



Seaham Town Council

Standing Orders for Tendering and Contractual Procedures



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Contents

- 1 Introductory Note
- 2 Compliance with Standing Orders
- 3 Estimates
- 4 Quotations and Invitation to Tender
- 5 Selected Tendering – Standing Approved Lists
- 6 Emergency Works
- 7 Receipt of Tenders
- 8 Opening and Acceptance of Tenders
- 9 Attempted Alteration of Tender
- 10 Lowest Tender
- 11 Contacts to be in Writing; Form of Contract and Completion of Contract Formalities
- 12 Performance Guarantee Bonds and Insurances
- 13 Custody of Contract Documents
- 14 Corrupt Practices
- 15 Interest of Officers
- 16 Appointment of Consultants
- 17 Additional Costs on Contracts
- 18 Review of Financial Limits
- 19 Issue of Final Certificates
- 20 Specialist Suppliers
- 21 EC Legislation
- 22 Changes in Tender Specification after Receipt of Tenders
- 23 Negotiations after Opening of Tenders

1 – Introductory Note

- 1.1 Standing orders for contracts are for the mutual benefit of staff and councillors alike. They provide rules and guidelines for working and dealing with contractual matters.
- 1.2 Contracts have, for a long time, always been regarded as a "danger zone" for both staff and elected members and hence the need for this introductory note. Every member of staff who has cause to deal with contracts is urged to familiarise himself/herself with the following contents.
- 1.3 In awarding contracts the important point is not who selects the firms to tender or even if every possible interested firm is invited. Rather it is how the selection is undertaken and how it can be shown to be fair. Impartiality must be shown from the decision to use contractors for all or part of a project to the compilation of a shortlist, to the final awarding of the contract, whether two or 200 tenders are received.

2 – Compliance with Standing Orders

- 2.1 Every contract made by the Council or by a Committee to which the power of making contracts shall have been delegated shall comply with these Standing Orders and no exception from any of the following provisions of these Standing Orders shall be made otherwise by direction of the Council. Unless directed by the Council (and only after considering a written report from the Chief Officer) there shall be no departure from or waiving of these Standing Orders.
- 2.2 Before letting any contract it is the responsibility of the supervising Chief Officer to ensure that all permissions, (e.g. consent from a Government Department; approval of tender by the Council, etc) and sufficient funding by means of grants; loan consent; subsidy, etc. have been obtained for the appropriate contract sum.

3 – Estimates

- 3.1 Before entering into a contract the appropriate Chief Officer shall prepare an estimate in a suitable manner of the probable expense of executing the work or providing the goods, materials and services and of the annual expense of maintaining the same.
- 3.2 Staff are required to ensure that suitable and sufficient funding is available in revenue/capital estimates to meet the running, maintenance and other ancillary costs associated with the item concerned.

4 – Quotations and Invitation to Tender

- 4.1 Unless authorised by Standing Order 2, or in an emergency no contract for the supply of goods or materials or for the execution of works or the provision of services whether to be supplied or executed at any one time or during a specified period shall be let unless:-

- 4.2 For contracts where the estimated value does not exceed £3,000 it shall be left to the discretion of the Chief Officer concerned of the relevant Department (taking into account value for money considerations) to decide whether or not quotations shall be sought. It is, however, recommended that wherever possible quotations (if possible three in number) be obtained as a matter of sound practice.
- 4.3 For contracts where the estimated value exceeds £3,000 but does not exceed £25,000 there shall be a minimum of three quotations sought, and full details shall be recorded in a permanent identifiable record which must be maintained for audit purposes containing full information of quotations in a manner approved by the Town Clerk. Quotations in this category shall be received by a specific date in a plain, sealed envelope and shall be opened at one time and initialled by two representatives of the receiving Department.
- 4.4 For any public works, public service or public supply contract with an estimated value of over £25,000, the Public Contracts Regulations 2015/102 **must** be complied with as summarised in the table below:

Value of Contract (net of VAT)	Legal Requirements
Up to £25,000*	Requirements in the Council's Standing orders (and Financial Regulations).
Over £25,000*	Use of the Contract Finder website and other light touch rules in the Public Contracts Regulations 2015.
Over £172,514* or £4,322,012*	Other detailed and complex requirements in the Public Contracts Regulations 2015.

***n.b. Thresholds as at Oct 2015**

- 4.5 For contracts where the value exceeds £25,000 the Council, having regard to the "Code of Procedure for single stage Selective Tendering as used in April, 1989" agree that the number of persons invited to tender for such contracts is:-
- Where the estimated value of the work exceeds £25,000 but does not exceed £100,000 to at least FOUR PERSONS.
 - Where the estimated value of the work exceeds £100,000 but does not exceed £140,000 to at least FIVE PERSONS.
 - Where the estimated value of the work exceeds £140,000 but does not exceed £2 million to at least SIX PERSONS.
 - Where the estimated value of the work exceeds £2 million to at least SIX PERSONS.
- 4.6 In the case of specialist suppliers for goods, services and works, it is recognised that individual circumstances will dictate the number of quotations which can be obtained. Wherever practicable attempts should be made to obtain a minimum of three quotations.
- 4.7 Excepting tenders for the supply of goods, materials or for the provision of services, a report in writing upon all tenders for works shall be made to the appropriate Committee or Sub-Committee of the Council for their acceptance of the tender or for their information as the case may be. The Chairman and Vice-

Chairman of the appropriate Committee (or in their absence the Chairman and Vice-Chairman of the Council shall have power without prior authorisation being given by the appropriate Committee) to authorise the appropriate Chief Officer to accept a tender for works on the written recommendation of the appropriate Chief Officer providing the action taken is subsequently reported in writing to the appropriate Committee.

- 4.8 Any public notice or written invitation to tender shall describe the nature and purpose of the proposed contract, invite tenders for its execution and either the public notice or written invitation or a subsequent written communication to tenderers shall state the last date when tenders will be received.

5 – Selected Tendering – Standing Approved Lists

- 5.1 For the purposes of selective tendering, standing lists shall be prepared suitable persons (i.e. firms considered capable of carrying out the work) wish to be invited to tender for contracts to carry out works or for the supply of goods or materials or services of specified categories, value or amount or for the execution of specified categories of works.

The compilation and extent of usage of such lists to be at the discretion of each Chief Officer.

- 5.2 The said lists shall:-

- Be maintained by the appropriate Chief Officer;
- Be compiled from the names of all persons who wish to be considered for inclusion in them;
- The decision of the appropriate Chief Officer as to suitability of firms for inclusion in or exclusion from the list shall be final and in accordance with Section 20 of the Local Government Act, 1988, and, if requested, the Chief Officer concerned must provide the firm with details of the reasons for such exclusion.

- 5.3 At least 4 weeks before the list is compiled, notices inviting application for inclusion in it shall be published in one or more local newspapers circulating in the District and if considered necessary by the appropriate Chief Officer in one or more newspapers or journals circulating among such persons as undertake contracts of the specified values or amounts or categories inviting firms, companies or individuals to put their names forward for inclusion in such lists and after vetting of applications, the recommended list shall be submitted to and be approved by the Council and be then recognised as the duly approved Standing List of Tenderers.

- 5.4 The said list shall be comprehensively reviewed at intervals not exceeding three years and at other times at the discretion of the Chief Officer, subject to the details being reported in writing to the Council for information being amended or increased at any time. At least 4 weeks before each review each person whose name appears in the list shall be asked whether he wishes his name to remain

therein and notices inviting applications for inclusion in the list shall be published in the manner provided by paragraph (iii) of this Standing Order.

5.5 The Chief Officer concerned shall submit to the Council for prior approval a list of the works, materials and services for which it is intended that the Council should maintain Standing Lists of Tenderers.

5.6 Where the Standing tender list has been used, in order to ensure proper rotation of tenderers the lowest and second lowest tenderer can (at the discretion of the Chief Officer) be automatically included in the next such tender list for works of a similar nature but thereafter shall take their turn on a rota.

5.7 *Explanatory Note*

It is considered prudent and good practice in order to ensure that the maximum return of completed tenders for contact to be made with firms to whom tender documents are to be sent asking whether or not they wish to receive and/or complete and return the tender. In the event of a firm not wishing to receive the tender documents a Departmental note should be kept for record purposes and the next firm on the rota selected in their place. If they fail to return without good reason they could be removed from the list or moved to the back of the rota.

6 – Emergency Works

6.1 The appropriate Chief Officer shall be authorised to appoint the relevant D.S.O. or any suitable contractor preferably from an approved standing list of Contractors to carry out such works of an emergency nature as are essential for the preservation of life and property, and a report on the action taken be given for information purposes to the next meeting of the appropriate Committee.

7 – Receipt of Tenders

7.1 Every invitation to tender shall 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, and shall not bear any name or mark indicating the sender. Tenders where the cost is estimated to exceed £25,000 shall be returnable to the Proper Officer. Such envelopes when returned to the Proper Officer shall be date and time stamped and entered in a "tenders received register" on receipt and then remain in the custody of the Proper Officer until the time appointed for their opening. Late tenders received after the appointed date and time for receipt shall not be considered and shall not be opened until after acceptance of a tender by the Council after which they shall be returned to the senders.

8 – Opening and Acceptance of Tenders

8.1 Tenders shall be opened at one time and in the presence of any two Elected Members and the Proper Officer (or his representative), and the Chief Officer (or his representative) concerned and be duly numbered, initialled and dated at the time of opening by the Members concerned. A register of tenders opened shall be kept and shall be initialled on each occasion by the Members in whose

presence the tenders are opened (including occasions when opened at Committee or a Council Meeting) such register to remain in the custody of the Proper Officer. Until such time as a tender has been finally accepted by the Council, all tendering information shall be kept strictly confidential PROVIDED that if a standing committee of the Council so determine and authorise or delegate responsibility to the appropriate Chief Officer, immediate acceptance of a tender can take place.

9 – Attempted Alteration of Tender

- 9.1 No amendment on the part of a Contractor shall be allowed to any tender following its receipt by the Council and, therefore, an application by the Contractor to amend the tender shall disqualify it from further consideration by the Council - except that only the Council always have the right to correct any arithmetical error.

10 – Lowest Tender

- 10.1 No tender other than the lowest tender if payment is to be made by the Council or other than the highest tender if payment is to be received by the Council shall be accepted until the Committee concerned have considered a written report on the tenders from the appropriate Chief Officer ALWAYS PROVIDED that if, after consideration of a written report, it is thought by Committee to be in the Council's best interests all tenders may be either rejected or other than the lowest tender may be accepted. Before the tender can be accepted the Chief Officer must take adequate steps to ensure financial stability/soundness ; obtaining technical and financial references; searches and previous or last year accounts.

11 – Contracts to be in Writing; Form of Contract and Completion of Contract Formalities

- 11.1 Every contract for execution of works, provision of services or purchases of materials which exceeds £25,000 in value or amount shall be evidenced in writing and shall be signed by the Proper Officer or appropriate Chief Officer on behalf of the Council.
- 11.2 Every contract in writing shall specify:
- The work, materials, matters or things to be furnished, had or done;
 - The price to be paid, with a statement of discounts or other deductions; and
 - The time or times within which the contract is to be performed.
- 11.3 Every contract which exceeds £25,000 in value and is for the execution of works shall provide for liquidated damages to be paid by the contractor in case the terms of the contract are not observed or duly performed.

Explanatory Note

Officers are reminded that liquidated damages should be properly ascertained, having regard to the recommendations put forward from time to time by the Society of Chief Quantity Surveyors in Local Government.

- 11.4 Wherever possible the appropriate Chief Officer shall ensure that contracts are let under terms approved by recognised bodies, eg. Joint Contracts Tribunal, I.C.E.; Institute of Landscape Architects; etc., and that such documentation is properly prepared and passed to the Proper Officer where appropriate to enable completion of contractual formalities.

Explanatory Note

It is the responsibility of the Supervising Officer to decide whether or not the documentation is passed on to the Proper Officer to enable him to complete the contractual formalities. If these are completed by the Supervising Officer himself, then he must observe the provisions of this Standing Order.

- 11.5 It shall be the responsibility of the appropriate Chief Officer to supply the Proper Officer where appropriate with full particulars and supporting documents to enable the letting of contracts.
- 11.6 The Proper Officer or appropriate Chief Officer shall as soon as practicable after completion of formal contact documentation advise the appropriate Supervising Officer to that effect.

12 – Performance Guarantee Bonds and Insurances

- 12.1 Except where otherwise directed by the Council the Proper Officer shall ensure that in respect of contracts for works being carried out by a Contractor on behalf of the Council exceeding £25,000 in value, the Contractor enters into a bond for the due performance of the contract; (the percentage amount being determined from time to time by the Council).

Note:- as at 1st January, 1996 the percentage amount is 10%.

- 12.2 The appropriate Supervising Officer shall ensure that all insurances which the contractor is required to effect are duly entered into and maintained until the final handing over of the contract works.

13 – Custody of Contract Documents

- 13.1 The Proper Officer or appropriate Chief Officer shall keep in secure custody all the contract documents including plans, specifications, bills of quantities, bonds, etc.

14 – Corrupt Practices

- 14.1 There shall be inserted in every written contract a clause on terms to be settled by the Proper Officer, empowering the Council to cancel the contract and to

recover from the contractor the amount of any loss resulting from such cancellation, if the contractor 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 doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract with the Council, or for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Council or if the like acts shall have been done by any person employed by him or acting on his behalf (whether with or without the knowledge of the contractor), or if in relation to any contract with the Council the contractor or any person employed by him or acting on his behalf shall have committed any corrupt offence or act or shall have given any fee or reward the receipt of which is an offence under Section 117 of the Local Government Act 1972.

15 – Interest of Officers

- 15.1 If it comes to the knowledge of an Officer of the Council that a contract in which he has any pecuniary interest, whether direct or indirect, not being a contract which he is himself a party, or is proposed to be, is to be entered into by the Council he shall at once give notice in writing to the Proper Officer of the fact that he is interested therein.

16 – Appointment of Consultants

- 16.1 In every contract where outside firms of consultants are to be employed to supervise works and/or advise the Authority in connection therewith, the following procedure shall apply:-
- On the recommendation of the appropriate Chief Officer, in a written report, consultants shall be chosen by the Council for individual schemes from recognised professional consultancy practices for the class of work involved and shall not be used for successive schemes unless:
 - the works are a continuation of earlier work, or
 - The works are of such a specialist nature that it would be desirable to employ the same consultants.
 - The repetitive nature of the designs would mean a saving in consultancy fees by utilising the same consultants.
- 16.2 The selection criteria for Consultants shall be no less stringent than that used for selection of works Contractors. Consultants employed by the Council should not be again employed unless a satisfactory report can be given by the appropriate Chief Officer regarding their previous performance in respect of completed works.
- 16.3 The firm concerned shall be required to enter into an agreement appointing them as consultants. Such agreement to be the standard one used by the professional body applicable to the type of work involved and should specify the conditions of engagement including fees.
- 16.4 The consultancy agreement shall include provision for the consultants to insure against any claims which could arise because of the negligence of the

consultants and that evidence of such insurance shall be produced to the Supervising Officer.

- 16.5 ALL CONSULTANTS ENGAGED TO ACT FOR THE COUNCIL SHALL BE SUPPLIED WITH A COPY OF THE COUNCIL'S STANDING ORDERS FOR CONTRACTS AND FINANCIAL REGULATIONS AND SHALL COMPLY WITH ALL THE CONDITIONS THEREIN AND THE CONSULTANCY AGREEMENT SHALL INCLUDE THIS PROVISION.

17 – Additional Costs on Contacts

- 17.1 The Supervising Officer (WHETHER IT BE THE CHIEF OFFICER OR THE APPOINTED CONSULTANT) must ensure when he envisages that the tender sum for a contract is likely to be exceeded by more than 2.5% or being a single item exceeds £10,000 in value then an immediate report in writing giving reasons for the overspending and seeking endorsement thereof be made to the Council with recommendations as to how the overspending can be funded. This requirement does not apply to contracts let on a fluctuating price basis the provisions for which are covered by JCT or ICE Standard Forms of Contract or other form approved by the Council.

18 – Review of Financial Limits

- 18.1 The financial limits specified in these Standing orders shall be reviewed annually by Chief Officers and recommendations made for adjusting the limits with the appropriate price.

19 – Issue of Final Certificates

- 19.1 The appropriate Chief Officer shall ensure that in every contract for works exceeding £25,000 in value, the Final Certificate shall only be issued after examination of the Final Account. A requirement to this effect should be included in every written contract.

20 – Specialist Suppliers

- 20.1 Where suppliers of goods, materials or services are specified to be used these should be subject to review every two years and the test of "value for money".

21 – EC Legislation

- 21.1 The extent of European legislation is significant. Officers dealing with contracts should have regard to EC rulings and legislation which is a constantly changing area of the law.
- 21.2 A separate reference book has been produced. "A guidance to Europe and the Single European Market" and appropriate officers should familiarise themselves with and observe the relevant rules and legislations at all times.

22 – Changes in Tender Specification after Receipt of Tenders

- 22.1 Should a sum tendered be substantially greater than the sum budgeted then consideration shall be given to either re-tender or negotiate a bill of reductions. In the case of the latter, tenderers would be invited to lower their tenders indicating any savings they consider they feel could be made in respect of materials, delayed start dates etc. The following safeguards should be applied.
- All tenderers who originally tendered shall be given equal opportunity to re-negotiate on a fair basis. If one Contractor is allowed to substitute a less expensive quality of material all others should be notified of the change in specification.
 - No tenderer shall be given any details of other tenders or the relative positions of other tenderers.

23 – Negotiations after Opening of Tenders

- 23.1 After the opening and evaluation of tenders, the appropriate Chief Officer has the discretion to decide whether, or not, it is in the Council's best interests to embark upon negotiations with the lowest tenderer/highest tenderer (as appropriate) with a view to achieving a lower/higher price. This will be regarded as a proper course of action provided that:-
- In respect of such negotiations, the Proper Officer is kept informed.
 - A detailed written record is kept of the negotiations and the proceedings.
 - That all negotiations take place within the Town Council premises wherever possible.
- 23.2 That the justifications/reasoning for any decision is properly recorded in the record of the negotiations.