

Part B

Standing orders - Contracts

1. Introduction

- 1.1 Any agreement between two or more parties to supply goods, services, materials or execution of works in exchange for payment represents a contract. This can range from the purchase of some envelopes from the village shop to the construction of an extension. For smaller purchases it is sufficient to either buy the goods from a local shop or raise an official order and either post or take it to the supplier provided the purchase is considered to represent value for money. For substantial contracts it is important for schools to ensure proper procedures are followed to obtain value for money and to ensure that the interests of the school are protected. The following regulations provide a framework to help schools achieve both of these objectives.
- 1.2. These Standing Orders (hereafter referred to as “the Orders”) provide a framework for schools so that there will be a common approach to the letting of contracts. The Orders apply to all types of contracts relating to activities which form part of the delegated budget and are based on the Constitution operated by Oxfordshire County Council (the “Local Authority”) for its own contracts. A common approach for all schools to the letting of contracts will help to avoid confusion on procedures and importantly will provide a safeguard for governors and Headteachers should there be any question raised as to the probity or propriety of decision making in relation to contracts. The Orders are not intended to be a millstone and provided they are followed will be a help in the proper management of schools.
- 1.3. When schools become academies they are not subject to the Orders but must still comply with procurement law and should seek advice as appropriate.
- 1.4. Although the Orders are aimed primarily at contracts where the school is making payment, the Governing Body may also find them helpful in instances where surplus equipment and materials are being disposed of to third parties.
- 1.5. Every contract made by the Governing Body of a school must comply with:
- a) European Union (EU) legislation;

- b) any relevant Directives of the EU for the time being in force in the United Kingdom. Corporate Procurement should be contacted on the application of Directives and the threshold values;
 - c) any relevant provisions of the law of the United Kingdom including any Act of Parliament requiring the letting of contracts by competitive tendering; and
 - d) the Orders.
- 1.6. The Orders shall apply to the selection of a nominated sub-contractor and of a nominated supplier as if a sub-contract were a contract.
- 1.7. Exemption from any of the provisions of The Orders can only be made:
- a) by direction of the Local Authority; or
 - b) by a committee of the Local Authority to which the power of authorising the making of contracts shall have been delegated, where they are satisfied that the exemption is justified in special circumstances; or
 - c) by the Director for Childrens Services in an emergency following consultation with the Director of Law & Governance.
- 1.8. Nothing in The Orders shall be taken to authorise;
- a) any disposal of land or buildings or any interest in land or buildings; or
 - b) the entering into contracts for the borrowing or raising of money.
- 1.9. For the purpose of the Orders:-
- a) a “contract” includes a series of transactions amounting to one contract;
 - b) a “school” means a school which is maintained by the Local Authority and which is subject to the Scheme for Financing Schools under the Schools Standard and Framework Act 1998;
 - c) a “person” includes a Body of persons corporate or unincorporated
- 1.10 The Standing Orders - Contracts covers:
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 - 2. Competitive requirements
 - 3. Evaluation criteria and invitations to tender

- 4. Award and contracts
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2. Competitive requirements

- 2.1 Contract values shall be calculated as the total amount payable over the whole term of the contract, including any potential extension period.
- 2.2. For contracts which do not exceed either £10,000 in one year or £25,000 in total:
 - 2.2.1 Quotations/tenders are not required, unless the Governing Body decides otherwise, or the school's internal control procedures require quotations or tenders.
 - 2.2.2 Authorised officers of the Governing Body with delegated powers shall take such practicable steps to satisfy themselves that they are receiving value for money through a combination of cost and quality.
 - 2.2.3 The expenditure shall be accounted for in accordance with the provisions of section A of the Financial Manual of Guidance.
- 2.3. For contracts where the estimated value is equal to or exceeds either £10,000 in one year or £25,000 in total but is less than £75,000:
 - 2.3.1 Either competitive quotations must be obtained in accordance with the procedures set out in the Orders sections 2A (open) or 2B (selective) or the procedure set out at section 2C (frameworks) should be followed. Requests for quotations can be more informal than requests for tenders and do not need to comply with the requirements in the Orders section 3 save for those relating to evaluation, unless the Governing Body specifies otherwise.
 - 2.3.2 It is for the Governing Body to determine which procedure it will adopt in any particular case. If a Governing Body requires any assistance regarding the most appropriate procedure for the particular contract they wish to let then the Corporate Procurement staff will be willing to provide advice in light of the Authority's experience. If assistance is required regarding contracts for the repair and maintenance of buildings then such advice can be sought from Communities Directorate staff.
- 2.4. For contracts where the estimated value is equal to or exceeds £75,000 but is less than the EU threshold (the thresholds current until December 2017 are £164,176 (euros 209,000) for supply and services contracts and £4,104,394 (euros 5,225,000) for works contracts):

2.3.1 Either competitive tenders must be obtained in accordance with the procedures set out in Standing Orders sections 2A (open) or 2B (selective) or the procedure set out at section 2C (frameworks) should be followed. Invitations to tender must comply with all the requirements in Standing Order section 3.

2.3.2 It is for the Governing Body to determine which procedure it will adopt in any particular case. If a Governing Body requires any assistance regarding the most appropriate procedure for the particular contract they wish to let then the Corporate Procurement staff will be willing to provide advice in light of the Local Authority's experience. If assistance is required regarding contracts for the repair and maintenance of buildings then such advice should be sought from Communities Directorate staff.

- 2.5. Where the estimated value of a proposed contract exceeds the EU threshold, the full processes set out in the Public Contracts Regulations should be followed – Corporate Procurement can provide support.
- 2.6 Where Standing Order 5 regarding proprietary articles applies, sections 2A, 2B and 2C do not need to be followed.
- 2.7 Before entering into any process which will or may result in any transfers of staff under the Transfer of Undertaking (Protection of Employment) Regulations ("TUPE") where any staff are or were previously School/Council employees or are members or are eligible to be members of the LGPS, the Pension Services Manager, the local authority's HR or such other person who provides HR advice to the school and the Local Authority's Legal Services team should be contacted. If in doubt the school should contact their EFS finance adviser before proceeding.

2A. Open quoting/tendering

2A.1. Where quotations or tenders for a contract are to be obtained by open competition, the contract must be advertised on either the South East Portal to <https://sebp.due-north.com/> and/or elsewhere if appropriate (the Corporate Procurement Team can assist with advertising) with a view to receiving at least:

- a) three written quotations where the value does not exceed £75,000
- b) three tenders where the value is between £75,000 and the EU threshold.

2B. Selective quoting/tendering

- 2B.1. Where quotations or tenders for a contract are to be obtained by using pre-qualification requirements, pre-qualification requirements shall be set by the Governing Body and shall relate to economic and financial standing and technical or professional ability.
- 2B.2. Where the estimated value is less than £75,000, at least three written quotations should be invited from those meeting the Governing Body's pre-qualification requirements (unless fewer than three persons meet the Governing Body's qualification requirements, in which case all such persons shall be invited to quote). Some degree of advertising may be required.
- 2B.3. Where the estimated value of a contract for the supply of goods or materials or services or for the execution of any work equals or exceeds £75,000 but is less than the EU threshold, the contract must be advertised on either the South East Portal to <https://sebp.due-north.com/>¹ and/or elsewhere if appropriate (the Corporate Procurement Team can assist with advertising) and invitations to tender shall be sent to not less than five persons who meet the Governing Body's pre-qualification requirements (unless fewer than five persons meet the Governing Body's qualification requirements, in which case all such persons shall be invited to tender).

2C. Use of framework agreements

- 2C.1. The Local Authority has a range of contractors appointed to framework agreements after competitive tendering (often together with other Local Authorities to achieve maximum spending power) and there are also national framework agreements. Schools can utilise such framework agreements to avoid running their own quotation/tendering process by either directly appointing a contractor already appointed to the framework or running a mini-tendering/quotation process under the framework. Schools should contact Corporate Procurement officers for further details. This also applies to leasing rates (Schools are advised to refer to leasing guidance issued before entering into any lease).
- 2C.2. Any requirements of a framework agreement as to how contractors are to be appointed or mini tendering processes conducted must be followed by the school before any entering into any such contract.

3. Evaluation criteria and invitations to tender

- 3.1. In determining the relevant evaluation criteria on which tenders are to be assessed, authorised officers of the Governing Body, in consultation with the

¹ note that Corporate Procurement officers can assist with use of the South East Business Portal to allow for electronic tenders

Corporate Procurement officers where appropriate, must consider all factors relevant to their requirement, including environmental and social considerations, so far as this is lawful. Evaluation criteria must be included in the invitation to tender.

- 3.2. The evaluation process will clearly demonstrate that the school is seeking to identify the tender which offers the best value for money.
- 3.3. Where in pursuance of The Orders invitation to tender is required every notice of such invitation shall:
 - a) if hard copy tenders are requested¹, state that no tender will be received except in a plain, sealed envelope which shall bear the word “Tender ...” followed by the subject to which it relates, but shall not bear any names or mark indicating the sender, and such envelope shall be addressed to and remain in the custody of the Headteacher or a member of staff authorised for the purposes by the Governing Body until the time appointed for its opening;
 - b) the notice shall express the nature and purpose of the contract, state where further details may be obtained, invite tenders for its execution and state the last date and time when tenders will be received.
- 3.4. Where hard copy tenders are requested:
 - 3.4.1 on receipt, tenders shall be kept in a secure place until the time appointed for their opening. Tenders shall be opened at one time and as soon as practicable after the time appointed for their receipt in the invitation to tender (e.g. within 3 days). The tenders shall be opened in the presence of two members of staff duly authorised by the Governing Body, and, where required by the Governing Body, a Governor.
 - 3.4.2 Tenders shall, immediately upon opening, be initialled and recorded by the designated opening officer on the “Schedule of Tenders”. This schedule shall be signed by each of the persons present at the tender opening session and passed to the Governing Body with the tender document.
- 3.5. Any tender received after the date and time appointed for their receipt shall be returned promptly to the tenderer. The tender may be opened to ascertain the name of the tenderer, but no details for the tender shall be recorded or disclosed.
- 3.6. All tenders, including mini-tenders under framework agreements, must be evaluated in accordance with the evaluation criteria specified in the invitation to tender.

- 3.7. The arithmetic in compliant tenders, including mini-tenders under framework agreements, must be checked. If arithmetical or clerical errors are found they should be notified to the tenderer, which should be requested to confirm the correct figures/wording or withdraw its tender.

4. *Award and contracts*

- 4.1. Where quotations or tenders have been received in accordance with The Orders, a member of staff of the school duly authorised by the Governing Body may without reference to the Governing Body accept tenders which do not relate to capital projects provided that the tender concerned is the lowest and financial provision has been included in the approved budget of the Governing Body.
- 4.2. Every contract shall be in writing and shall be in a form agreed by the Director of Law & Governance where he/she so requires by notice in writing which may be given in relation to contracts generally or to a class or classes of contract. Where the contract is (a) to be supported by a bond or guarantee or (b) in respect of a sum of £500,000 or more for all contracts it shall be executed under the County Council's seal or under the hand of the Director of Law & Governance.
- 4.3. An authorised officer of the Governing Body with delegated powers shall sign contracts or agreements up to £25,000 in value.
- 4.4. Two authorised officers of the Governing Body with delegated powers shall formally sign all contracts or agreements which exceed £25,000 and are less than £100,000 in value.
- 4.5. The Chair of Governors and one other member of the Governing Body or two other officers to whom the Governing Body has specifically delegated the power to sign that contract shall formally sign all contracts or agreements which equal or exceed £100,000 but are less than £500,000.
- 4.6. All contracts, where an appropriate British Standard Specification or British Standard Code of Practice issued by the British Standards Institution is current at the date of tender, shall require that goods and materials used or supplied and all workmanship shall be in accordance with that standard or European equivalents.
- 4.7. All contracts with a value of £25,000 or more must include a clause empowering the School to terminate the contract for bribery or corruption and to recover from the supplier the amount of any loss resulting from such termination in a form approved by the County Solicitor

- 4.8. Where it appears likely or becomes apparent that the total project cost recorded in the Capital Programme is to be exceeded (excluding updated inflation) for contracts of £75,000 and above and a variance of 10% or more is highlighted then the Headteacher shall report this to the Governing Body, approval shall be sought in accordance with the schools internal financial procedures document.
- 4.9. As soon as it appears likely or becomes apparent that the final cost of any other contract is likely to cause the revenue budget to be exceeded, for contracts of £75,000 and above and a variance of 10% or more is highlighted then the Headteacher shall report this to the Governing Body, the Headteacher shall report this in accordance with the schools internal financial procedures document.
- 4.10. Before proposing or authorising the extension of any existing contract, the relevant Headteacher shall ensure that the proposed extension fully complies with the relevant terms and conditions of the Contract, procurement law and these Rules and seek advice from Corporate Procurement officers and/or Legal Services as appropriate.

5. *Proprietary Articles*

- 5.1. Proprietary articles are those items which are made or sold for a particular firm and are required in order to be compatible with articles already at the school. This can often apply to certain types of replacement parts or extensions to existing systems. The proprietary item rule does not generally apply to such items as stationery and cleaning materials.
- 5.2. Proprietary articles or articles for which no competitive quotations/tenders can be obtained, although reasonable attempts to obtain quotations/tenders must be made, shall not be selected by the Governing Body for use in any contracts unless the Governing Body is satisfied that there are no reasonably satisfactory alternative articles and, where the contract is above the EU threshold, the Governing Body has consulted with Corporate Procurement and Legal Services regarding the proposed action.