



## **Contract Standing Orders**

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These CSOs were adopted by the Council at its Meeting held on 24<sup>th</sup> May 2018

## Contract Standing Orders

### CSO1 General

#### 1.1 Definitions

“Contract” means (i) any agreement for the supply of goods, services, or the execution of works to or for the Council including the use of consultants; (ii) any Framework Agreement; or (iii) any agreement where no payment is made by the Council but which is of financial value to the economic operator but does not include (without exception) (iv) an employment contract: or (v) a Grant Agreement;

“Contracts Finder” means a web-based portal provided for the purposes of the UK Regulations by or on behalf of the Cabinet Office;

“Council” means Petersfield Town Council;

“Economic Operator” means the party or potential party to a Contract;

“Proper Officer” means the Town Clerk or other such employee as appointed by the Council

1.2 These Contract Standing Orders (“CSOs”) are made pursuant to the Local Government Act 1972, section 135 and shall come into force on 1<sup>st</sup> January 2018 but nothing in these CSOs shall prejudice the validity of any actions taken before that date under any previous CSOs.

1.3 Subject to CSO1.4 every contract made by or on behalf of the Council shall comply with:

1.3.1 these CSOs;

1.3.2 the Council’s Financial Regulations;

1.3.3 all relevant statutory provisions including, in particular, Local Government Act 1988 Part II, Local Government Acts 1999 and 2000 and the Public Contracts Regulations 2015;

1.3.4 European Union treaties and European Council directives;

1.3.5 the rules on State Aid;

1.3.6 any direction by the Council or Committee having appropriate delegated authority.

1.4 These CSOs shall not apply or may be varied:

1.4.1 as resolved by the Council or appropriate Committee;

1.4.2 where statute or subordinate legislation prescribes otherwise.

1.5 The estimated value of a contract shall be the total value of the contract, net of VAT. This is the total consideration estimated to be payable over the full term of the Contract by the Council to include any option to extend.

1.6 The estimated value of a Framework Agreement is the total value of all the Contracts which could be entered into by the Council and all other contracting authorities, as applicable. Where the Council has a requirement for a single contract comprising services, supplies or works in combination, the rules to be applied are those which apply to the largest element by consideration.

- 1.7 Purchases of the same or similar goods or services must be aggregated wherever practicable. Contracts must not be artificially separated so as to circumvent the application of any part of CSOs, the EU Public Procurement Directives or UK Regulations.
- 1.8 Where the Contract period exceeds four years or is for an indefinite or unknown period, the value shall be calculated on the basis that the Contract shall be for a period of four years.
- 1.9 A decision whether to employ electronic or paper based methods of seeking expressions of interest, inviting tenders and/or receiving tenders shall be taken before expressions of interest are sought and the method chosen shall take into account of the class of potential economic operators and economic operators. Those decisions shall be advertised to potential economic operators and economic operators.

## **CSO2 Authority to Enter into Contracts**

- 2.1 The Proper Officer shall have power to accept tenders (where required) and to enter into contracts on behalf of the Council to a value not exceeding £5,000.
- 2.2 In other cases the Council or the relevant committee shall have power to accept tenders and to authorise the conclusion of contracts.
- 2.3 The authority to accept tenders and/or enter into contracts shall be documented by the Proper Officer. The report seeking authority and the decisions shall include: a Council summary, recommendations, reasons for recommendations, a list of background papers (if any), the outcomes of consultations, statutory background, relevant policy background, other courses of action considered but rejected (if appropriate), staffing consequences, financial consequences, and how the proposal will help to reduce crime and disorder and promote race relations. Decisions taken under delegated authority shall be recorded by the Proper Officer in the database of delegated decisions.

## **CSO3 Framework Agreements and Suitability of Economic Operators**

- 3.1 A Framework Agreement is an agreement between one or more contracting authorities (bodies governed by public law) and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged. Framework Agreements may be established by the Council, or by other public bodies, or public sector buying consortia, as arrangements through which the Council, along with other public bodies, may make specific purchases.
- 3.2 Where appropriate a Framework Agreement that has been approved as suitable by the Council or an appropriate Committee should be used for the making of the proposed purchase. A suitable Framework Agreement shall be appropriate for the specific requirement and procured in compliance with the UK Regulations, and the terms and conditions applicable shall meet the minimum requirements of the Council.
- 3.3 Provisions contained in the UK Regulations which govern Framework Agreements must be complied with when concluding a Framework Agreement or awarding a contract based on a Framework Agreement.
- 3.4 In all cases where a Contract is awarded under these CSOs, an economic operator can only be appointed who, as a minimum:

- a) meets the Council's insurance requirements for the Contract (in respect of public liability, product, professional indemnity and/or employer's liability as appropriate, based on an assessment of risk for the Contract); and
- b) is registered for tax and holds a valid certificate ( where appropriate).

**CSO4 Publication of Notices**

- 4.1 In accordance with either these CSOs or UK Regulations, in all cases a public notice will be required. The notice shall be placed on the Council's web site and on Contracts Finder.
- 4.2 The notice shall additionally be placed in at least one local newspaper, one trade journal and/or approved website stating the nature and purposes of the Contract, inviting tenders and stating the last day when tenders shall be accepted.
- 4.3 Where the value of the Contract is £25,000 or greater the information regarding the Contract award is required to be placed on Contracts Finder.
- 4.4 Where the value of the Contract exceeds the relevant EU Threshold, the Contract notice and Contract award notice shall also be placed in the OJEU in accordance with the UK Regulations.

**CSO5 Contracts of £50,000 or Less**

- 5.1 Where the estimated value of the Contract, calculated in accordance with CSO1, is less than £50,000 and there is a suitable Framework Agreement approved by the Council or appropriate committee under CSO3, that Framework Agreement shall be used.
- 5.2 Where no suitable Framework Agreement is available, and the estimated value of the Contract, calculated in accordance with CSO1, is less than £500, then one written quotation should be obtained.
- 5.3 Where no suitable Framework Agreement is available, and the estimated value of the Contract, calculated in accordance with CSO1, is £500.01 or greater and less than £50,000 three written quotations should be obtained against the same written request for quotation should be obtained.
- 5.4 In the selection of the economic operator, the need to seek best value for money and be able to demonstrate that they have achieved this should be borne in mind.
- 5.5 The requirement for written quotations in CSO4.1 or 4.2 shall not apply where the services comprise:
  - 5.5.1 seeking the advice of counsel;
  - 5.5.2 the services of counsel by way of representation;
  - 5.5.3 the services of an expert witness;
  - 5.5.4 the engagement of temporary or locum staff but the Proper Officer shall obtain quotations wherever possible.
- 5.6 Contracts having a value of £50,000 or less shall be evidenced in writing which may be the Council's Purchase Order form.

**CSO6 Requirement for Tenders with a Value above £50,000 but below EU Threshold**

- 6.1 Where the estimated value of the Contract, calculated in accordance with CSO1, is £50,000 or greater but less than the relevant EU Threshold, and there is a suitable Framework Agreement approved by the Council or appropriate committee, under CSO3, that Framework Agreement shall be used.
- 6.2 Where no suitable Framework Agreement is available, tenders shall be invited using a procedure comparable/similar to the open procedure under the Public Contract Regulations.
- 6.3 The procedure requires the publication of a notice in accordance with CSO4. The public notice shall specify (i) a time period within which interested parties may express an interest in tendering and (ii) the method by which such interest shall be expressed. At the end of this period, an invitation to tender shall be sent to all parties who have expressed an interest, specifying a reasonable period for tenders to be returned.
- 6.4 In all cases, every invitation to tender shall include the following:
- A statement that the tendering process will be conducted within the Council's corporate [electronic] tendering system;
  - [Full instructions on how to submit their tender to this system];
  - Advice that tenders, once received in the system, will be anonymous until the time specified for their opening;
  - Advice as to the deadline for submission of tenders to this system.
- 6.5 The invitation to tender shall state:
- the evaluation criteria (including sub-criteria and sub-sub-criteria (where used));
  - weightings and scoring criteria that will be applied in the award of the Contract.
- 6.6 These criteria must be capable of objective assessment, include price and any other relevant factors, and be weighted by relative importance. The invitation to tender shall also include the terms and conditions that will apply to the Contract.

#### **CSO7 Tendering Procedures for Contracts above EU Thresholds**

- 7.1 The EU Public Procurement Directives sets the financial threshold above which prescribed tendering procedures must be followed. The EU Thresholds are reviewed every two years.
- 7.2 Where the estimated value of the Contract is above the relevant EU Threshold, the procedures set out in the EU Public Procurement Directives must be followed. In most cases, the open procedure, restricted procedure or competitive procedure with negotiation will be used, but in certain specialist cases, the negotiated procedure without prior publication, competitive dialogue procedure or innovation partnership procedure shall apply.

#### **CSO8 Form of Invitation to Tender and Submission of Tender**

- 8.2 The invitations to tender shall state that no tender will be considered unless contained in a plain sealed envelope and endorsed 'Tender' followed by the subject to which it relates. Every such envelope shall bear no name or mark indicating the sender. In cases where in accordance with CSO1.5 it has been decided that electronic means of communication may or shall be used, tender forms may be accepted by email or other form of electronic

communication provided all appropriate safeguards ensuring probity and anonymity have been put into place and have been complied with by the economic operator.

- 8.3 Every tender shall be addressed to the Proper Officer of the Council and the tender shall remain in the custody of the Proper Officer until the time appointed for its opening.

### **CSO9 Opening of Tenders**

- 9.1 All tenders for a contract shall be opened at the same time and in the presence of the following persons:
- 9.1.1 in respect of tenders invited by the Proper Officer in accordance with CSO2.1 above, the Proper or such officer as he or she shall have designated for the purpose;
  - 9.1.2 in respect of tenders in accordance with CSO2.2 above, the Chairman or other member of the appropriate committee together with the Proper Officer or such officer as he or she shall have designated for the purpose.
- 9.2 The Proper Officer shall prepare and maintain a register of tenders received and shall record in that register the name of the economic operator and the total amount of the tender.
- 9.3 All persons required by CSO11.1 above to be present at the opening of tenders shall immediately thereafter sign against the relevant particulars in the register of such tenders having been opened by them or in their presence and shall initial each of the tender documents.

### **CSO10 Evaluation of Tenders and Award of Contracts**

- 10.1 The Proper Officer shall ensure that the tenders received are evaluated in accordance with the evaluation criteria that have been adopted for the Contract, and stated in the Invitation to Tender. These criteria must be capable of objective assessment, include price and other relevant factors, and be weighted by relative importance.
- 10.2 The Proper Officer shall produce a written report evaluating each tender received against the evaluation criteria. The report shall identify the tenderer who has submitted the most economically advantageous tender i.e. the tender that achieves the highest score in the evaluation, and recommend the award of the Contract to that tenderer. This report shall be submitted to the person authorised to award the Contract under CSO 2.
- 10.2 Where the value of a Contract is above the relevant EU Threshold, the Contract shall be awarded in accordance with the UK Regulations and in particular the requirements relating to a “standstill” period prior to the Contract being entered into.
- 10.4 All Contracts, including an arrangement subject to a purchase order, must be made in writing under English Law, and must clearly and carefully specify the supplies, services or works to be provided, the agreed programme for delivery and the price and terms for payment together with all other terms and conditions.
- 10.4 Subject to CSO10.5 and CSO10.6 every Contract exceeding £50,000 in value not required or intended to be made under seal shall be signed on behalf of the Council by two officers of the Council being the Proper Officer and the Finance Officer or other office as nominated and approved by Council.

- 10.5 Every Contract which is a lease finance agreement shall be signed by both the Proper Officer and the Finance Officer.
- 10.6 Every Contract required or intended to be made under seal shall be sealed on behalf of the Council by the Proper Officer in the presence of a member of the Council.

### **CSO11 Waiver of Contract Standing Orders and Modifications of Contracts**

- 11.1 Any of the requirements of these CSOs may be waived in an individual case, by the person authorised as follows:
- 11.1.1 Where the estimated value of the Contract is less than £50,000, the Manager within whose area of responsibility the Contract falls;
  - 11.1.2 Where the estimated value of the Contract is £50,000 or greater but less than £100,000, the Town Clerk;
  - 11.1.3 Where the estimated value of the Contract is £100,000 or greater, the Council or an appropriate committee with delegated responsibility for the relevant service area.
- 11.2 A request for the issue of a waiver must be made in writing to the person authorised under CSO11.1, with full reasons as to why the waiver is required, and evidence that the issue of a waiver will not prevent best value from being obtained. The decision in response to the request must also be in writing. No action shall be taken to enter into the Contract until such request has been submitted and the decision made.
- 11.3 The Council is subject to legal requirements to ensure fair competition for Contracts of a value exceeding the EU Thresholds, and subject to obligations under the EU Treaty to ensure that all Contracts (regardless of value) are awarded having regard to the need to avoid any action that is discriminatory, improper or which distorts competition.
- 11.4 It is understood that a waiver may be utilised where it can be demonstrated that the ability to act quickly to engage a single supplier would make economic sense and fit with service requirements, in circumstances where there is no more effective way to secure the capacity.
- 11.5 Any proposed modifications to existing contracts which have not been provided for in the initial procurement documents in clear, precise and unequivocal review clauses shall be approved by the Town Clerk where the value of the modification is less than £5,000 and by the relevant committee with delegated responsibility for the relevant service area where the value of the modification is £5,000 or greater prior to agreement of such modification.

## **APPENDIX 1**

The Public Works Contracts Regulations 2015 or the most recently approved set of regulations in force.