

APPENDIX 17

CONTRACT STANDING ORDERS

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STANDING ORDERS RELATING TO CONTRACTS

The overall purpose of these Contract Standing Orders is threefold:-

- (a) to ensure transparency and fairness in the procurement of works, goods and services
- (b) to ensure the County Council gets best value from its procurements
- (c) to protect those involved in the procurement process.

1. Interpretation

In these Standing Orders, unless the context otherwise requires:-

- 1.1 "appropriate Chief Officer" means either the Chief Officer responsible for the function to which the contract relates (or any other person or body duly authorised) except that, where under any major user purchasing policy another Chief Officer is responsible for the letting of the contract, it shall mean that Chief Officer in consultation with the Chief Officer on whose behalf the contract is to be let.
- 1.2 "estimated value" means the value of the contract estimated under Standing Order 8.
- 1.3 a "concession" is where the County Council allows an outside body, under contract, to run a service on its behalf using income derived from the service.
- 1.4 "person" includes a partnership, body corporate or unincorporated association.
- 1.5 "In writing" or "written" includes transmission by email and any other electronic means which is approved by the Head of Law and the Director of Finance.
- 1.6 The Procurement Guide means the manual issued by the Director of Finance containing best practice guidance on procurement and known by that name.

2. Application

These Contract Standing Orders apply to every procurement contract made by or on behalf of the Norfolk County Council except contracts:

- for the acquisition of any interest in land.

- for the lending or borrowing of money.
- of employment for an individual employee.
- for the disposal of property (including any interest in land).
- secured by ESPO.
- for the engagement of Counsel.
- the procurement of which the County Council is securing on behalf of a third party, unless it is agreed between the Council and the third party that they will apply.

NOTES:

- (a) *Generally our partners and contractors must comply with these Standing Orders when letting contracts on our behalf if it is the County Council who bear the risk. See also the "External Partnerships Protocol – Guidance for Officers" issued by the Head of Law in November 2003.*
- (b) *NCC units spending Government money must either follow these CSOs or equivalent, established provisions.*

Procedures relating to disposals (excluding those relating to land) are dealt with separately within the Procurement Guide.

3. Exceptions

3.1 Subject to the requirements of EU Directives, Acts of Parliament and UK Regulations (see Standing Order 17 and the Procurement Guide for contracts over the EU threshold) tendering is not required:-

- (a) for supplies or materials which are available only as proprietary or patented articles from one contractor or supplier and for which the appropriate Chief Officer certifies that there is no reasonably satisfactory alternative is available in the European Union and for repairs to, or the supply of, parts of existing proprietary or patented articles, including machinery or plant; (such certificate must be retained on the appropriate file and where the contract exceeds £100,000, reported to the next meeting of the Cabinet).
- (b) for works of art, museum specimens or historical documents;

- (c) for a procurement which constitutes a variation or extension of an existing contract and either:-
 - (i) the variation or extension is specifically provided for in the original contract (although in such cases the appropriate Chief Officer should first consider whether re-tendering would be likely to result in better value for the County Council), or
 - (ii) the estimated value of the variation or extension is less than the greater of £5,000 or 10% of the original contract sum.
- (d) for supplies or materials to be purchased at an auction;
- (e) for procurements by the Director of Children's Services and the Director of Adult Social Services:-
 - (i) a voluntary or charitable organisation or
 - (ii) from a body whose services have been secured by an agreement that reflects a declared price agreed by the Cabinet.
 - (iii) for a bespoke care package for a specified individual

In the case of this exception the Director of Children's Services or the Director of Adult Social Services (as the case may be) must retain on file a record of the negotiations surrounding the contract awards.

(The third exception applies only where agreed by the Director or a person authorised by the Director in accordance with a protocol approved by the Cabinet).

- (f) for procurements by a Trading Unit which procurements are required only to enable that Trading Unit to itself carry out work and/or provide supplies and/or services in a contract which is to be (or has been) won or lost by the Trading Unit itself through a competitive tendering or quotation process. Trading Units are normally expected to secure their procurements through the processes set out in these standing orders.

- (g) for the execution of work or for the supply of services or supplies or material certified by the appropriate Chief Officer as being required so urgently as to preclude the invitation of quotations or tenders. (Where the contract exceeds £100,000 in estimated value, such certificate must be reported to the next meeting of the Cabinet; otherwise the certificate is to be retained on the appropriate file);
- (h) for something which the appropriate Chief Officer and the Head of Law agree that it is not reasonably practicable or in the Council's interests so to do, subject (if the contract exceeds £100,000 in estimated value) to a report to the Cabinet.
- (i) For agreements which are expressly exempt from the tendering requirements of Section 89 of the Transport Act 1985.

NOTE

- These exceptions do not relate to Part A services above the EU threshold (for threshold values see Chapter 3 of the Procurement Guide).
- 3.2 Other exceptions to these Standing Orders may only be made within the relevant law and with the authority:-
- of the Council by a direction given generally or in relation to contracts of a specified class, or,
 - of the Cabinet especially in relation to a specific contract either in an emergency or other special reason justifying it.
- 3.3 Every exception authorised by the Cabinet must be reported to the Council and the report must specify the emergency or other special reason justifying it.
- 3.4 Where Chief Officers have authorised departures from Contract Standing Orders, under Paragraphs 3.1 (a), (g) or (h) these must be reported by the appropriate Chief Officer to the Director of Finance, who must maintain a register of all such departures and report them to the Procurement Standards Board.

4. **Framework Arrangements:**

- 4.1 In this Standing Order, a Framework Arrangement is a formal tendered arrangement which sets out terms and conditions under which specific purchases can be made throughout the term of the agreement and the appropriate Chief Officer procures the supplies, services or the works from the successful tenderer(s) in unpredicted quantities at various times during the period that the agreement is in force. For this purpose, a Framework Arrangement may be set up by the County Council or ESPO or some other Consortium, association or similar body of which the County Council is a member or party.
- 4.2 In any case where a Framework Arrangement in accordance with these standing orders is in place:-
- (a) Orders to be placed against a known price do not require further competition unless required by law.
 - (b) In circumstances where the price was not specified under the Framework Arrangement an order can only be placed if three quotes have been obtained from the list of suppliers specified in the Arrangement or, if there are less than three suppliers specified, then all of them. (See note (c) in the respect of framework arrangements over the EU threshold).
- 4.3 When advertising for a Framework Arrangement the advertisement must indicate:-
- (a) That it is a Framework Arrangement which is being tendered.
 - (b) The duration of the Arrangement.
 - (c) The expected maximum number of suppliers.
 - (d) The estimated total value of the contracts to be covered by the Arrangement.
 - (e) The award criteria for choosing suppliers and subsequent criteria for placing orders.
- 4.4 Chief Officers must ensure that supplies, services and works are ordered via ESPO, consortia or centrally negotiated contracts whenever such Arrangements have been put in place by the Council, unless better value for money can be obtained by using an alternative source of supply. The latter cases must be referred to the Director of Finance who must in turn notify ESPO if appropriate.

NOTES:

- (a) Under CSO 4.2 the OGC can be used when appropriate and agreed with the CPU.
- (b) A protocol for the use of the OGC framework and similar frameworks in respect of ICT contracts will be published in the ICT Procedures Appendix D3 of the Procurement Guide.
- (c) Where the price is not specified under a framework arrangement which exceeds the EU threshold then an order can only be placed if quotes are sought from all the suppliers in the arrangement capable of meeting the particular requirements.

5. Consultants

- 5.1 The engagement of consultants and other professional advisers must be in accordance with these Standing Orders insofar as reasonably practicable unless the Council or Cabinet decide otherwise.
- 5.2 The appropriate Chief Officer must ensure so far as possible that no conflict of interest exists for any chosen consultant, etc., either as between the Council and other clients or as between different pieces of work by that consultancy, etc., for the Council.

6. Supervision of Contracts by Third Parties

- 6.1 It must be a condition of any contract between the Council and any person (not being an Officer of the Council) who is required to supervise a contract on behalf of the Council that in relation to that contract he must comply with the requirements of these Standing Orders as if he were the appropriate Chief Officer.
- 6.2 Such person must:
 - 6.2.1 at any time during the carrying out of the contract produce to the appropriate Chief Officer or his/her representative on request all records maintained by him/her in relation to the contract; and
 - 6.2.2 on completion of the contract transmit all records to the appropriate Chief Officer.

7. Conflict of Interests of Officers

Officers employed by the Council must comply with Paragraph 8 of the Council's "Standards of Conduct and Behaviour - Guidelines for Employees", relating to conflicts of interest.

8. Pre-estimate

8.1 Before any procurement is begun the appropriate Chief Officer must estimate the value of the contract and must keep a written record of that estimate in the Department.

8.2 In the case of contracts for:-

- (a) the hire of goods for an indeterminate period or
- (b) the provision of services for a period in excess of 4 years or for an indeterminate period.

the estimated value of the contract for the purpose of these standing orders must be the estimated monthly cost multiplied by 48 or; where monthly costs are inapplicable the estimated annual cost multiplied by 4.

8.3 In the case of contracts for the supply of goods (except for a hire in accordance with paragraph 8.2 (a)) over a period where the Council enters into a series of contracts or a renewable contract the estimated value of the contract is either:-

- (a) the aggregate value of similar contracts over the previous 12 months (adjusted for any known changes in demand);
- (a) the estimated value of similar contracts over the next 12 months or
- (b) if the contract is for a definite term of more than 12 months, the estimated value for the period of the contract.

8.4 For all supplies, services and works not covered by Paragraphs 8.2 or 8.3, the estimated value for the purpose of these Standing Orders must be the total estimated value of the supplies, services or works to be supplied over the period covered by the contract.

8.5 The value of a concession for the purpose of this Standing Order is the estimated gross value of the service before income.

Note:- In considering the estimated value of a contract it is important to note:-

- a) periodic purchases from the same suppliers for the same requirement, should be aggregated for the purpose of 8.4. There is a potential to secure better value for money where such requirements are aggregated and where the aggregate sum exceeds £30,000, the requirement must be tendered.*
- b) orders to suppliers for a particular requirement, even if placed by different parts of the County Council and to different suppliers, may constitute a single procurement for the purposes of EU Directives with the result that the values of each contract must be aggregated across the Council. Further advice on aggregation under the EU Directives is contained in the Procurement Guide.*
- c) where the contract relates to a matter where there is external funding, the estimated value will be the gross estimated value of the contract, not the value of the County Council's contribution.*

9. Selection, Evaluation and Award Criteria

- 9.1 Every contract or official order for works, supplies or services made by the County Council must be for the purpose of achieving the Council's statutory and approved objectives and must be made in accordance with the Council's duty of Best Value, i.e. the duty to ensure continuous improvement and to provide efficient, high quality services that people want at a price they are willing to pay.

9.2 Criteria for Selection of Tenderers

This paragraph 9.2 applies where a One-Off List is used under Standing Order 15.

9.2.1 Contracts between £30,000 and the relevant EU threshold

In respect of these contracts the appropriate Chief Officer must determine and publish in the Invitation the Tender the minimum criteria to be applied in determining whether a person will be invited to tender.

9.2.2 Contracts above the relevant EU threshold

In respect of contracts to be awarded for Part A Services above the relevant EU threshold:-

- (a) where there is a sufficient number of persons suitable to be selected for invitation to tender the number may be limited provided that the contract notice specifies:-
 - (i) the criteria to be applied in order to limit the number of tenderers, and

- (ii) the minimum number of tenderers, which must not be less than 5, which it is intended to invite to tender and, where appropriate, the maximum number.
- (b) the number of those invited to tender must be sufficient to ensure genuine competition and at least equal to the minimum number specified in the contract notice.
- (c) where an application of the selection criteria results in an exclusion of some of those who have expressed an invitation to tender (see the footnote below) and as a result the number of those invited is less than the minimum number specified in the contract notice, the award procedure can continue with those who have been selected provided that no-one is then included who was not selected or who did not request to participate.
- (d) minimum levels of economic and financial standing and technical or professional ability can be used to select those invited to tender provided those minimum levels are specified in the contract notice and are related to and proportionate to the subject matter of the contract.

NOTE:

Chapter 20 of the Procurement Guide sets out the circumstances in which potential tenderers either must or can be excluded from being invited to tender.

9.3 Criteria for the evaluation and award of Contracts

9.3.1 Contracts between £30,000 and the relevant EU threshold

- (a) Before any tender is sought the appropriate Chief Officer must decide and record the award criterion to be used when the tenders are received.
- (b) The award criterion must be either:-
 - the lowest price (where the Council is to pay the supplier); or
 - the highest price (where the supplier is to pay the Council); or
 - the most economically advantageous tender.
- (c) If the chosen award criterion is the “most economically advantageous”, the appropriate Chief Officer must then decide and record in a list the evaluation criteria (in descending order of significance) upon which the tenders will be so evaluated.
- (d) The appropriate Chief Officer must notify all those invited to tender which award criterion is being used in the case of the contract in question and where applicable, the evaluation criteria.

9.3.2 Contracts above the relevant EU threshold

- (a) The contract must be awarded on the basis of the offer which is either the most economically advantageous from the point of the view of the Council or offers the lowest price.
- (b) In order to determine the offer which is the most economically advantageous, criteria must be used which are linked to the subject matter of the contract.
- (c) Where it is intended to award a contract on the basis of the most economically advantageous offer, the weighting which is to be given to each of the chosen criteria must be stated in the contract notice or in the contract documents. When stating these weightings they must be given a range (specifying a minimum and maximum weighting) where this is considered appropriate in view of the subject matter of the contract.
- (d) Where it is not possible to provide weightings for the chosen criteria, on objective grounds, the contract notice or contract documents must indicate the criteria in descending order of importance.

NOTE:

If an offer is abnormally low this may be rejected in the circumstances set out in Chapter 23.2.1 of the Procurement Guide.

9.4 Innovative Forms of Procurement

For contracts involving innovative forms of procurement and below the relevant EU threshold where the scheme is not defined at the tender stage, the award criterion will be the most economically advantageous tender. In the case of such contracts, the appropriate Chief Officer must decide and record the basis on which tenders will be evaluated and must also inform tenderers of the process for awarding and developing the contract.

10. **Nominated Sub-Contractors and Suppliers**

Where a sub-contractor or supplier is to be nominated to a main contractor, the following provisions shall have effect:

- 10.1 Where the estimated amount of the sub-contract or estimated value of the work or supplies to be supplied by the nominated supplier does not exceed **£30,000** then, unless the appropriate Chief Officer is of the opinion in respect of any particular nomination that it is not reasonably practicable to obtain competitive prices, quotations shall be invited for the nomination in accordance with Standing Order

- 10.2 Where the estimated amount of the sub-contract or estimated value of the work or supplies to be supplied by the nominated supplier exceeds **£30,000** then, unless the Council or the Cabinet determine in respect of any particular nomination that it is not reasonably practicable to obtain competitive prices, tenders must be invited in accordance with Standing Order 12.
- 10.3 The terms of the invitation under paragraph 10.1 or 10.2 above must require an undertaking by the tenderer that, if selected, they will be willing to enter into a contract with the main contractor on terms which indemnify the main contractor against their own obligations under the main contract in relation to the work or supplies included in the sub-contract.
- 10.4 The appropriate Chief Officer must comply with Standing Order 9 in deciding the person whose tender is to be nominated to the main contractor.

NOTE:

Care must be taken when nominating sub-contractors and suppliers in technical specifications. In particular it must be justified by the subject matter of the contract or accompanied by the words "or equivalent". In other words, the County Council must be genuinely open to the consideration of alternatives.

11. Contracts under £30,000 - Chief Officer's Rules

Contracts, the estimated value of which is below **£30,000**, must be let in accordance with rules to be made by the appropriate Chief Officer for use within his/her Department. These rules must require competitive quotations to be obtained unless impracticable. The appropriate Chief Officer must obtain the approval of the Director of Finance and the Head of Law to the text of his/her Rules and to any amendment thereof. Model Rules setting out minimum requirements are included in the Procurement Guide. Final versions of Departmental rules must be copied to the Director of Finance and the Head of Law. In the absence of any Departmental rules the Model Rules will apply. (See Chapter 6 of the Procurement Guide).

12. Contracts over £30,000

For contracts with an estimated value of more than £30,000, the appropriate Chief Officer must invite tenders on the basis of open tendering. unless the Council or the Cabinet have authorised, whether specifically or generally, the use of a Standing List or One-Off List.

13. Open Tendering

- 13.1 For contracts with an estimated value of more than £30,000 but less than the relevant EU threshold, the appropriate Chief Officer **must** at least fifteen days before the last date for the receipt of tenders give public notice in a local newspaper expressing the nature and purpose of the contract or stating where further details may be obtained and inviting tenders for its execution, and **may** also give such notice in an appropriate trade or professional journal.
- 13.2 If the estimated value of the contract exceeds the relevant EU threshold, the appropriate Chief officer **must** give public notice in:-
- at least one local newspaper and
 - at least one appropriate trade or professional journal and
 - the Official Journal of the European Communities (OJEC).
- 13.3 Under open tendering, invitations to tender **must** be sent to **all** those who respond to the public notice.
- 13.4 Tenders submitted on the basis of open tendering must be evaluated in two stages:-
- (a) As a first stage, tenderers will be evaluated for financial and economic standing and, in cases where the appropriate Chief Officer in consultation with the Head of Law considers it appropriate, technical capacity in accordance with requirements to be specified in the Invitation to Tender. Tenderers who fail to meet these requirements will be disqualified at this stage and will not be evaluated further.
- (b) Tenders which are not disqualified under paragraph (a) will be evaluated in accordance with Standing Order 9.
- 13.5 In addition, the relevant EU Procurement Rules, including rules relating to timescale for giving notice, must be followed in respect of contracts for Part A services (as defined in the EU rules) supplies and works the estimated value of which exceeds the relevant EU Threshold.

13.6 For Part B services (as defined in the EU rules) the requirements relating to non-discriminatory technical specifications and obligatory contract award notices apply.

NOTE:

All contracting procedures must be fair, transparent and reasonable and consideration must be given to whether a Part B Contract needs to be advertised in the OJEU to meet the EU Treaty principles of non-discrimination on grounds of nationality, equal treatment and free movement of goods and services.

14. Use of a Standing List

This Standing Order applies to contracts with an estimated value of more than £30,000 but less than the relevant EU threshold, where the Council or the Cabinet have authorised the use of a Standing List for a contract or for a category of contracts.

14.1 The list must:

- be compiled and maintained by the appropriate Chief Officer; and
- contain the names of all persons who are approved by the Cabinet; and
- indicate the categories of contract and the values or amounts in respect of those categories for which those persons are approved.

14.2 At least four weeks before a list is first compiled, a notice inviting applications by a specified date for inclusion in it **must** be published:

- in at least one local newspaper; and
- in at least one appropriate trade or professional journal.

14.3 The notice referred to in Paragraph 14.2 must include any minimum criteria to be applied in determining whether a contractor will be selected for the list or any part of the list. (See also Paragraph 9)

14.4 The list must be submitted to the Cabinet for approval together with details of any person whose name is not included in the list but had requested that it should be.

14.5 The list must be amended as required from time to time and must be reviewed at intervals not exceeding three years. At least four weeks before each review, each person whose name appears in the list must be asked whether he wishes his/her name to remain there and notices inviting applications for inclusion in the list must be published in the manner provided by paragraph 14.2.

14.6 At each review the list must be reported to the Cabinet with particulars showing those invited to tender, those responding and those successful, since the last review, and individual amendments must also be reported to the Cabinet.

14.7 Invitations to tender for a contract where use of a Standing List has been authorised must be sent to:

- not less than four of the persons selected by the appropriate Chief Officer, from among those approved for a contract of the relevant category and amount or value; or
- where fewer than four persons are approved for a contract of the relevant category and amount or value, all those persons.

NOTE:

Chief Officers will be expected to operate a policy of fair rotation of suppliers invited to tender whilst having regard to matters such as price and geographical location. See also Chapter 10 of the Procurement Guide.

14.8 A Standing List must not be used for contracts with an estimated value exceeding the relevant EU threshold.

15. Using a One-off List

This Standing Order applies where authorisation has been given for the use of a one-off list.

(a) Contracts between £30,000 and the relevant EU Threshold

15.1 For contracts with an estimated value of more than £30,000 but less than the relevant EU threshold, where use of a One-Off List has been authorised, a notice, as required by Standing Order 15.2 **must** be published in at least one local newspaper and **may** be published in an appropriate trade or professional journal.

15.2 The notice must:

- specify details of the contract into which the Council wishes to enter; and
- invite persons interested to apply for permission to tender; and

- specify a period being not less than ten days, within which such applications are to be submitted to the Council.

15.3 The appropriate Chief Officer **may** in addition to those who reply under Standing Order 15.1 also give notice to all or a selected number of persons included in any relevant Standing List set up under Standing Order 14.

15.4 Those who apply for permission to tender must be given details of the criteria which will be used to decide who to invite to tender. (See paragraph 9.2.1).

15.5 After the expiry of the period specified in the notice, invitations to tender for the contract must be sent quoting a return date allowing not less than 15 days for tenders to be returned, to:

- not less than four of the persons who apply for permission to tender, selected by the appropriate Chief Officer; or
- where fewer than four persons have applied or are considered suitable, to all those persons whom the appropriate Chief Officer considers suitable

15.6 In the case of contracts with an estimated value over **£100,000** the names of all persons who applied and of those invited to tender shall be reported to the Cabinet.

(b) **Contracts above the relevant EU Threshold**

15.7 If the estimated value of the contract exceeds the relevant EU threshold, notice **must** be published in:-

- at least one local newspaper and
- at least one appropriate trade or professional journal and
- in the Official Journal of the European Communities.

15.8 In addition, the relevant EU Procurement Rules, including rules relating to timescales for giving notice, must be followed in respect of contracts for Part A services (as defined in the EU rules) supplies the works the estimated value of which is above the relevant EU Threshold.

15.9 For Part B Services (as defined in the EU Rules) the requirements relating to non-discriminatory technical specifications and obligatory contract award notices apply.

NOTES TO PARAGRAPH 15(b)

- (a) All contracting procedures must be fair, transparent and reasonable and consideration must be given to whether a Part B Contract needs to be advertised in the OJEU to meet the EU Treaty principles of non-discrimination on grounds of nationality, equal treatment and free movement of goods and services.
- (b) See also CSO 9.22 and 9.32 for further details on the requirements in respect of contracts above the relevant EU threshold.
- (c) The rules for the procurement of Part A Services above the EU limit now also allows for “competitive” dialogue in limited circumstances. Further information on this procedure and the circumstances in which it can be used can be found in Appendix D4 of the Procurement Guide.

16. Invitations to Tender

- 16.1 Every invitation to tender must specify the latest day and hour and the place appointed for the receipt of tenders and must state the effect of Standing Order 18.
- 16.2 Persons to whom tender documents are sent must be asked to acknowledge receipt.
- 16.3 Tenders estimated as below £100,000 must be addressed to, and opened by, the appropriate Chief Officer. Tenders estimated over £100,000 must be addressed to and opened by the Head of Democratic Services.
- 16.4 Where the estimated value of the contract is over **£100,000** the appropriate Chief Officer must on inviting tenders send to the Head of Democratic Services a note of the subject and the closing date and time and (where appropriate) a list of the persons invited to tender together with the estimated value.

17. Contracts with an estimated value exceeding the relevant EU threshold

The appropriate Chief Officer must comply with all of the Procedures set out in the relevant EU Directives and consequent UK Regulations (For guidance see Appendix B of the County Council's Procurement Guide)

18. Invalid Tenders

- 18.1 An invalid tender must not be accepted.
- 18.2 A tender is not valid unless it has been delivered to the place appointed by the Head of Democratic Services (or, where the estimated value of the contract was below **£100,000**, by the appropriate Chief Officer) not later than the appointed day and hour in a plain sealed envelope or parcel addressed to the Head of Democratic Services (or, where the estimated value of the contract was below **£100,000**, to the appropriate Chief Officer). The envelope or package must bear the word "Tender" followed by the subject to which it relates and shall not be valid if the envelope, parcel or packaging bears any name or mark indicating the sender (regardless of the identity of the person causing the name or mark in question to be visible) or has been unsealed or opened or shows evidence of having been re-sealed prior to the appointed time.
- 18.3 Qualified tenders will not be considered except to the extent provided in Standing Order 23.2.

19. Receipt of Tenders

On receipt, envelopes containing tenders must be date and time stamped by the Head of Democratic Services or by the appropriate Chief Officer and shall remain in his/her custody until they are opened.

20. Opening of Tenders

- 20.1 Tenders must be opened at one time in the presence of not less than two Officers of the Council designated by the Head of Democratic Services (or, where the estimated value of the contract was below **£100,000**, by the appropriate Chief Officer), who must both initial each tender.
- 20.2 Tenders received at the appointed place later than the day and time specified under Standing Order 16 must not be opened.
- 20.3 Particulars of all tenders opened must be recorded on a form which must be signed by the Officers present at the opening, together with a note of the number of unopened tender envelopes.

- 20.4 Where the estimated value of the contract exceeded **£100,000** the Head of Democratic Services must forthwith send a copy of the completed form to the appropriate Chief Officer (with the tender documents) and to the Director of Finance and must retain a copy him/herself.
- 20.5 All tenders received, including any invalid tenders, must be retained in accordance with the Retention of Documents statement within the Procurement Guide.

21. Errors or Discrepancies in Tenders

- 21.1.1 Where examination of tenders reveals errors or discrepancies which would affect the tender figures in an otherwise successful tender, the tenderer is to be given details of such errors and discrepancies and afforded an opportunity of confirming or withdrawing the offer.
- 21.1.2 Where a tender is for a fixed sum and is for measured work calculated on Bills of Quantity with rates or Activity Schedules and the arithmetical calculations are erroneous the tenderer may confirm either the rate (or rates) or the total for that particular item or the tenderer may withdraw the offer. Where the Contractor has agreed to confirm their offer, any revision to the arithmetic total will require a compensating adjustment to provide a build up of cost to agree with the tendered sum.
- 21.1.3 Where a tender is for measured work calculated on Bills of Quantity with rates or Activity Schedules and is not for a fixed sum and the arithmetical calculations are erroneous the tenderer may confirm either the rate (or rates) or the total for that particular item or the tenderer may withdraw that offer.
- 21.2 If the tenderer withdraws, the next tender in competitive order is to be examined and then dealt with in the same way.
- 21.3 Any exception to this procedure may be authorised only by the Cabinet after consideration of a report by the appropriate Chief Officer, or in cases of urgency, by that Chief Officer after consultation with the Leader.

22. Acceptance of Tenders

- 22.1 The appropriate Chief Officer may accept from valid tenders in accordance with the decided award criterion:

- 22.1.1 the lowest tender, if that was the award criterion, provided that the tender is not more than 10 per cent above the estimated value; or
- 22.1.2 the highest tender, if that was the award criterion, provided that the tender is not more than 10 per cent below the estimated value; or
- 22.1.3 the most economically advantageous tender, if that was the award criterion and if one tender clearly meets that criterion more closely than any other: or
- 22.1.4 any other tender only after consultation with the Leader and after taking legal advice on the impact of EU Directives and subject to the appropriate Chief Officer making a written report to the Cabinet subsequently.
- 22.2 A Chief Officer may not reject an abnormally low tender without first giving the Tenderer the opportunity to explain the tendered price.
- 22.3 Acceptance of a tender must be in writing and may in some cases be in the form of an official purchase order and must be signed by the appropriate Chief Officer or by an Officer designated by him/her. The “acceptance” must not prejudice any formal contract required by Standing Order 24.
- 22.4 Where the estimated value of the contract was over **£100,000** the appropriate Chief Officer must forthwith inform the Director of Finance of the name of the successful tenderer.
- 22.5 The appropriate Chief Officer must inform all tenderers of the name of the successful tenderer and (where practical) the amount of the tender accepted and (without connecting particular prices to particular tenderers) the prices submitted by other tenderers.
- 22.6 The file copy of the record must be endorsed to indicate the tender accepted.
- 22.7 In the case of contracts which have been tendered via the EU procurement process, a 10 calendar day standstill period between notification of an award to the successful and unsuccessful tenderers and the entering into the contract must be applied. Advice on the nature of the notification, and the details to be included, are set out in Chapter 25 of the Procurement Guide.

23. Post Tender Negotiations

23.1 No negotiations may take place under this Standing Order unless the tender documents specifically reserve the right to do so.

(a) Contracts between £30,000 and the relevant EU Threshold

23.2(a) In the case of contracts whose estimated value was between £30,000 and the EU threshold, the appropriate Chief Officer may (following the closing date for receipt of Tenders but before acceptance of any Tender) carry out Post Tender Negotiations to attempt to secure an improvement in the contract price or other conditions only in one or more of the following circumstances:

- where the lowest submitted tender or the most economically advantageous tender (where this is the award criterion) exceeds the estimated value of the contract;
- where the appropriate Chief Officer considers that the price of the lowest tender submitted does not represent the best value for money that can reasonably be obtained;
- where tenders have been invited only on the basis of unit prices or a schedule of rates and the lowest in aggregate is not the lowest on all items;
- where the lowest submitted tender or the most economically advantageous tender (where this is the award criterion) contains conditions, trading terms, specification, performance, guarantees, or service delivery less favourable than in other tenders, or than stipulated for AND this defect appears capable of being remedied by Post Tender Negotiations.

23.2(b) In the case of contracts whose estimated value is between £30,000 and £50,000 the appropriate Chief Officer may (following the closing date for receipt of tenders before acceptance of any tender) carry out Post Tender Negotiations with the tenderer who has submitted the best price or most economically advantageous tender (as the case may be) where that course of action is considered to be in the best interests of the County Council provided the integrity and accountability of the County Council are not put at risk. This power is in addition to that set out in Standing Order 23.2(a). In addition, in negotiations carried out under this paragraph, the requirements of Standing Orders 23.3 and 23.9 will not apply.

- 23.3(a) In Post Tender Negotiations carried out under Standing Order 23.2(a) where price is the award criterion the tenderers submitting the lowest tender and all those the value of which is within 5% of the lowest tender or, if there is no such tender, the tenderer submitting the second lowest, must be invited to participate in Post Tender Negotiations.
- 23.3(b) In post Tender Negotiations carried out under Standing Order 23.2(a) where the most economically advantageous tender is the award criterion the tenderers submitting the most economically advantageous tender and the second most economically advantageous tender must be invited to participate in the Post Tender Negotiations.
- 23.4 Post Tender Negotiations may only be authorised by the appropriate Chief Officer. In the case of contracts with an estimated value exceeding £50,000, the appropriate Chief Officer must also obtain the consent of the Head of Law who must thereafter be notified of the time and venue of all negotiations carried out and who must have the right to be represented at any such negotiations.
- 23.5 In the case of all Post Tender Negotiations the appropriate Chief Officer must record in writing the objective to be secured by such negotiations and in the case of contracts with an estimated value exceeding £100,000, forward a copy of this record to the Head of Law.
- 23.6 Unless other arrangements are specifically authorised by the Head of Law all negotiations held under this Standing Order must take place at County Council premises with both the tenderer and the relevant officers of the County Council present.
- 23.7 During negotiations with the tenderer there must always be present at least two officers of the County Council.
- 23.8 A note of the negotiations will be made by one of the officers present recording those present, the time and location of the negotiations, detail of the discussion and any agreement reached. The note shall be signed by all officers present and will be kept with a file copy of the record and a further copy will be sent to the Head of Law.
- 23.9 At no time must a tenderer be informed of the detail of any other tender submitted or as to whether or not the tender he submitted was the lowest or the most economically advantageous tender (where this is the award criterion).

23.10 Acceptance of tenders following Post Tender Negotiations must be in accordance with Standing Order 22 except that the appropriate Chief Officer must also inform the Head of Law of the name of the successful tenderer and of the tender price regardless of the estimated value of the contract.

23.11 The Head of Law will maintain a record of all post tender negotiations relating to contracts with an estimated value in excess of £50,000. This record must show the date of the tender, the date of any post tender negotiations, the names of tenderers involved in negotiations, the original price, the revised price, the revised specification, the names of the officers involved and details of the contract awarded. The Head of Law will report annually to the Cabinet, giving a summary of all the Post Tender Negotiations which have been approved.

(b) Contracts above the relevant EU Threshold

23.11 Except to the extent permitted under the EU Negotiated Procedure, Post Tender Negotiations are not allowed in the case of contracts with an estimated value exceeding the relevant EU threshold. However, in the case of such contracts, the appropriate Chief Officer may (following the closing date for receipt of tenders but before acceptance of any tender) have discussions with tenderers in order to:

- ensure that the Tender is constructed correctly; or
- ensure that the Tenderer has fully understood the specification; or
- seek clarification from tenderers of quality and performance indicators.

No other discussions may take place. Where such discussions are held, the procedures in this Standing Order at paragraphs 23.4 to 23.10 will apply with the necessary consequential amendments so as to refer to "discussions" rather than "negotiations".

NOTES:

Attention is drawn to the advice in Appendix D4 of the Procurement Guide relating to the use of the Negotiated Procurement Procedure.

In limited circumstances the EU Procurement rules allow for negotiation with a single bidder where the value of the contract exceeds the EU threshold. Advice on this is also contained in Appendix D4 of the Procurement Guide.

24.1 Form of Contract

24.1 Every contract whose estimated value is over £30,000:

- must be in writing; and must specify the supplies, materials or services to be supplied, the price to be paid and must contain a statement as to the amount of any discount or other deductions, the period within which the contract is to be performed and such other conditions and terms as may be agreed between the parties; and
- must include a clause prohibiting the contractor from transferring or assigning or sub-letting to any person any portion of the contract without the written permission of the Council signified by the appropriate Chief Officer; and
- must where relevant contain a clause requiring that all supplies and materials used or supplied and all the workmanship must be at least of the standard required by an appropriate British or equivalent EU or International Standards Specification or Code of Practice current at the date of the tender; and
- must contain a clause empowering the Council to cancel the contract and to recover from the contractor the amount of any resulting loss if the contractor or any person employed by him/her or acting on his/her behalf whether or not to his/her knowledge shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for taking or for not taking any action in relation to the contract or any other contract with the Council, or, in relation to any contract with the Council, shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916, or shall have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

NOTE:

In certain cases it may not be appropriate to include all of these terms. However, before excluding them, advice must be sought from the Head of Law.

24.2.1 Every such contract must either be under seal and attested to by the Director of Corporate Resources or an officer authorised by him/her or be signed by two officers of the County Council designated by the appropriate Chief Officer except in the following circumstances:-

- (a) where in the case of individual client care contracts entered into by the County Council it is impracticable for reasons of urgency to obtain two signatures; or
- (b) where the contract has been procured on behalf of the County Council by NPS Property Consultants Limited it may be signed by two of their Senior Officers who have not been involved in the contract negotiations.
- (c) in the case of electronic tendering and electronic auctions, the contract may be entered into by one Officer responding electronically provided that Officer has first obtained approval from a member of the relevant Departmental or Unit Management Team.

Where two signatures are required at least one must be that of a person not involved in the tendering or negotiation of the contract.

24.2.2 Chief Officers must produce a list of those Officers whom they have authorised to sign contracts on their behalf and deposit that list with the Corporate Procurement Unit.

24.3 Every contract whose estimated value exceeds **£100,000** must in appropriate cases provide for the payment of liquidated damages by the contractor where he/she fails to complete the contract within the time specified.

24.4 The standard Norfolk County Council Conditions of Contract for contracts must be incorporated in all contracts entered into by the County Council unless the parties agree to the contrary or it is considered inappropriate to do so by the appropriate Chief Officer where necessary in consultation with the Head of Law.

24.5 No contract whose estimated value is over £30,000 can be entered into unless the Contract Risk Analysis as set out in Chapter 25 of the Procurement Guide has been completed and lodged with the Corporate Procurement Unit and, where required as a result of the Analysis, signed off in accordance with the procedure set out in that section of the Guide.

25. Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE)

In relation to contracts where there is a likelihood that employees may be transferred to a new employer the invitation to tender will state that the County Council assumes that TUPE will apply unless evidence to the contrary is produced.

NOTE:

Advice must be sought from Human Resources and the Pensions Team before starting a procurement which might involve a transfer of staff.

26. E-Procurement

26.1 E-Tendering

These Contract Standing Orders apply equally to e-tendering subject to Contract Standing Orders 18.2, 19 and 20.1 being replaced by separate rules (to be agreed by the Corporate Procurement Unit) relating specifically to e-tendering.

26.2 E-Auctions

26.2.1 Procurements by E-Auction are acceptable in order to achieve the final contract price provided all appropriate guidelines have been complied with and indicative prices obtained.

26.2.2 All E-Auctions must be carried out under the supervision of the Corporate Procurement Unit.

26.2.3 The requirements in the Contract Standing Orders apply to procurements by E-Auction except that:-

(a) The tendering requirements will not automatically apply but instead the position on tendering will be governed by the guidelines referred in Standing Order 26.2.1.

(b) Contract Standing Orders 18.2, 19 and 20.1 will not apply.

27. Constructing Excellence

The County Council endorses the principle of working with contractors in accordance with the principles of Rethinking Construction and encourages Chief Officers to apply these principles where appropriate.

28. Procurement Guide

Those applying these Standing Orders are also advised to refer to the County Council's Procurement Guide. This Guide provides advice on a range of matters to be considered in connection with the procurement of goods, services and works including advice on the following:-

- (a) the extent to which non-commercial considerations can be taken into account in awarding contracts.
- (b) what the invitation to tender should say regarding the transfer of staff and the requirement to provide workforce information.
- (c) evaluation of tenderers and tenders.
- (d) post tender negotiation.