



BUCKINGHAMSHIRE AND MILTON KEYNES FIRE AUTHORITY

STANDING ORDERS RELATING TO CONTRACTS

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1. Basic Principles

- 1.1 These Orders apply to all Authority contracts with the exception of employment contracts or any contract relating to the engagement of counsel.
- 1.2 Failure by an Officer to comply may result in disciplinary action being taken against that Officer.
- 1.3 These Orders set down the minimum requirements. A more detailed procedure may be appropriate for a particular contract.
- 1.4 In interpreting and applying these Orders, where there is a difference:
 - (a) EU Procurement Directives and EU case law take precedence over both English law and these Orders; and
 - (b) English law takes precedence over these Orders
- 1.5 A contract includes the following:-
 - (a) any contract for goods, works or services, including disposals
 - (b) any order for goods, works or services
 - (c) a grant given or received by the Authority
 - (d) a contract managed by consultants
 - (e) a contract appointing consultants
 - (f) any partnership arrangement
 - (g) contracts relating to the disposal or purchase of land and buildings.
- 1.6 Purchasing and disposal procedures must:
 - (a) Achieve best value for public money spent;
 - (b) Be consistent with the highest standards of integrity;
 - (c) Ensure fairness in allocating public contracts;
 - (d) Comply with legal requirements;
 - (e) Ensure that non-commercial considerations do not influence any contracting decision;
 - (f) Support the Authority's corporate and service aims and policies;
 - (g) Comply with Financial Regulations and Health and Safety requirements;
 - (h) Be able to demonstrate that the Authority's interests have not been prejudiced or exposed to undue or unmanaged risks; and
 - (i) comply with any monitoring arrangements required by the Authority from time to time.

2. Responsibilities of Officers

2.1. Officers

- (a) Every Officer dealing with contracts must have written authority to do so. This can be in their job description or in written delegated authority.
- (b) Officers responsible for purchasing and disposal must comply with these Standing Orders relating to Contracts, the Financial Regulations and the Employee Code of Conduct together with all UK and EU/EC legal requirements.
- (c) Officers must comply with any prevailing guidance issued by the Treasurer or his or her nominee.
- (d) Officers must use any relevant Corporate Contract which is already in place.
- (e) Officers must keep the records to show a clearly documented audit trail. The Officer has a duty to produce such records when requested to do so by the Monitoring Officer, Treasurer, or Chief Fire Officer and Chief Executive or their nominees.
- (f) Officers must ensure that agents and consultants acting on their behalf comply with the requirements referred to in Standing Order 2.1(b) above. Such consultants must not make any decision as to whether to award a contract or to whom a contract should be awarded.
- (g) Officers must take all necessary legal, financial and professional advice.

2.2 Chief Fire Officer and Chief Executive

The Chief Fire Officer and Chief Executive must:

- (a) Have delegated powers for the contract or ensure that the project has the formal approval of the appropriate Committee of the Authority;
- (b) Ensure that there is full budgetary provision for the contract and that the sources of funding are fully detailed before starting the contract process;
- (c) Ensure that no tender is accepted where it exceeds the approved budget/cash limit by more than 10% unless prior written approval is obtained from the relevant Committee of the Authority;
- (d) Ensure that expenditure is fully contained within the approved budget/cash limit unless prior approval has been obtained from the Committee of the Authority;
- (e) Ensure that he or she has given written delegation of the role that the appropriate Officer may take in the contracting process on behalf of the Authority;
- (f) Ensure that his or her staff complies with these Standing Orders relating to Contracts; and

- (g) Keep a register of contracts over with a value of £10,000 or more showing:
 - (i) the estimated value;
 - (ii) the name of the contractor;
 - (iii) the subject matter of the contract;
 - (iv) contract duration; and
 - (v) the name of the Officer responsible for the contract

3. Partnerships

Officers considering a partnership arrangement must before starting the contract process obtain advice from the Treasurer or his or her nominee who will advise on the partnership options available to ensure a workable partnership including appropriate governance arrangements.

4. Exemptions

- 4.1 Exemptions are subject to the requirements set out in this Standing Order. An exemption allows a contract to be placed by direct negotiation with one or more suppliers rather than in accordance with **Standing Order 8**. Exemptions under this Standing Order cannot be granted if EU Regulations apply.
- 4.2 If an Officer requires an exemption from one or more Orders in an emergency, the Treasurer can provide this. A report must be made to a Committee of the Authority subsequent to the award of the contract. An emergency means a situation involving risk of injury or loss of life or risk to the security or structural viability of a property.
- 4.3 If an Officer requires an exemption from one or more Orders where there is no emergency and the estimated value is below the European threshold, this requires the prior approval of the Treasurer if the value is up to £50,000; or prior approval of a Committee of the Authority if the value is over £50,000 or more. Approval will be given in exceptional circumstances only, such as:
 - (a) special expertise or manufacturing capacity is required for which only one source has been identified. In this case a written quotation shall be obtained from that source; or
 - (b) special expertise or manufacturing capacity is required which is only available from such a limited number of sources that competitive tendering is not practicable. In this case all sources shall be invited to provide quotations.

5. Requirements for all contracts

- 5.1 Every contract must be in writing and must state:-
 - (a) the goods, works or services to be provided;
 - (b) the agreed programme of delivery;
 - (c) the price and terms of payment;

- (d) all other terms that are agreed;
 - (e) exit procedures, for when the contract comes to its natural end, and
 - (f) termination procedures for early termination of the contract including when the contractor has not fulfilled his contractual obligations.
- 5.2 Every contract must comply with Financial Regulations and corporate procurement guidance, including EU Procurement regulations, where necessary.
- 5.3 Every contract shall include standard clauses approved by the Treasurer or his or her nominee on:-
- (a) Anti Fraud and Corruption
 - (b) Equal Opportunities
 - (c) Health and Safety
 - (d) Freedom of Information and Data Protection
 - (e) Time of the Essence (for contracts for goods)
 - (f) Liquidated Damages
- 5.4 The Treasurer or his or her nominee shall be responsible for the safekeeping of all executed contracts.

6. Steps Prior to Letting a Contract

- 6.1 Before letting a contract, an Officer must:
- (a) Estimate the total value of the contract. For example, if the subject matter of the procurement is worth £15,000 over 5 years, the total value of the contract will be £75,000;
 - (b) Ensure that the contracting process is not used to create separate contracts in order to avoid the requirements of Contract Standing Orders or the requirements of the EU procurement regulations;
 - (c) Ensure that there is sufficient budgetary provision for the goods or services required;
 - (d) If leasing arrangements are proposed, obtain prior approval from the Treasurer;
 - (e) Identify whether there is an existing corporate contract already in place;
 - (f) Take into account the outcome from any strategic service review, if appropriate;
 - (g) Define the objectives of the contract;
 - (h) Provide evidence in writing that the risks that are associated with the contract have been assessed and suitable arrangements have been or can be put in place to manage them;

- (i) Evaluate what procurement method is most likely to achieve the Authority's objectives, including internal/external sourcing, sourcing through a public sector consortium, packaging strategy or collaboration with another organisation;
- (j) Consult users as appropriate about the proposed procurement method and standards for the contract;
- (k) Take into account the whole-life costs and environmental impact of the contract;
- (l) Retain evidence that the above steps have been carried out for examination by internal or external auditors;
- (m) Ensure confidentiality when dealing with contractual matters. Officers must not disclose any information regarding tenders to anyone who is not involved in the selection process; and
- (n) In circumstances that it is likely that employees will transfer to a new employer as a result of a contract, seek legal advice from an appropriately qualified source with regard to the application of TUPE (Transfer of Undertakings (Protection of Employment) Regulations 2006.

7. Requirements to Ensure Competition

7.1 Where the total value of the contract is less than £50,000, Officers may identify potential candidates using the most cost-effective and reasonable methods. This may include reference to advertising, catalogues, business directories etc.

7.2 Where the estimated value of a contract is:

(a) Up to and including £5,000

One written quotation is required. This can be a written confirmation by an Officer of an oral quotation. The aim of the Officer responsible for the contract shall be to obtain the best value for money for the Authority.

(b) Over £5,000 and up to and including £50,000

Three written quotations must be requested. The aim of the Officer responsible for the contract shall be to obtain the best value for money for the Authority.

(c) Over £50,000 and up to the European Union thresholds

The Officer responsible for the contract must comply with one of the following options:-

(i) follow a publicly advertised competitive tender process (**See Standing Order 8**)

or

(ii) select a contractor from an approved list of contractors by inviting bids from at least three. (**See Standing Order 9**)

In both (i) and (ii) the Officer must use the Authority's conditions of contract or appropriate professional institute conditions of contract or a contract which has been approved by the Treasurer or his or her nominee.

- (d) **Over the European Union thresholds** which as at 1st January 2008 net of VAT are

	EUROS
Works	€5,150,000
Supplies	€206,000
Services	€206,000

Contracts must be advertised according to EU procurement law. The Officer responsible for the contract must before starting the contract process obtain advice from the Treasurer or his or her nominee

- (e) **Any Value**

The Officer responsible for the contract may use a Framework or Consortium Agreement but before starting the contract process must seek advice from the Treasurer or his or her nominee.

EU procurement law requires compliance with the principles of the free movement of goods, the right of establishment the freedom to provide services, non-discrimination and equal treatment, transparency, proportionality and mutual recognition.

Contracts which fall outside of the Procurement Directives either by reference to value or type must still be let in accordance with the guidance contained in the European Commission Interpretive Communication (1/8/06) http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c_179/c_17920060801en00020007.pdf

8. Competitive Tendering Process

- 8.1 Where the total value of the contract is more than £50,000, Officers must ensure that potential candidates are asked to provide sufficient detail to:
- (a) ensure that they are financially stable;
 - (b) ensure that they have appropriate technical ability to undertake the sort of contract for which they wish to be considered; and
 - (c) check their health and safety record.
- 8.2 Officers must be able to demonstrate documentary evidence that (a) to (c) above have been checked.
- 8.3 Where the total value of the contract is more than £50,000 and there is no Approved List or Corporate Contract for the contract, Officers must invite tenders by public advertisement. The minimum requirement for advertisement is placing an advert on the public website.

8.4 Unless a shorter period has been approved by the Treasurer a period of four weeks must be provided for potential tenderers to receive and submit their expressions of interest for the contract. Where EU Regulations apply, the relevant OJEU time limits apply.

9. Creation and Maintenance of an Approved List

9.1 As an alternative to advertising contracts, Officers may use approved lists to select tenderers. However, approved lists cannot be used where the total value of the contract exceeds the EU procurement threshold.

9.2 Where the Treasurer or his or her nominee decides that a select list of approved Contractors shall be maintained, at least four weeks before the list is compiled or reviewed Public Notice (as a minimum in a trade newspaper or journal and the Authority's website) inviting applications for inclusion on the list must be given. In addition, each Contractor already included on any relevant list shall be asked whether they wish to remain on it.

9.3 The criteria for admission to and suspension from a select list shall be based upon the Authority's corporate policy and procedural guidance, be specified in writing by the Officer and be approved by the Treasurer or his or her nominee.

9.4 Potential candidates for the list must be asked to provide details, which will enable the Authority to:

- (a) ensure that they are financially stable based upon the submission of statements of accounts for the last two years as a minimum
- (b) ensure that they have appropriate technical ability to undertake the sort of contract for which they wish to be considered
- (c) compliance with environmental, health and safety, equality and diversity standards as determined by legislation and as may be approved by the Authority

9.5 The standing list shall include the names and addresses of all the Contractors who meet the selection criteria and shall indicate the nature and value of Contracts for which each Contractor listed may be used.

9.6 Any Contractor may withdraw at any time from a standing list by giving written notice to the Authority.

9.7 Each list must be re-advertised at least every three years. Any necessary amendments including additions and deletions shall be made by the Officer responsible for the list.

9.8 An accredited government scheme subject to approval by the Treasurer or his or her nominee is also considered to be an approved list for the purpose of these Standing Orders relating to Contracts.

10. Standards and Award Criteria

10.1 Officers must ensure that the award criteria are selected which are appropriate to the contract.

10.2 Officers must design award criteria to ensure best value for money for the Authority.

10.3 The pre-agreed criteria for assessing the bid must not be changed after tender proposals have been opened.

11. Invitations to Tender/Quotations

11.1 The Officer must ensure that Invitations to Tender and Invitations to Quote include a specification. The specification must describe clearly the Authority's requirements in sufficient detail to ensure the submission of competitive bids which may easily be compared.

11.2 The Invitation to Tender or Invitation to Quote must state that the Authority is not bound to accept any Quotation or Tender.

11.3 All candidates invited to tender or quote must be issued with the same information at the same time and subject to the same terms. Any additional information or amendments to the specification must be provided to the candidates on the same basis.

11.4 In cases where it can be demonstrated that there are insufficient suitably qualified candidates to meet the competition requirements set out in **Standing Order 7**, all suitably qualified candidates must be invited.

11.5 The Invitation to Tender or Invitation to Quote must specify the award procedure

11.6 Unless the tendering process is by using an approved list, all Invitations to Tender must be advertised on the Authority's website.

12. Shortlisting

12.1 Where approved lists are used, the responsible Officer in consultation with the Treasurer or his or her nominee may undertake the shortlisting in accordance with the relevant criteria.

12.2 Shortlisting must be undertaken with regard to financial and technical standards and other criteria relevant to the contract including the award criteria.

12.3 In the case of contracts let under the EU Procedure, the advice of the Treasurer or his or her nominee must be obtained.

12.4 Where appropriate, Officers may decide not to shortlist and to send Invitations to Tender and evaluate all submissions.

13. Submission, Receipt and Opening of Tenders/Quotations

13.1 Candidates invited to bid must be given adequate time in which to submit a quotation or tender. At least four weeks must be allowed for submission of tenders and the EU Procedure sets out specific time periods.

13.2 All tenders submitted to the Authority shall be in a sealed, plain envelope marked 'TENDER'. There must be no indication on the outside of the envelope of who the sender is. The envelope should be clearly addressed to the Treasurer and must indicate the subject of the contract.

- 13.3 The Treasurer shall be responsible for the safekeeping of tenders until opening. Receipt of each tender must be initialled and dated by the receiving Officer.
- 13.4 A record must be made at the time of opening the tenders showing the name and address of the tenderers, the date and time of opening and the amount tendered. All those present at the tender opening (who shall be two nominees of the Treasurer and one officer authorised by the Chief Fire Officer and Chief Executive) shall sign the record as evidence that it is correct.
- 13.5 At the discretion of the Treasurer, requests for quotations and invitations to tender may be either issued and/or received by electronic means. In circumstances where the Treasurer elects to either issue and/or receive tenders by electronic means the following conditions shall apply: -:
- (a) The Treasurer shall ensure that evidence that the transmission was successfully completed is obtained and recorded; and
 - (b) Electronic tenders received are kept in a separate secure folder under the control of the Treasurer or his or her nominee.

14. Clarification Procedures

- 14.1 After the tender opening, it may become apparent that one or more of the potential contractors that have submitted bids have misinterpreted the specification. If it is clear that this is a result of an error or ambiguity in the specification, the responsible Officer must consult the Treasurer or his or her nominee as to whether all the contractors should be provided with revised specifications and given the opportunity to revise their tender.

15. Tender Evaluation

- 15.1 Confidentiality of tenders/quotations and the identity of tenderers must be maintained at all times. Information about one tenderer's response must not be given to another tenderer.
- 15.2 Officers must evaluate and award the contract in accordance with the award criteria in the Invitation to Tender. The Officer responsible for evaluating the tenders should complete a tender evaluation sheet recording the details of the tenders and the process for selecting the winner. This Officer must be someone other than the person who is going to sign the contract. Financial evaluation must be completed by the Treasurer or his or her nominee. Financing arrangements must be included in the evaluation.
- 15.3 The reasons for the selection of the successful candidate should be recorded on the evaluation report. The Officer carrying out the evaluation must sign the report. Authorisation to award the contract must be given in writing by an Officer who has written delegated authority to do so.

16. Award of Contract

- 16.1 All candidates must be notified in writing, simultaneously and as soon as possible, as to the outcome of the tender exercise.

16.2 In the case of those contracts which have been let using the EU procurement procedure, a statutory standstill of 10 days must apply between the notification of the tenderers and the successful candidate signing the contract, to allow for the decision to be challenged by the unsuccessful candidates.

16.3 The contract can only be signed by an Officer who has written delegation to do so.

17. Executing a Contract

17.1 Where a contract has a bond or guarantee or is over £150,000 it shall be sent to the Clerk and shall be sealed on behalf of the Authority.

17.2 Any contract under £150,000 shall be signed by the Chief Fire Officer and Chief Executive or an Officer with written delegated authority to sign by the Chief Fire Officer and Chief Executive or may be executed by affixing the seal of the Authority in accordance with **SOA 15** (SOA 15 - Standing Orders for the Authority and its Committees)

18. Post Contract Monitoring

18.1 During the duration of a contract, the designated project manager, or, where no project manager has been appointed, the Officer signing the contract must monitor the contract/contractor in respect of:

- (a) performance
- (b) compliance with the specification and the contract
- (c) cost
- (d) user satisfaction
- (e) risk management; and
- (f) in accordance with any guidance issued by the Treasurer or his or her nominee.

18.2 Officers must seek advice from the Treasurer or his or her nominee if payments to a contractor are to be withheld or there is any other problem with the contract which may result in early termination.

19. Termination of Contract

19.1 An Officer shall not terminate a contract over £50,000 prior to its expiry date without first obtaining advice from the Treasurer or his or her nominee.

20. Land and Property

20.1 This Standing Order relates to the acquisition and disposal of land and property including leases which are for a fixed term of more than seven years.

20.2 All valuations and negotiations shall be the responsibility of the Treasurer or his or her nominee who must ensure that anyone undertaking valuations or negotiations on his/her behalf must have appropriate written delegation and must be a qualified Member of the Royal Institution of Chartered Surveyors or equivalent.

- 20.3 All valuations prepared for the purpose of a transaction must be accompanied by evidence of the values or comparable properties in the locality, where possible, or evidence of recent, similar transactions carried out the Authority.

Acquisitions

- 20.4 No purchase of land or property (freehold or leasehold) may be made without the prior approval of an Officer delegated to do so by the Authority's Scheme of Delegation. In order to do this the information detailed below must be provided for this Officer which must be retained for six financial years after the acquisition has been completed:
- (a) a complete description of the land or property that is being considered for purchase;
 - (b) the reason for the purchase;
 - (c) any information that may affect the value of the property or land, including structural and environmental reports;
 - (d) the proposed purchase price or rental value together with evidence of the prices for similar properties in the location, and evidence that there is sufficient budget to cover all costs; and
 - (e) any other terms and conditions.

Disposals

- 20.5 Land and buildings owned by the Authority shall not be disposed by lease or freehold without the prior approval of a Committee of the Authority.
- 20.6 Prior to approval being sought the following information must be provided:
- (a) a complete description of all the land and/or property to be included in the disposal;
 - (b) confirmation that the title of the land and/or property is owned by the Authority;
 - (c) the reason for the sale and any restrictions which this may impose;
 - (d) a report on any information which is held by the Authority in the previous use of the land which may affect its value (eg if the site were contaminated);
 - (e) the estimated value of the land and/or property together with evidence of comparable properties in the location or by reference to other recent, similar Authority transactions;
 - (f) in cases where land and/or property is being sold as potential housing development, evidence that planning applications will be obtained prior to the completion of the disposal in order to obtain the best possible price for the land;

- (g) recommendations on the following:
 - (i) issues that need to be resolved before marketing the land and/or property can commence;
 - (ii) the preferred method of disposal (private treaty/public auction/formal tender);
 - (iii) the title to be transferred; and
 - (iv) the minimum price that the Authority is prepared to receive together with an asking price.

20.7 Where it has been decided that the disposal of the land and/or property will be by formal tender, **Standing Order 8** above relating to tenders shall be applied.

21. Asset Disposals (other than Land or Property)

21.1 A check must be made to determine whether there is a corporate policy or contract for the disposal of the stock. If a policy or contract is in place, this should be used.

21.2 Where the estimated value of the goods is no more than £2,500 the disposal will be authorised by the Treasurer. If the estimated value is more than £2,500 a Committee of the Authority must approve the disposal.

21.3 Disposal must be either by public auction or by obtaining three quotes from suitable contractors.

21.4 The Officer responsible for the disposal must ensure that the Authority is receiving value for money; that the contractor used is reputable; and that the necessary anti-money laundering checks are in place by reference to the Treasurer.