

CONGLETON TOWN COUNCIL

STANDING ORDERS FOR CONTRACTS

1. GENERAL

- 1.1 The following Standing Orders set out the procedures by which the Council will enter into contracts for the provision of goods, services, materials and work. Every contract made by or on behalf of the Council shall comply with these procedure rules and no exception from any of the provisions shall be made otherwise than by direction of the Council or under Standing Order.
- 1.2 The Orders do not apply to contracts for the sale or purchase of land or buildings. **Every contract relating to the sale or purchase of any land or buildings** shall be in writing and be signed on behalf of the Council by the Town Clerk. Purchases of land should not be above the current market value as determined by the Council's appointed valuer and sales of land should not be below the current market value as determined by the Council's appointed valuer. Where this is not the case a report should be made to Council setting out the reasons for such variation, which may take into account any community benefits or justification on the grounds that it helps fulfil a wider policy of the Council.
- 1.3 Subject to Rule 1.2 every contract made by or on behalf of the Council shall comply with
 - 1.3.1 these Standing Orders
 - 1.3.2 the Council's Financial Regulations
 - 1.3.3 the Council's Standing Orders
 - 1.3.4 all relevant statutory provisions including any relevant E.C. directive
 - 1.3.5 any direction by the Council, Committee, Sub-Committee having appropriate delegated authority.
- 1.4 These Contract Procedure Rules shall not apply or may be varied where or to the extent that:
 - 1.4.1 the Council so resolves
 - 1.4.2 statute or subordinate legislation prescribes otherwise

2 DELEGATED AUTHORITY TO ENTER INTO CONTRACTS

- 2.1 The Town Clerk shall have power to accept tenders (where required) and to enter into contracts on behalf of the Council, when the principle and budget have been approved by Council.
- 2.2 The Town Clerk and RFO have authority to issue official orders or letters for work, goods and services as set out in the Financial Regulations.

3. ORDERS FOR WORK, GOODS & SERVICES UPTO £2000

- 3.1 Orders for work, goods and services up to the value of £2000 are not subject to the Standing Orders for Contracts, nor are formal quotations required but orders must comply with the Council's Financial Regulations.

- 3.2 Orders for work, goods and services which would normally be considered as one transaction shall not be divided into different orders so that the Standing Orders for Contracts are deemed not to apply.

3 CONTRACTS OF UP TO £25,000

Tenders need not be invited for contracts estimated to have a value of £25,000 or less but 3 quotations shall be obtained in accordance with the Council's Financial Regulations.

4 REQUIREMENTS FOR TENDER

- 4.1 Subject to the exceptions in Rule 4.2 below, tenders shall be invited where the contract sum is estimated to be £25,001 and above.
- a) Where the council intends to procure or award a public supply contract, public service contract or public works contract as defined by The Public Contracts Regulations 2015 ("the Regulations") which is valued at £25,000 or more, the council shall comply with the relevant requirements of the Regulations¹.
 - b) The full requirements of The Regulations, as applicable, shall be followed in respect of the tendering and award of a public supply contract, public service contract or public works contract which exceed thresholds in The Regulations set by the Public Contracts Directive 2014/24/EU (which may change from time to time)².
- 4.2 Tenders need not be invited where
- I the Town Clerk in consultation with the Chairman of Finance & Policy is of the opinion that the goods or services are supplied only at a fixed price and no reasonably satisfactory alternative is available
 - II there would be no genuine competition on account of the uniquely specialised nature of the goods/services
 - III the goods/services consist of repairs/supply of parts to an existing proprietary machinery/plant
 - IV the contract consists of goods/services the same as currently in use by the Council, which are required in the interest of standardisation for maintenance or for other special reasons. In such a case a report should be prepared and presented to Finance & Policy Committee stating such reasons.

¹ The Regulations require councils to use the Contracts Finder website to advertise contract opportunities, set out the procedures to be followed in awarding new contracts and to publicise the award of new contracts

² Thresholds currently applicable are:

- a. For public supply and public service contracts 209,000 Euros (£164,176)
- b. For public works contracts 5,225,000 Euros (£4,104,394)

- V the work to be executed or the goods or materials to be supplied constitute an extension of an existing contract and the proposed extension is at a value not greater than the original contract sum plus RPI and it is considered by the Town Clerk in consultation with the Finance & Policy Chairman and Responsible Financial Officer that, taking into account the cost of re-tendering, the Council is unlikely to benefit from a reduced contract sum. The Town Clerk must obtain Council approval for the proposal.
- VI the Town Clerk or Responsible Financial Officer certifies on a form approved by the Finance & Policy Committee that work, goods, materials or services are required so urgently that there is not time to invite tenders, or where compliance would mean that less favourable terms or conditions would have to be accepted; and subsequently submits the certificate to the next meeting of the Committee and the Committee accordingly approves the exception.
- VII goods purchased at public auction.
- VIII where purchases are made as a consequence of a contract made by another local authority, the benefits of which the Council obtain as a result of participation in a consortium.
- IX Where the Council enters into a contract jointly with one or more other local authorities or partners, one of whom is the "lead authority" for that contract subject to the Town Clerk in consultation with the Chairman of Finance & Policy being satisfied that the Council's interests will not be adversely affected.

4.3 Where tenders are required, one of the following methods shall be used:

- 4.3.1 Open competitive tender (Rule 5)
- 4.3.2 Ad hoc approved list (Rule 6)
- 4.3.3 Standing approved list (Rule 7)
- 4.3.4 Approved list of another Council (Rule 8)
- 4.3.5 Established procurement specialist (Rule 9)

5 **OPEN COMPETITIVE TENDERS**

Tenders shall be invited after giving at least 14 days public notice in at least one local newspaper circulating in the area of the Authority and in such trade journals as the Town Clerk has considered appropriate stating the nature and purpose of the contract, inviting tenders and stating the last date when tenders will be accepted. Any notice issued shall contain a Statement of the effect of Standing Orders Nos. 65, 66 & 67.

6 AD HOC APPROVED LIST

- 6.1 Tenders shall be invited after giving notice in the manner set out in Rule 5 seeking applications to be placed on a list from which selected contractors will be invited to submit tenders.

7 STANDING APPROVED LIST

- 7.1 Tenders shall be invited from persons included in a list approved by the Council for the supply of goods or materials of specified categories values or amounts or for the carrying out of specified categories of work

- 7.2 The list shall be compiled in the following manner:

7.2.1 Notices inviting applications for inclusion in the list shall be published not less than 28 days before the list is compiled in at least one local newspaper and one trade journal.

7.2.2 No person shall be included in the list unless, at the time of compilation of the list, the Responsible Financial Officer is satisfied as to his or her financial status and suitability.

7.2.3 The approved list may be amended as required from time to time by the Council and shall be reviewed at intervals not exceeding two years.

8. APPROVED LIST OF ANOTHER AUTHORITY

- 8.1 Tenders shall be invited from persons included in a list approved by the Principal Council for the supply of goods or materials of specified categories values or amounts or for the carrying out of specified categories of work

9 ESTABLISHED PROCUREMENT SPECIALIST

- 9.1 Where large, high value tender exercises take place, in areas in which the Council have limited expertise, it may be necessary to engage the use of established procurement specialists. These specialists will undertake the tender process on behalf of the Council, subject to compliance with Financial Regulations for the opening of tenders.

10 SELECTION OF TENDERERS OR INVITEES

- 10.1 The selection of persons from whom tenders shall be invited shall be delegated to the Town Clerk.
- 10.2 In inviting applications for inclusion in a list of approved tenderers or in selecting persons from whom tenders are to be invited, steps shall be taken to ensure fair competition.

11 FORM OF INVITATION TO TENDER AND SUBMISSION OF TENDERS

- 11.1 All tenders shall be required to be submitted on a Form of Tender approved by the Town Clerk. This Form shall include a statement that the Council will not be bound to accept any tender and reserves the right to accept a tender other than the one which is the most favourable or not to accept any tender at all.
- 11.2 The invitations to tender shall state that no tender will be considered unless contained in a unmarked plain sealed envelope and endorsed "Tender" followed by the subject to which it relates.
- 11.3 Every tender shall be addressed to the Town Clerk and the tender shall remain in his custody, or that of his nominated representative, until the time appointed for its opening. (See also 9.1)

12 EXTENSION OF TIME

- 12.1 Where the Town Clerk considers it to be in the best interests of the Council the time within which tenders must be received may be extended after giving notice of such extension of time in the following manner: -
 - 12.1.1 **Open competitive tenders** - in accordance with paragraph 5.
 - 12.1.2 **Ad hoc approved list / Established procurement specialist** - by giving 14 days written notice to each of the selected contractors.
 - 12.1.3 **Standing approved list** - by giving 14 days written notice to each of the relevant persons on the list.

13 OPENING OF TENDERS

- 13.1 All tenders for a contract shall be opened at the same time and as soon as possible after the closing time for the acceptance of tenders. The tenders will be opened by the Town Clerk or other nominated officer in the presence of two Members of Council. (See also 9.1)
- 13.2 The Town Clerk shall prepare and maintain a register of tenders received and shall record in that register the following particulars:
 - 13.2.1 the last date and time for the receipt of tenders
 - 13.2.2 the date and time the tender was actually received
 - 13.2.3 the name of the tenderer and the amount of the tender
 - 13.2.4 the date and time they were opened and by whom.
 - 13.2.5 the signature of the officer to whom the tenders were handed after opening.
- 13.3 All persons required to be present at the opening of tenders shall immediately sign against the relevant particulars in the register and shall also sign each page of the tender as evidence of such tenders having been opened by them or in their presence.
- 13.4 Following the opening of tenders invited the Town Clerk shall write to all persons who were invited to tender but who failed to tender to ascertain the reasons for that failure.

14 LATE TENDERS

- 14.1 Any tender received late will be returned promptly to the tenderer by the Town Clerk. A late tender which has been received may be opened in the presence of the two Members to ascertain the name and address of the tenderer but no details of the tender shall be disclosed.

15 ALTERATIONS TO TENDERS

- 15.1 Where the tender reveals errors or discrepancies, which would affect the tender figure in an otherwise successful tender, the tenderer shall be told of the errors and discrepancies and given an opportunity of confirming, correcting or withdrawing the offer.

16 ACCEPTANCE OF TENDERS

- 16.1 In accepting a tender, consideration will be given to price and quality. A suitable pre-determined price-quality model (Evaluation Model) will be devised by the Town Clerk. Selection of the best tender will be based on this evaluation.
- 16.2 If no tenders are received or if all tenders are identical, the Council may make such arrangements for procuring the goods or materials or executing the works as it thinks fit.

17 CONTRACTS TO BE IN WRITING

- 17.1 Every contract shall be in writing in a form approved by the Town Clerk.
- 17.2 Every contract shall specify, amongst other things:
- 17.2.1 the goods, materials, works, matters, or things, to be furnished, supplied or done (including any appropriate technical specifications)
 - 17.2.2 the price to be paid with a statement of discount or other deductions
 - 17.2.3 where applicable, the time or times that the contract is to be performed
 - 17.2.4 how the contractor will be accountable for performance, and any information or reports that he will be required to submit.
- 17.3 The Town Clerk shall sign every contract not required to be made under seal on behalf of the Council.
- 17.4 The Town Clerk or his nominated representative shall seal every contract required or intended to be made under seal on behalf of the Council, in accordance with Standing Orders.

18 ASSIGNMENT

- 18.1 In every written contract for the execution of work or the supply of goods or materials, the following clause shall be inserted:
- 18.2 "The contractor shall be prohibited from transferring or assigning directly or indirectly, to any person or persons whatever, any portion of the contract without the written permission of the Council. Sub-letting of any part(s) of the work, except to the extent permitted in writing by the officer concerned, shall be prohibited".

19 LIQUIDATED DAMAGES

- 19.1 Every contract that exceeds £50,000 shall, where considered appropriate by the Town Clerk, provide for liquidated damages to be paid by the contractor in case the terms of the contract are not duly performed.

20 PERFORMANCE BONDS

- 20.1 Where a contract is estimated to exceed £150,000 in value and is for the execution of the works, or for the supply of goods or materials by a particular date or series of dates, the Finance & Policy Committee shall consider whether the Council should require security for its due performance and shall either certify that no such security is necessary or shall specify in the conditions of tender the nature and amount of any security to be given. In the latter event, the Council shall require and will take a bond or other sufficient security for the due performance of the contract.

21 RETENTION

- 21.1 Works contracts, which are estimated to exceed £50,000 in value, will be subject to a defects period. The Council will retain a percentage of the monies due to the contractor for a period that the Town Clerk deems appropriate, having regard to the current practice in the relevant industry and to the circumstances of the contract.

22 CANCELLATION

- 22.1 Every contract will include a clause allowing the Council to cancel the contract and to recover costs if the contractor has offered, or given, any gift or consideration whatsoever as an inducement or reward to obtain the contract, or any other contract with the Council.

23 NOMINATED SUB-CONTRACTORS

- 23.1 Where a sub-contractor or supplier is to be nominated to a main contractor the following provisions shall have effect.
- 23.2 Where the estimated amount of a sub-contract exceeds £50,000 then, unless the Town Clerk certifies that it is not reasonably practicable to obtain competitive tenders, tenders for the nomination shall be invited and dealt with in accordance with these Contract Procedure Rules as if they were for a contract with the Council.
- 23.3 A nominated sub-contractor must be willing to enter into a contract with the main contractor on terms which indemnify the main contractor against his own obligations under the main contract in relation to the work or goods included in the sub-contract.

24 ENGAGEMENT OF CONSULTANTS

- 24.1 In the event of the Council engaging the services of consultants these Contract Procedure Rules will apply, where relevant.