together with an identifier whereby the name of the Contractor can be ascertained for the purpose of Standing Order 13 hereof and statement “if returned by hand, should be delivered to the Main Reception at Council Headquarters, London Road, Kilmarnock where a receipt will be issued specifying the date and time of receipt.
- (6) All tender return envelopes shall be marked with date and time received by the Council Officers if received in the mail and by reception staff if hand delivered and kept in safe place until formally opened. Where delivered by hand, a receipt shall be issued specifying the date and time of receipt.

Late Tenders

12. No tenders received after the closing date and time for submission shall be considered. Any tender received late should be stamped accordingly and returned to the Tenderer with an accompanying letter indicating that as a result of the tender being received late it will not be considered.

Opening of Tenders

13. (1) Tenders having estimated value in excess of £30,000

- (a) Tenders shall be opened in the presence of one Elected Member, together with the Executive Director of Corporate Support or his/her nominee and, where appropriate, such other officers as the Executive Director of Corporate Support deems appropriate.
- (b) At the opening of Tenders the amount of offers as received shall be recorded for each tenderer upon the Tender Record Sheet. As each tender is opened and noted, it shall be initialled, dated and time recorded by the Elected Member present, who will also sign and date the Tender Record Sheet.
- (c) Following opening and recording of offers received, the Tender Documents shall be passed together with a copy of the completed Tender Record Sheet to the appropriate Executive Director/Executive Head of Service/Head of Service in the originating Department, for checking and reporting.

2) Tenders having estimated value not exceeding £30,000

- (a) The appropriate Executive Director/Executive Head of Service/Head of Service upon receipt from the Executive Head of Administrative and Legal Services, of the Tender Record Sheet together with the Tenders received (unopened), shall arrange for their opening.
- (b) Tenders shall be opened in the presence of the Executive Director/Executive Head of Service/Head of Service or his/her nominee and one other senior officer designated by the Executive Director/Executive Head of Service/Head of Service.
- (c) At the opening of Tenders the amount of offers as received for each tender shall be recorded upon the Tender Record Sheet. As each

tender is opened and noted, it shall be initialled, dated and time recorded by the officials present, who will also sign and date the Tender Record Sheet.

Checking of Tenders

14. The three lowest tenders received shall be subject to checking by the appropriate officers of the originating Department. In respect of tenders whose estimated value is in excess of £30,000 a written report shall be prepared detailing all the tenders received in a form determined from time to time by the Executive Director of Corporate Support. This report shall contain a specific recommendation as to the acceptance or otherwise of each tender with reasons.

Acceptance of Tenders

15. (1) No tender shall be accepted for any contract for the supply of goods or materials or for the provision of services or for the execution of works unless the estimated expenditure has been approved previously by the appropriate Committee.
- (2) The Council will not be bound to accept the lowest or any tender received. Tenders may be accepted without further reference to Committee, provided the lowest valid tender after checking and, where appropriate, identification of savings, does not when aggregated with other contracts where appropriate, exceed the budget allocation as approved by the appropriate Committee. In relation to price only tenders, in the event that it is proposed to accept other than the lowest valid tender received after checking, then this should be referred to the appropriate Committee prior to acceptance.
- (3) Where the appropriate Executive Director/Executive Head of Service/Head of Service determines that tenders should be evaluated not only on price, then the tender documentation inviting offers should state the criteria, weightings and evaluation process which will be used.
- (4) Where the appropriate Executive Director/Executive Head of Service/Head of Service determines that a tender is abnormally low and is of the opinion that

it is not possible for the tenderer to deliver the contract to the required standard for the price offered, then such an offer may be rejected as invalid.

- (5) Acceptance of a tender shall be signed by the Executive Director of Corporate Support or his/her nominee in respect of tenders whose estimated value is in excess of £30,000. For tenders whose estimated value does not exceed £30,000 the acceptance shall be signed by the appropriate Executive Director/Executive Head of Service/Head of Services or his/her nominee.
- (6) Following the issue of a contract acceptance for a contract in excess of £30,000, a report on the outcome of the tendering procedure should be submitted by the relevant Executive Director to the first meeting of the appropriate Committee.

Documents

16. (1) The Executive Director of Corporate Support shall maintain a register of all tenders received in respect of each contract, having an estimated value in excess of £30,000 and shall include therein the name and address of such tenderer invited, the value or amount of tenders “as opened” and “as checked”, together with a record of any tenders returned due to late receipt and details of the contract award.
- (2) The appropriate Executive Director/Executive Head of Service/Head of Service shall maintain a similar register, of all tenders received in respect of each contract having an estimated value not exceeding £30,000.
- (3) The appropriate Executive Director/Executive Head of Service/Head of Service shall keep
 - (a) the successful tender and related contract documentation for a period of 10 years following settlement of the final account for the contract.
 - (b) the unsuccessful tenders until completion of the contract.

Upon expiry of the aforementioned timescales, appropriate arrangements must be made by the appropriate Executive Director/Executive Head of

Service/Head of Service for the suitable disposal of such confidential documentation.

Monitoring of Processes

17. (1) **Record of Contracts**

- (a) Departments shall maintain a record of all contracts, together with appropriate documentation and payments made thereon.
- (b) The Executive Head of Finance will maintain the Financial Ledger in such a way as to record payments made in respect of Individual Contracts.

(2) **Contract Sum**

- (a) In the event that the accepted contract sum is to be exceeded, then Committee approval for such further additional expenditure will be required.
- (b) In the event that the final cost of a contract exceeds or is likely to exceed the accepted contract sum including any subsequent authorised approval to incur additional expenditure then this should be reported to the appropriate Committee at the earliest possible date, explaining the circumstances and the financial implications.

(3) **Payments**

- (a) Certification of payments shall be in accordance with the Council's Financial Regulations.
- (b) Where appropriate, and in accordance with the relevant conditions of contract, interim payments will be certified.

(4) **Reports on Financial Outcome of Contracts**

- (a) A report shall be prepared by the relevant Executive Director on the financial outcome of each capital contract and submitted to the appropriate Committee.

(5) **Best Value Performance Monitoring**

- (a) The Executive Director of Corporate Support will ensure that the monitoring procedures by the appropriate Client Departments relating to the administration of Best Value provide Value for Money in respect of service delivery to the Council.

- (b) The Chief Executive, together with the Executive Director of Corporate Support in relation to contracts or their authorised Officers, whilst carrying out the monitoring of Performance and Best Value, shall have the authority, on production of identification, to:-

(i) obtain entry at all reasonable times to any Council premises, land or sites.

(ii) have access to all records, documents and correspondence relating to the audit in hand.

(iii) require and receive such explanations as are necessary concerning any matter under investigation.

Nomination of Sub-Contractor/Supplier

18. (1) Where a contract provides for the nomination by the Employer of a sub-contractor and/or supplier for the execution of works or supply of goods or materials or for the provision of services, the following provisions shall apply:-

- (a) tenders shall be invited by the appropriate Executive Director/Executive Head of Service/Head of Service from not less than three persons whom he/she considers competent for the purpose,

unless he/she considers that less than three persons are so competent, whereupon tenders may be invited from such lesser number of persons.

- (b) every invitation to tender shall be accompanied by a suitable envelope for its return by post or by hand, which is clearly marked to indicate that enclosed is a tender and for what purpose. The envelope shall be addressed to the appropriate Executive Director/Executive Head of Service/Head of Service. Tenders shall be opened in the presence of the Executive Director/Executive Head of Service/Head of Service or his/her nominee and one other senior officer designated by the Executive Director/Executive Head of Service/Head of Service. No tenders received after the closing date and time for submission shall be considered. Records of the process shall be maintained in the manner provided in Standing Order 17 hereof.
- (c) the lowest valid tender received after checking shall be nominated as a sub-contractor or supplier by the appropriate Executive Director/Executive Head of Service/Head of Service, unless he/she is satisfied for some good and sufficient reason to accept other than the lowest valid offer received after checking.

Contractual Matters

19. (1) **Equal Opportunity in Employment**

Before entering into a contract, the Council shall obtain from the contractor/supplier a written assurance that, to the best of his knowledge and belief, he has complied with all statutory requirements in respect of ensuring equal opportunity in employment.

(2) **Race Equality**

Before entering into a contract, the Council shall obtain from the contractor/supplier a written assurance that, to the best of his knowledge he is not unlawfully discriminating within the meaning and scope of the provisions

of the Race Relations Act, 1976 or any statutory modification or re-enactment thereof relating to discrimination in employment.

(3) **Form of Contract**

Every contract shall be in writing and shall be subject to the law of Scotland. Standard Forms of Contract shall be used where appropriate.

(4) **Prevention of Collusion and Corrupt or Illegal Practices**

Every contract shall contain a clause entitling the Council to cancel the contract and to recover from the contractor/supplier the amount of any loss resulting from such cancellation, if the contractor/supplier or his representative (whether with or without the knowledge of the contractor/supplier) shall have practised collusion in tendering for the contract or any other contract with the Council or shall have employed any corrupt or illegal practices either in the obtaining or execution of the contract or any other contract with the Council. Tenderers shall sign a declaration of non-collusion.

(5) **Assignment/Sub-letting**

(1) Except where otherwise provided in the contract the contractor/supplier shall not assign a contract without the previous written consent of the Council.

(2) Except where otherwise provided in the contract, a contractor/supplier shall not sub-let any portion without the previous written consent of the appropriate Executive Director/Executive Head of Service/Head of Service.

(6) **European Standards**

Where there is a recognised European or international standard applicable to any contract current at the date of tender, the tender document shall require that the goods or materials to be used or supplied and all workmanship shall at least meet the requirements of that standard. On the absence of any such

European or international standard, the tender document shall require than an appropriate equivalent standard be used. In presenting evidence of equivalence, tenderers shall be required to provide a certified translation into English of the standard being used.

(7) **Copyright**

Executive Directors, Executive Heads of Service and Heads of Service shall in so far as practicable, ensure that in contracts for the commissioning of reports, research, graphics, design, media and other consultancy services to which copyright applies, that copyright in the work vests in the Council.

(8) **Health & Safety**

Every contractor/supplier appointed by or on behalf of the Council will be required to conduct his undertakings in accordance with current Health and Safety Regulations and approved Codes of Practice.

(9) **Performance Bond**

Where considered necessary by the appropriate Executive Director/Executive Head of Service/Head of Service, the Council shall require the contractor/supplier to take out a bond or other sufficient security for the due performance of the contract. The tender documentation shall specify the nature and amount of the security to be given.

(10) **Liquidated and Ascertained Damages**

(1) Where considered necessary by the appropriate Executive Director/Executive Head of Service/Head of Service, contracts shall provide for liquidate and ascertained damages in the event of late completion of the contract.

(2) The amount to be specified in each such contract shall be determined in terms of the estimated losses likely to be incurred by the Council, in the event of late completion.

(11) **Insurance**

All contracts for the supply of goods, materials, services and the execution of works shall require the contractor/supplier to maintain adequate insurance for the following as appropriate:-

- (a) Employers Liability Insurance.
- (b) Public (Third Party) Liability Insurance.
- (d) Professional Indemnity Insurance.

These insurance provisions shall be supplemented by rules of procedure relating to insurance which shall be complied with as if they were part of these Standing Orders.

Application to Consultants

20. (1) Any consultant who is to be responsible to the Council for a contract on its behalf shall in relation to that contract -
- (a) comply with these Standing Orders;
 - (b) at any time during the carrying out of the contract, produce, on request, to the appropriate Executive Director/Executive Head of Service/Head of Service, all records maintained by him in relation to the contract; and
 - (c) on completion of the contract, transmit all such records to the appropriate Executive Director/Executive Head of Service/Head of Service.

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