

### A GENERAL INFORMATION ABOUT THE STANDING ORDERS

#### A1 Why Do We Have Procurement Standing Orders?

- 1 Section 135 of the Local Government Act 1972 requires all local authorities to have them. They are part of our Constitution.
- 2 We use them to ensure that there is a fair competition when we buy goods and equipment or commission services or works. They set out the procedure to be followed.
- 3 They apply to a wide range of contracts we award, to schools (except D1.1.4 and D1.1.7) who award contracts as our agent, the Greater Manchester Pension Fund and any other unincorporated bodies that we host. They do not apply to staff contracts, purchases of land or financial investments by the Council.
- 4 Executive Directors are responsible for ensuring that all staff follow these Standing Orders and the Public Contracts Regulations 2015, which for the purpose of these Standing Orders we call the Procurement Rules. They do this by appointing a lead officer who looks after the contract tender and award process and to manage the contract once it has been awarded. Our Code of Practice gives guidance on the Procurement Rules.
- 5 **If any officer does not follow these Standing Orders or the Procurement Rules this may result in disciplinary action being brought against such employee and/or and senior officer responsible for ensuring compliance.**

#### A2 Are There Any Exceptions to the Standing Orders?

- 1 We can waive Standing Orders in exceptional circumstances as long as we don't break the Procurement Rules and it will achieve best value.
- 2 Anyone wanting an exception has to follow the approval process. This means the lead officer first getting their Executive Director's agreement and then submitting a written report to the Executive Director (Governance, Resources and Pensions) who can approve it in consultation with an Executive Member of the Council and the Chief Finance Officer. The Executive Director of Resources and Governance exercises an overall inspection and monitoring role in conjunction with the Chief Finance Officer as S151 Officer with responsibility for the Audit function.
- 3 We keep a record of all exceptions that are approved.
- 4 We make similar arrangements for the Greater Manchester Pension Fund.

#### A3 What Do We Gain Though Having Standing Orders?

- 1 They make sure that we get the benefits of competition and act in a proper manner.
- 2 They help us get best value and ensure that we show fairness, transparency, equality and integrity in all our dealings and that we act lawfully.

#### **A4 Are there People We Can't Contract With?**

- 1 We cannot have contracts with any Councillor or any organisation that the Councillor or any relative\* of the Councillor has an interest in, unless there has been a competitive procurement and the contract is awarded to the best value tender. \*Relative here means spouse, partner, parent, parent-in-law, child, stepchild, child of a partner or sibling.
- 2 Employees are also required to disclose in writing to the Executive Director for Governance & Resources of any financial interest in a contract, whether direct or indirect (not being a contract to which s/he is himself a party), that has been, or is proposed to be, entered into by the Council. Section 117 of the Local Government Act 1972 makes it a criminal offence to fail to do so.
- 3 The Head of Democratic Services any such interests or notifications in a Register.

#### **A5 Work for Outside Bodies**

- 1 An Executive Director can only submit a tender for work over £30K for an outside body if a report has been approved by the Executive Member, the Chief Finance Officer and the Executive Director (Governance, Resources and Pensions).

### **B THE INITIAL STAGES OF PROCUREMENT**

#### **B1 How Do We Estimate Value?**

- 1 First of all the lead officer has to do an estimate of the value of the contract and be aware of the threshold values under the Procurement Rules. These dictate which rules apply.
- 2 This has to be genuine and not a way to get round the thresholds in the Procurement Rules. For example we cannot divide up contracts or orders without a valid reason.
- 3 We must calculate the value that the person winning the contract will get over the expected life of the contract. We must also include any sums we get from third parties such as central Government. For a one off order, it means the order value. For recurrent purchases we look at the total value of purchases over the term of the contract.
- 4 If we receive a best bid which is more than 5% above the estimate value, the lead officer's Executive Director has to submit a written report with a full justification to the Executive Director (Governance, Resources and Pensions) who has to consult the First Deputy (Performance and Finance) and the relevant Service Executive Member of the Council. S/he cannot approve it if it takes it above a legal threshold. It will then have to go out to tender. It is therefore very important that lead officer err on side of caution otherwise the procurement process may end up taking longer than intended or desired.
- 5 If the estimate is close to the threshold for the Procurement Rules to apply, the lead officer must carry out a tender exercise that complies with the Procurement Rules.

#### **B2. How Do We Get Best Value?**

- 1 Everything we do has to be designed to get best value for the Council.
- 2 The definition we use is best the combination of whole life costs and benefits to meet the Council's needs.

- 3 Before starting any procurement or awarding any contract the lead officer has to understand those needs and check whether they could be met instead from an existing contract.
- 4 The lead officer also has to check that there is finance available from a Council revenue or capital budget. It may be necessary given the scale of spend for the lead officer to have in principle governance to incur such expenditure.

### **B3 We Care about Social Value**

- 1 We must follow the Public Services (Social Value) Act 2012. This means that when we embark on a procurement exercise the lead officer must consider how it might improve the economic, social and environmental well-being of the inhabitants of Tameside.

### **B4 How Do We Ensure Proper Specifications?**

- 1 All specifications have to set out what the Council needs clearly and precisely. We do not allow the contract to be advertised until the Specification is ready.
- 2 The Specification cannot include material that is discriminatory, distorts competition or is non-commercial. This applies to any quality standards we specify.
- 3 We only name specific products, sources or process if these are essential for our needs. When we do so we allow equivalent items to be used.
- 4 All our Specifications and contracts must include conditions dealing with our legal requirements or policies. We also require minimum levels of insurance cover.

## **C UNDERTAKING A COMPETITIVE PROCESS**

### **C1 We Use Public Sector Portals**

- 1 All contracts £60K and over have to be advertised on the Government website Contracts Finder.
- 2 Procurement leads must use the Chest, the North West's Local Authority Procurement Portal for all competitive procurements.

### **C2 We Use Frameworks**

- 1 We support the use of national, regional and local frameworks as they produce significant savings in time, effort and cost for the Council.
- 2 We operate a general waiver system for use of frameworks. A general waiver is approved annually listing the frameworks which can be used without the need for further authorisation.
- 3 If the framework does not fall within the general waiver, written approval of the Executive Director (Governance, Resources and Pensions) and the Chief Finance Officer in consultation with the First Deputy (Performance and Finance) must be obtained.

### **C3 How Do We Choose The Right Procurement Procedure?**

- 1 Before choosing a procurement procedure the lead officer has to look at the Code of Practice to see if the Procurement Rules apply. The lead officer should also get advice and approval from Corporate Procurement and also legal services if needed.
- 2 If the procurement is going to be carried out by another public body, the lead officer must submit a report and get written permission from the Executive Director (Governance, Resources and Pensions) that it is lawful for us to participate.
- 3 The lead officer must select the procedure that is most likely to get best value for us and calculate the value of the contract in accordance with the Procurement Rules.

### **C4 Contracts Under £25K**

- 1 The lead officer is free to decide how to proceed based on professional judgment. This means for contracts over £5K the 'Quick Quote' facility in the Chest should be used
- 2 The lead officer must comply with our Financial Regulations and Procedures and these Standing Orders and keep a written record of the decision.

### **C5 Contracts £25K or Over but Under £60K**

- 1 The lead officer must use the Chest to get at least three quotations from suitably experienced firms that can meet our needs.
- 2 There must be a proper system in place for receiving, opening, registering and evaluating the quotations.
- 3 The lead officer can accept the best value quotation and must comply with our Financial Regulations and Procedures and these Standing Orders. If these are not complied with, the lead officer must submit a written report for the written approval of the Executive Director (Governance, Resources and Pensions) and the Chief Finance Officer in consultation with the First Deputy (Performance and Finance).

### **C6 Contracts £60K or Over but Below the Procurement Rules Thresholds**

- 1 The lead officer must comply with these Standing Orders and use one of the following procedures as set out in the Procurement Rules:
  - Open Procedure;
  - Competitive Procedure with Negotiation;
  - Competitive Dialogue;
  - Innovation Partnership.
- 2 If the lead officer wants to use any procedure other than the Open one, permission must be obtained in advance from the Executive Director (Governance, Resources and Pensions) in consultation with the First Deputy (Performance and Finance) and relevant service Executive Member. The lead officer must submit a written report to the Executive Director.
- 3 Restricted procedure cannot be used for a below threshold procurement.

## **C7 Contracts At or Over the Procurement Rules Thresholds**

- 1 The lead officer must consult the Code of Practice to see if the Procurement Rules apply.
- 2 If the lead officer feels that the Procurement Rules do not apply, if for example it is a 'Light Touch' services procurement which has a higher threshold, written confirmation has to be obtained from the Executive Director (Governance, Resources and Pensions) and the advice placed on the procurement file. In that case the lead officer must follow the procedure in the previous paragraph.
- 3 If the Procurement Rules do apply, the lead officer must use one of the following procedures as set out in the Procurement Rules:
  - Open Procedure;
  - Restricted Procedure;
  - Competitive Procedure with Negotiation;
  - Competitive Dialogue Procedure;
  - Innovation Partnership.
- 4 If the lead officer wants to use any procedure other than the Open Procedure or Restricted Procedure, permission must be obtained in advance from the Executive Director of (Governance, Resources and Pensions) in consultation with the First Deputy (Performance and Finance) and the relevant service Executive Member. The lead officer must submit a written report to the Executive Director.

## **D ENSURING PROBITY**

### **D1 What Are the Arrangements for Tenders?**

- 1 The lead officer has to give the Head of Democratic Services details of the name and date of every tender invitation.
- 2 It is our policy to use electronic tendering as set out in the tender instructions describing the system approved by the Executive Director (Governance, Resources and Pensions) as being secure. In such cases after the deadline for submission of tenders has passed the electronic seal can be opened by a single duly appointed officer of the Democratic Services.
- 3 Where this is not available, bids can be submitted by post or hand delivery to in a sealed envelope marked with the word 'tender' and its name addressed to the Head of Democratic Services, Tameside MBC, Dukinfield Town Hall, King Street, Dukinfield SK16 4LA.
- 4 The Head of Democratic Services has to record the date and time of receipt and keep the unopened tenders in a safe place until the deadline for tender submission has passed.
- 5 Tenders cannot be submitted by fax or email and late tenders cannot be considered. The Head of Democratic Services has to notify any bidder who submits a faxed, emailed or late tender.
- 6 Duly appointed officers of the Democratic Services and Finance open the tenders. They access and record electronic tenders first followed by paper tenders. They put in the Tender Register:
  - Name of the tender
  - Name of the Bidder
  - Date and time of receipt of each tender
  - Value of each bid
  - Date and time of opening of each tender and the names of the persons present.

- 7 Arrangements are then made for the lead officer to collect the tenders. The lead officer then sets up an Evaluation Panel to do an evaluation in accordance with the Code of Practice.

## **D2 Evaluating Tenders received**

- 1 Tenders cannot be altered during the evaluation, except where there are obvious arithmetical errors or discrepancies that would affect the value of the tender. If that happens the lead officer can notify the bidder and give an opportunity for the bidder to write:
  - Confirming the tender
  - Withdrawing it or
  - Correcting the error or discrepancy
- 2 A record has to be kept of any corrections made as a result.
- 3 We cannot negotiate with bidders after tenders are received, unless we are using a Competitive Procedure with Negotiation.

## **D3 Accepting Tenders**

- 1 The lead officer can accept the best value tender received in accordance with the Code of Practice.
- 2 If the lead officer wants to accept a tender where:
  - it is not best value, or
  - it has been negotiated, or
  - less than 3 tenders have been receiveda report has to be written with a full justification with details of the evaluation.
- 3 The lead officer has to submit this for approval by the Executive Director (Governance, Resources and Pensions) and the Chief Finance Officer who have to consult the First Deputy (Performance and Finance) and the relevant service Executive Member.

## **D4 Contract Award**

- 1 The lead officer has to inform every bidder of the result in accordance with the Code of Practice.
- 2 The Procurement Rules require the lead officer to write and retain a written report (a "Regulation 84 Report") covering specified information about the procurement process for every over EU threshold contract, framework agreement and dynamic purchasing system which is awarded or established.
- 3 We keep a Register of Contracts so the lead officer must inform Corporate Procurement that the contract has been awarded giving the information required in the Code of Practice.

## **E ENTERING INTO A CONTRACT**

### **E1 We Have Some Formal Requirements**

- 1 Contracts over £60K have to be in writing and sealed by the Council. The sealing can be witnessed by any of one of the following people:
  - Executive Director (Governance, Resources and Pensions);

- Head of Legal Services;
  - Assistant Borough Solicitor; or
  - Anyone authorised by the Executive Director (Governance, Resources and Pensions).
- 2 Contracts between £25K and £60K have to be in writing and signed by two officers, one of whom has to be from the following list:
- Chief Executive
  - Executive Director (Governance, Resources and Pensions)
  - Member of the Senior Management Team
  - Head of Legal Services
- 3 Contracts below £25K have to comply with our Financial Regulations and Procedures.
- 4 Contracts only start when a formal agreement has been signed or a letter of acceptance and an official order for the procurement has been issued. We make payments under contracts in accordance with the terms of the contract.
- 5 We monitor Contracts and review the performance of contractors regularly throughout the contract period.

## **F CHANGING THE CONTRACT**

### **F1 Can We Extend or Vary Contracts and Make Direct Awards?**

- 1 All requests for extensions, direct awards or variations to a contract have first to be authorised in writing by an Executive Director or the (Governance, Resources and Pensions) if it is a Pension Fund matter.

#### **Extension**

- 2 Contracts can only be extended if:
- There is an extension provision in the contract, or
  - Only the existing contractor can meet the tender requirements and no reasonable alternative or substitute exists, or
- There is extreme urgency due to events which we could not foresee and are not our fault. This usually means Act of God situations such as fire or flood.

- 3 In all such cases the written approval of the Executive Director (Governance, Resources and Pensions) and the Chief Finance Officer in consultation with the First Deputy (Performance and Finance) and the relevant service Executive Member must be obtained.

#### **Direct Award**

- 4 Where the Procurement Rules apply a direct award of a contract i.e. without any competition can only be made if:
- No suitable tender is received capable of meeting our requirements.
  - Our requirements can only be met by a single bidder because:
    - (i) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance, or
    - (ii) competition is absent for technical reasons
    - (iii) we have to protect exclusive rights such as intellectual property rights and no reasonable alternative or substitute exists.
  - There is extreme urgency due to events which we could not foresee and are not our fault. This usually means Act of God situations such as fire or flood.

## Variation

- 5 Where the Public Contracts Rules apply a contract can be varied if:
- The variation is provided for in the original contract;
  - Additional works, supplies or services are necessary and we cannot change contractor for technical reasons or without significant inconvenience or cost - provided that these are not more than 50% of the value of the original contract.
  - There are circumstances which as a diligent contracting authority we could not have foreseen. This usually means Act of God situations such as fire or flood. The variation must not alter the overall nature of the contract or be more than 50% of the value of the original contract.
  - It is to novate the contract to a new provider who takes on the obligations of the original contractor.
  - The variation is of low value. This means not more than 10% of the value of the original contract.
- 6 In every case where a variation or direct award is requested, except where the variation is provided for in the original contract, the Executive Director must get the written approval of the Chief Finance Officer and the Executive Director (Governance, Resources and Pensions) in consultation with the First Deputy (Performance and Finance) and the relevant service Executive Member.
- 7 They can only grant such an approval if it can be demonstrated that this will achieve Best Value for the Council and is in accordance with the Procurement Rules.
- 8 Similar arrangements apply to the Greater Manchester Pension Fund where the Pension Fund Management/Advisory Panel can extend, make direct awards or vary contracts. The Director of Pensions has to write a report with comments from the Executive Director (Governance, Resources and Pensions).

## F2 What Happens If the Final Costs Is More than the Estimate?

- 1 We allow minor variations on the following scale:

<b>Contract Value</b>		<b>Permitted Variation</b>
<b>Exceeding</b>	<b>Not Exceeding</b>	
£25,000	£60,000	10%
£60,000	£500,000	7.5%
£500,000	£1,000,000	5%
£1,000,000+		2.5%

- 2 If the final cost is likely to be more than a minor variation, the lead officer has to submit a written report to their Director, the Executive Member and the Assistant Executive Director of Finance.

## F3 How Do We Deal with Contract Claims

- 1 An Executive Director can deal with contract claims not covered by the contract, provided they take advice of the Executive Director (Governance, Resources and Pensions) on legal liability and the Chief Finance Officer on financial implications.
- 2 Where claims are likely to arise due to delay the Executive Director has to notify the Executive Member and the Executive Director (Governance, Resources and Pensions) and the Chief Finance Officer of the remedial action to be taken. It should be noted only the

Executive Director (Governance, Resources and Pensions) has authority to settle disputes and litigious actions.