



**CONTRACT STANDING ORDERS**

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Responsible Officer	First Section Issue Date	Section Amended/Updated	Review Date
ACO	October 2005	September 2015 May 2017 July 2019	



## **1. Introduction**

- 1.1 These Contract Standing Orders govern the making of contracts for and on behalf of the East Sussex Fire Authority. They regulate the manner in which procurement takes place and include provision for competition. They were approved on 10 December 2007 and revised on 10 September 2015.
- 1.2 Contract Standing Orders are referred to below as “CSOs” or “CSO” as appropriate and East Sussex Fire Authority is referred to as “the Authority”.

## **2. Purpose**

- 2.1 The main purposes of these CSOs are to ensure that the Authority:
- (a) complies with the laws which apply to the contract processes;
  - (b) has clear and fair rules for contracting;
  - (c) has suitable safeguards against fraud and corruption in its contract processes; and
  - (d) achieves Best Value with its contracts.

## **3. Interpretation**

- 3.1 Words and phrases used in the CSOs which are defined are set out in Appendix 1 and for ease of reference begin with capital letters.
- 3.2 Any dispute or difference as to the interpretation of CSOs shall be determined by a Principal Officer. If the Principal Officer considers that it is necessary to obtain financial and/or legal advice, the Principal Officer shall consult the Treasurer and/or Monitoring Officer before making a determination.

## **4. Compliance**

- 4.1 Every contract made by the Authority must comply with:
- (a) the EU Procurement Directives and any relevant English law;
  - (b) these CSOs, subject to CSOs 5 (Application) and 7 (Waivers); and
  - (c) the Authority’s Financial Regulations.
- 4.2 In interpreting and applying the CSOs, where there is a difference,
- (a) EU Procurement Directives take precedence over both English law and the CSOs; and
  - (b) English law takes precedence over the CSOs.



- 4.3 For each contract, the Contract Officer (whether an officer of the Authority or not) is responsible for ensuring that there is compliance by the Authority with CSO 4.1. The Contract Officer must also have regard to the Authority's other procurement documents, which include:
- (a) the procurement strategy;
  - (b) the information management strategy;
  - (c) the asset management strategy;
  - (d) the contracts code of practice and
  - (e) relevant East Sussex Fire and Rescue Service manuals relating to procurement, project management, electronic procurement and financial management policies and procedures.
- 4.4 The Contract Officer must ensure that any other Person (whether an officer of the Authority or not) who assists the Authority in procuring and managing a Contract complies with CSO 4.1.
- 4.5 The Contract Officer must contact the Procurement Manager at the outset of the procurement process to ensure the proposed Contract is registered on the Contracts Register and must liaise with Procurement, Contracts & Insurance Manager thereafter so that all relevant information is supplied as required under CSO 6 (Contracts Register). This requirement applies to Contract extensions and renewals as well as to new Contracts.
- 4.6 The Procurement Manager shall assist Principal Officers to manage effectively and prudently the corporate Contract management arrangements of the Authority as determined by these CSOs and the Authority's other procurement documents such as those mentioned in CSO 4.3.

## **5. Application**

- 5.1 The CSOs shall not apply to the following:
- (a) any Contract of employment;
  - (b) any Contract relating to the engagement of counsel or other legal specialists;
  - (c) any Contract relating to the transfer, acquisition or disposal of land or any interest in land;
  - (d) any Contract for the provision of Supplies, Services or Works where the Cost of the Contract is estimated at less than £5,000, but in such cases procurement must be in accordance with the Authority's Financial Regulations and any other applicable procurement documents of the Authority such as those mentioned in CSO 4.3 (Compliance);
  - (e) any Contract where the Authority is the seller rather than the buyer, except to the extent that CSOs are applied to disposals of Supplies by the Authority by CSO 22 (Disposal of Supplies).

## **6. Contracts Register**

6.1 The Authority shall keep a single, corporate, electronic register of all formal contracts for any services, supplies or works which the cost of the contract as awarded is £5,000 or more. The Contracts Register shall include the following as a minimum in relation to each contract:

- (a) name of the Contract Officer;
- (b) appropriate Tendering information to assist with the determination of Best Value, including type of Tender process used (for example Framework Agreement, Select List etc.) and confirmation tender information requirements were met;
- (c) contract category (Supplies, Service, Works or combination thereof);
- (d) summary of the Supplies, Services and / or Works to be provided under the contract;
- (e) whether or not the contract has been procured through a Consortium or Partnership arrangement and the details thereof;
- (f) details of any declarations of interest under CSO 9 (Declarations of interests);
- (g) details of any waiver(s) approved under CSO 7 (Waivers);
- (h) name of the contractor;
- (i) contract duration;
- (j) cost of the contract (which may be the anticipated or estimated cost where the contract is for an indeterminate amount);
- (k) details of any retentions under the Contract;
- (l) any other contract management information that may be relevant to the contract, for example compliance / potential default issues.

6.2 The Contracts Register shall be kept by the Authority's Procurement, Contracts & Insurance Manager.

6.3 The Contracts Register shall be open for inspection by any Member of the Authority and otherwise as directed by a Principal Officer.

## **7. Waivers**

7.1 Any proposal to waive any of the provisions of one or more CSOs in relation to a Contract must be referred by the Contract Officer to the Treasurer. Except in an emergency, the proposal must be in writing, setting out the reason(s) for the waiver.

7.2 Subject to CSO 7.3, the Treasurer may waive any provision of one or more CSOs in relation to a proposed Contract. Except in an emergency, the Treasurer shall consult the Monitoring Officer, the Procurement Manager and the relevant Member of the Authority before making a decision.

7.3 The following CSOs cannot be waived:

- (a) CSO 4.1(a) – Compliance with EU Procurement Directives and any relevant English law;



- (b) CSO 9 – Declarations of interests; and
- (c) CSO 19 – Mandatory Contract clauses.

7.4 All waivers of CSOs must be reported to the Authority or its Scrutiny and Audit Panel and recorded by the Procurement Manager in the Contracts Register.

## **8. Authorised Officers**

8.1 Contract Officers are hereby given delegated power from the Authority to take any steps required or authorised under the CSOs but may only accept a Quotation or Tender if authorised to do so under CSO 8.2.

8.2 Each officer of the Authority in the categories listed below is hereby given delegated power from the Authority to accept Quotations or Tenders for the amounts shown:

- (a) where the Cost of the Contract is less than £50,000, any officer who is designated as Assistant Director;
- (b) where the Cost of the Contract is £50,000 or more but less than £172,514, any Principal Officer;
- (c) where the Cost of the Contract is £172,514 or more, the Chief Fire Officer or the Deputy Chief Fire Officer.

## **9. Declarations of interests**

9.1 At the beginning of and throughout the contract process, the Contract Officer and any other Person (whether an officer of the Authority or not) involved in process must consider if they have any direct or indirect interests in either the contract or in any contractor who wishes to be appointed for the contract. Any such interests must be declared immediately in writing to a Principal Officer and recorded in the Contracts Register.

9.2 In relation to each declaration under CSO 9.1, if the interest is a financial interest, the Person who made the declaration shall take no further part in the contract process. If the interest is not a financial interest, the Principal Officer must decide how far, if at all, the Person making the declaration may participate in the Contract process. The Principal Officer must ensure that a written record is kept of the outcome of any declaration of interest as part of the Contracts Register.

## **10. Valuation and aggregation**

10.1 For each proposed Contract, the Contract Officer must estimate and record the Cost of the Contract.

10.2 The Cost of the Contract must not be artificially divided either in structure or duration so as to avoid the application of any CSO or the EU Procurement Directives.

## **11. Budgeting**

- 11.1 For each proposed contract, the Contract Officer must ensure that the Cost of the Contract will be within the financial capability of the Authority and either that provision has been made for the contract in the Authority's approved revenue budget or capital programme provision or that appropriate adjustments to the revenue budget or capital programme provision are made in accordance with Financial Regulations before the Authority accepts any quotation or tender for the contract.
- 11.2 Capital schemes: If a contract is to be financed from the capital programme, before the Authority accepts any Quotation or Tender for the contract the Contract Officer must ensure that:
- (a) the Cost of the Contract can be met from the individual scheme provision within the approved capital programme of the Authority and that, for a Contract which will carry on over more than one financial year, the capital programme makes allowance for the financial implications of the phasing of the Contract between years;
  - (b) the approved limits contained within the prudential guidelines supporting the approval capital programme can be met;
  - (c) any necessary and specific government approvals have been received; and
  - (d) any Partnership requirements or national and local funding requirements can be met.
- 11.3 Revenue budgets: The Contract Officer must ensure that the Cost of the Contract for the current year and any subsequent years of the Contract can be met by the Authority from the budget for the financial year in which the Contract is to begin and from budget commitments for future years as necessary.
- 11.4 CSOs 11.1 to 11.3 and 21 (Contract variation) will also apply in relation to any increase in the Cost of the Contract to the Authority as a result of any variation to the Contract after acceptance of a Quotation or Tender.

## **12. Choice of procurement method**

- 12.1 At the beginning of the Contract process, the Contract Officer shall consider and select the procurement method which is expected to give Best Value to the Authority in relation to the proposed Contract, bearing in mind that:
- (a) any best practice commissioning and procurement guidance made available from time to time by the Authority must be considered;
  - (b) there will be stricter requirements for Contracts to which the full EU Procurement Directives apply;
  - (c) if available, a Framework Agreement as described in CSO 12.2 may be the most appropriate arrangement;
  - (d) if available, collaborative procurement arrangements may be appropriate; and
  - (e) Where available, the Service's e-tendering solution must be used.



- 12.2 A Framework Agreement is an agreement with contractors that sets out terms and conditions under which specific purchases (call-offs) can be made through the terms of the agreement. Examples of organisations setting up Framework Agreements which are likely to be used include:
- (a) Buying Solutions;
  - (b) The Pro5 Local Authority Consortia;
  - (c) The Consortium (successor to FireBuy); or
  - (d) other local authority partnership agreements.
- 12.3 The Contract Officer must satisfy themselves that the Framework Agreement has been constituted in a way that lawfully permits the Authority to use the arrangement in procuring Contracts and that using it is expected to provide Best Value to the Authority. In particular evidence shall be sought that:
- (a) that the EU Procurement Directives, where relevant, and any applicable English law have been followed;
  - (b) that the proposed Framework Agreement has satisfied the approved contract standing orders or other similar rules of the organisation acting as the procurer;
  - (c) that full Quotation / Tender and Contract award information is available for inspection on reasonable request and
  - (d) that a summary of the Quotation / Tender selection information including financial differentials will be submitted to the Contract Officer for the Authority's Best Value monitoring needs, to be kept with the Contracts Register.
- 12.4 If the Contract Officer selects a Framework Agreement for the Contract, they shall ensure that the Authority complies with the requirements of the Framework Agreement in following the Framework Agreement's mini-competition process.
- 12.5 Depending on the estimated Cost of the Contract and the procurement method selected, the Contract Officer will also need to consider and determine:
- (a) the criteria for selecting the Contractors who will be invited to submit Quotations or Tenders (see CSO 11.7 - Budgeting);
  - (b) the procedure for obtaining Quotations or Tenders (see Appendix 2);
  - (c) the form of Contract (see CSO 18 – Contract formalities and CSO 19 – Mandatory Contract clauses); and
  - (d) the criteria for assessing which Quotation or Tender shall be accepted (see CSO 11.7 – Budgeting and CSO 15 – Evaluation of Quotations or Tenders).



- 12.6 Prior to Contract award, the Contract Officer must ensure that an adequate technical and financial appraisal of the proposed Contractors, commensurate with the Cost of the Contract, has been undertaken at an appropriate stage in the process. Where financial appraisals are necessary they shall be carried by East Sussex County Council's financial services personnel or otherwise as directed by the Treasurer. If the open procedure (described in Appendix 2) is used, this will be on receipt of the Quotations or Tenders. If the restricted procedure (also described in Appendix 2) is used, this will be on receipt of expressions of interest and before receipt of Quotations or Tenders.
- 12.7 When any employee either of the Authority or of a Contractor may be affected by any transfer arrangement, the Contract Officer must ensure that the Transfer of Undertaking (Protection of Employment) (TUPE) issues are considered and obtain legal advice before proceeding with inviting Tenders or Quotations.

**13. Competition processes**

**Quotation or formal Tender process - Estimated Cost of the Contract £5,000 or more and less than £50,000**

- 13.1 For a proposed Contract where the estimated Cost of the Contract is £5,000 or more and less than £50,000, the Contract Officer must obtain Quotations in accordance with either CSO 13.2 or CSO 13.3.
- 13.2 The Contract Officer shall seek at least three Quotations. If fewer than two Quotations or Tenders are received then the Contracts Officer must consult with the Procurement Manager and provide evidence to show that the Authority can obtain value for money.  
OR
- 13.3 The Contract Officer shall obtain Quotation(s) in one of the following ways:
- (a) where there is a suitable Framework Agreement, by using that Arrangement and if the particular Arrangement permits competition by the Authority seeking Quotations from at least three Contractors;
  - (b) where the Authority maintains a suitable list of Approved Contractors under CSO 23 (Compilation of Approved Lists of Contractors) and the total value of the contract is not expected to exceed the EU Directives threshold, obtaining Quotations from at least two Contractors on the list, the selection from the list to be subject to rotation;
  - (c) where, in the opinion of the Procurement Manager, there is only one Contractor who can properly provide the Supplies, Services or Works required for the Contract, the Contract Officer may obtain a Quotation from that Contractor; or
  - (d) where, in the opinion of the Procurement Manager, it is appropriate to seek a Quotation from a particular Contractor because of the developmental or trial nature of the Supplies, Services or Works to be provided, the Contract Officer may obtain a Quotation from that Contractor.



**Formal Tender process - Estimated Cost of the Contract in from £50,000 or more and less than £172,514**

- 13.4 For a proposed Contract where the estimated Cost of the Contract is more than £50,000 and less than £172,514, the Contract Officer must seek and obtain Tenders in accordance with either CSO 13.5 or CSO 13.6.
- 13.5 The Contract Officer shall give Public Notice of the proposed Contract, shall seek at least four Tenders. If less than two Tenders are received then the Contracts Officer must consult with the Procurement Manager and provide evidence to show that the Authority can obtain value for money. OR
- 13.6 The Contract Officer shall seek and obtain Tender(s) in one of the following ways:
- (a) where there is a suitable Framework Agreement, by using that Arrangement and if the particular Arrangement permits competition by the Authority seeking Tenders from at least four Contractors;
  - (b) where the Authority maintains a suitable list of selected Contractors under CSO 23 (Compilation of selected lists of Contractors) and the total value of the contract is not expected to exceed the EU Directives threshold, seeking Tenders from at least three Contractors on the list, the selection from the list to be subject to rotation;
  - (c) where, in the opinion of the Procurement Manager in consultation with the Monitoring Officer and the Treasurer, there is only one Contractor who can properly provide the Supplies, Services or Works required for the Contract, the Contract Officer may obtain a Quotation from that Contractor but must bring a report to the next meeting of the Scrutiny & Audit Panel; or
  - (d) where, in the opinion of the Procurement Manager in consultation with the Monitoring Officer and the Treasurer, it is appropriate to seek a Quotation from a particular Contractor because of the developmental or trial nature of the Supplies, Services or Works to be provided, the Contract Officer may obtain a Quotation from that Contractor.

**Formal Tender process - Estimated Cost of the Contract £172,514 or more**

- 13.7 For a proposed Contract where the estimated Cost of the Contract is £172,514 or more, the Contract Officer must seek and obtain Tenders in accordance with either CSO 13.8 or CSO 13.9, but in both cases this shall be subject to CSO 13.10.
- 13.8 The Contract Officer shall give Public Notice of the proposed Contract, shall seek at least five Tenders. If less than two Quotations or Tenders are received then the Contracts Officer must consult with the Treasurer and the Monitoring Officer and provide evidence to show that the Authority can obtain value for money. OR
- 13.9 The Contract Officer shall seek and obtain Tender(s) in one of the following ways:



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- (a) where there is a suitable Framework Agreement, by using that Arrangement and if the particular Arrangement permits competition by the Authority seeking Tenders from at least five Contractors;
- (b) where the Authority maintains a suitable list of selected Contractors under CSO 23 (Compilation of selected lists of Contractors) and the total value of the contract is not expected to exceed the EU Directives threshold, seeking Tenders from at least five Contractors on the list, the selection from the list to be subject to rotation;



- (c) where, in the opinion of the Contract Officer after consulting with the Head of Finance and Procurement there is only one Contractor who can properly provide the Supplies, Services or Works required for the Contract, obtaining a Tender from that Contractor;
  - (d) where, in the opinion of the Contract Officer after consulting with the Head of Finance and Procurement it is appropriate to seek a Tender from a particular Contractor because of the developmental or trial nature of the Supplies, Services or Works to be provided, obtaining a Tender from that Contractor.
- 13.10 Where the estimated Cost of a Contract is above the relevant threshold in the EU Procurement Directives, the procurement method chosen must be one which enables the Authority to comply with the Directives. In relation to CSO 13.8, this would include giving public notice in the Official Journal of the European Union. In relation to CSO 13.9 (a) the Framework Agreement would need to have been set up in a way that allowed compliance with the Directives. It is not permitted to use CSO 13.9 (b) for procurement above the EU Procurement Directive threshold. Before CSO 13.9 (c) or CSO 13.9 (d) is chosen, the Contract Officer must seek advice from the Procurement, Contracts & Insurance Manager as to whether the circumstances are sufficient to allow compliance with the EU Procurement Directives.
- 14. Delivery opening and recording of Quotations or Tenders**
- 14.1 Every invitation to submit a Quotation or Tender must state that the Authority does not bind itself to accept the Most Economically Advantageous Quotation or Tender or the Lowest Cost Quotation or Tender, or indeed, any Quotation or Tender.
- 14.2 After the expiry of the period specified in any Public Notice, all Contractors who have applied or been selected to submit a Quotation or Tender shall be invited to do so.
- 14.3 Every invitation to submit a Tender must either:
- (a) if paper based, state that the Tender must be delivered in a sealed envelope, without any mark identifying the sender, addressed to the Procurement, Contracts & Insurance Manager and bearing the words "Tender for .... " and the title of the Contract; or
  - (b) be received electronically in a designated format.
- 14.4 The Procurement Manager shall ensure that the receipt of paper based Tenders is recorded and that they are endorsed with the date of receipt.
- 14.5 Paper based Tenders where the estimated Cost of the Contract is £50,000 or more will remain unopened in the secure custody of a Principal Officer or the Procurement Manager until the time appointed for their opening.



- 14.6 In the case of electronic tenders the Service's endorsed system, "EU Supply" must be used and that all officers will adhere fully to the prescribed procedures including issue of invitation, receipt and opening of tenders. Controls and checks built into the system including controlled access, full audit trail and restrictions on viewing documents until the tender deadline has passed means that the presence of a Principal Officer is not required at the tender opening.
- 14.7 All Tenders will be opened together after the end of the time set for submission.
- 14.8 All Tenders where the estimated Cost of the Contract is £50,000 or more will be opened in the presence of at least two officers of the Authority. One of these must be a Principal Officer. The Procurement Manager shall also be present if available. One of the officers present at the opening must be independent from the Contract Officer.
- 14.9 The date of opening, the name of the Contractor who has submitted each Tender received and the identity of the officers present at the time of opening shall be recorded. For electronic Tenders a secure, auditable electronic record showing the identity of the officers opening the Tender, and the date of opening shall be added to the file.
- 14.10 Any electronic Tenders must conform to any protocols issued from time to time by a Principal Officer.
- 14.11 Any Tenders received after the end of the time set for submission or which contravene any provision of these CSOs or any applicable Tender conditions, instructions or protocols will only be opened and accepted for evaluation with the authority of a Principal Officer, who will consult with Treasurer and the Monitoring Officer if minded to waive compliance. The Principal Officer shall have authority to waive compliance if he/she sees fit, but any Tender received after the time set for submission will normally be rejected. Any rejected Tender may only be opened to ascertain the name of the Contractor who submitted it, so that it can be returned to the Contractor.
- 15. Evaluation of Quotations or Tenders**
- 15.1 Subject to CSO 15.2 and 15.3, the Contract award must be assessed in accordance with the Most Economically Advantageous Quotation / Tender evaluation criteria specified in the Quotation / Tender documents.
- 15.2 For Contracts where the Cost of the Contract was estimated not to exceed £50,000, if there are no such Most Economically Advantageous Quotation evaluation criteria specified in the Quotation documents, then the sole evaluation criterion will be the Lowest Cost.



- 15.3 For Contracts where the Cost of the Contract was estimated to be £50,000 or more, a Tender evaluation procedure based on the identification of the Most Economically Advantageous Tender shall normally be specified and applied in the evaluation of the Contract unless the Contract Officer, after consulting the relevant Authorised Officer (CSO 8), determines that a tender evaluation based on Lowest Cost is more appropriate. If the Lowest Cost evaluation criterion has been specified, then the sole criterion will be Lowest Cost.

**16. Clarification after receipt of Quotations or Tenders**

Arithmetical errors

- 16.1 CSO 16.2 shall apply where any errors of arithmetic are discovered after the time set for submission in a Quotation or Tender.
- 16.2 Subject to the approval of a Principal Officer and only prior to the acceptance of any Quotation or Tender for the Contract, the Contractor will be allowed either (a) to confirm without amendments or withdraw the Quotation or Tender or (b) to amend the Quotation or Tender in order to correct those errors.

Clarification of other matters

- 16.3 In relation to Quotations or Tenders submitted under the open and restricted procedures (described in Appendix 2) CSO 16.4 shall apply where the Contract Officer considers that matters other than arithmetical errors need to be clarified after the time set for submission of Quotations / Tenders.
- 16.4 Discussions may take place with a Contractor but only for the purpose of clarifying or supplementing the content of the Contractor's Quotation or Tender or the requirements of the Authority. There shall be not be any negotiations on fundamental aspects of the Contract, nor any variations which are likely to distort competition, in particular on prices. Any such clarifications after receipt of Quotations or Tenders and before the letting of a Contract must have the authorisation of a Principal Officer. If the Principal Officer considers that it is necessary to obtain financial or legal advice, the Principal Officer shall consult the Treasurer or the Monitoring Officer before any discussions take place with the Contractor. Any amendments, once agreed, must be put in writing by the Contractor and shall be signed by the Contractor.
- 16.5 CSO 16.4 will not apply where the use of the negotiated procedure or the competitive dialogue procedure (described in Appendix 2) have been approved by the Authority and in such cases negotiation will be permitted within the terms of the procurement process approved by the Authority.

**17. Acceptance of Quotations or Tenders**

- 17.1 The Quotation or Tender for a Contract which has been assessed under CSO 15 (Evaluation of Quotations or Tenders) as the preferred Quotation or Tender may be recommended for acceptance by the Contract Officer. If for any reason a preferred Quotation or Tender is withdrawn or ceases to be preferred before it has been accepted, the Contract Officer may recommend another Quotation or Tender for acceptance.
- 17.2 Where the Cost of a Contract is above the relevant thresholds in the EU Procurement Directives, before a Tender for the Contract is accepted, between notification of the provisional award decision to Contractors who submitted Tenders and the date on which the successful Tender is accepted there shall be a standstill period in accordance with the EU Procurement Directives.
- 17.3 Subject to CSO 17.2, the preferred Quotation or Tender may be accepted by any officer with the necessary delegated power under CSO 8.2 (Authorised Officers).
- 17.4 The Contract Officer shall record the Tender accepted and any amendments agreed by under CSO 16 (Clarification after receipt of Quotations or Tenders). Immediately after the award of the Contract, the Contract Officer shall ensure that this and any other information required to update the Contracts Register is supplied to the Procurement, Contracts & Insurance Manager.

**18. Contract formalities**

- 18.1 Every Contract shall be in writing.
- 18.2 Subject to CSO 18.3, the Contract Officer shall determine the form of the Contract.
- 18.3 Where the Cost of a Contract exceeds £500,000 the Contract must be in a form agreed by the Procurement Manager in consultation with the Monitoring Officer.
- 18.4 Subject to CSO 18.5, each Contract shall be signed by an officer of the Authority who has the necessary delegated power under CSO 8.2 (Authorised Officers).
- 18.5 The Contract Officer must consider, in conjunction with the Procurement Manager, whether by the nature of the Contract it should be completed under the common seal of the Authority. In any event if the Cost of the Contract exceeds £500,000 the Contract must be completed under the common seal of the Authority.

**19. Mandatory Contract clauses**

Termination for fraud or corruption

- 19.1 The clause set out in CSO 19.2 (or an equivalent clause of similar effect) shall be included in every written Contract.

- 19.2 “The Authority may terminate the Contract and recover all its loss if the Contractor, its employees or anyone acting on the Contractor’s behalf do any of the following things:
- (a) offer, give or agree to give to anyone any inducement or reward in respect of this or any other Authority Contract (even if the Contractor does not know what has been done); or
  - (b) commit an offence under the Bribery Act 2010 or Section 117(2) of the Local Government Act 1972; or
  - (c) commit any fraud in connection with this or any other Authority Contract whether alone or in conjunction with Authority Members or employees.

Any clause limiting the Contractor’s liability shall not apply to this clause.”

Use of consultants in the Contract processes

- 19.3 It shall be a condition of any Contract between the Authority and any Person who is not an employee of the Authority, but who is authorised to carry out the Authority’s functions under CSOs, that such Person complies with the CSOs as if that Person were an employee of the Authority.

**20. Monitoring Contract performance**

- 20.1 The Contract Officer responsible for a Contract of £50,000 or more in value, must ensure that appropriate management and performance monitoring mechanisms are in place in accordance with procurement policies and procedures defined in the relevant East Sussex Fire and Rescue Service Manuals or any additional protocols determined by a Principal Officer.

**21. Contract variation**

- 21.1 Subject to CSO 21.2, variations to extend the period or value of a Contract (other than those already provided for within the original terms of the Contract) may be approved by the Contract Officer after consulting a Principal Officer, where Best Value to the Authority can be demonstrated.
- 21.2 The Treasurer and the Monitoring Officer shall be consulted if approval of a proposed variation would mean that the Supplies, Services and / or Works to be added to or deleted from the Contract would render the Contract substantially different in scope and cost.
- 21.3 In relation to any such variation, the Contract Officer must ensure that before the variation is approved:
- (a) the variation can be made without the Authority breaching the EU Procurement Directives and any relevant English law;



- (b) the Cost of the Contract after the variation is within the financial capability of the Authority; and
- (c) either that provision has been made for the cost of the variation in the Authority's approved budget or that appropriate adjustments to the budget are made in accordance with Financial Regulations.

## **22. Disposal of Supplies**

- 22.1 When the Chief Fire Officer determines, under his delegated power to authorise the disposal of surplus supplies, that competitive Quotations or Tenders shall be sought, the Contract Officer shall seek to comply with the spirit of CSOs, particularly CSOs 8 (Authorised Officers), 9 (Declarations of Interest), 14 (Delivery, opening and recording of Quotations or Tenders), 17 (Acceptance of Quotations or Tenders), 18 (Contract formalities) and 19 (Mandatory Contract clauses).
- 22.2 The Contract Officer shall take instructions as necessary from a Principal Officer in relation to the disposal method to be followed and the extent to which the CSOs shall be applied in the circumstances of the proposed disposal.
- 22.3 The Contract Officer shall ensure compliance with any recycling, environmental protection, data security and / or electrical supply requirements arising from any disposal.

## **23. Compilation of Approved List of Contractors**

- 23.1 Where a Contract Officer, after consulting the Procurement Manager, decides that an Approved 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) 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.
- 23.2 Approved Lists should be used where recurrent transactions of a similar type are likely but where such transactions need to be priced individually and cannot easily be aggregated and priced in a single tendering exercise. Approved lists cannot be used where the EU Procurement Directives apply.
- 23.3 The criteria for admission to and suspension from an Approved List shall be based upon the Authority's corporate policy and procedural guidance, be specified in writing by the Contract Officer and be approved by the Procurement Manager.
- 23.4 The evaluation of the Contractors who wish to be considered shall be made in accordance with the Authority's corporate policy and procedural guidance and shall include a formal evaluation of at least the following:
  - (a) the financial standing of the Contractors by East Sussex County Council financial services personnel (or otherwise as directed by the Treasurer) based





- upon the submission of statements of accounts for the last two years as a minimum;
- (b) their technical ability to perform the Contract including any externally accredited quality service marques of the Contractors; and
  - (c) compliance by the Contractors with environmental, health and safety, equality standards and ethical standards as determined by legislation and as approved by the Authority.
- 23.5 The Approved 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.
- 23.6 Any Contractor may withdraw at any time from an Approved List by giving written notice to the Authority.
- 23.7 Each list must be re-advertised at least every three years. Any necessary amendments including additions and deletions may be made in between where approved by the Contract Officer responsible for the list.
- 23.8 The Contract Officer responsible for an Approved List, may after consulting the Procurement Manager discontinue the use of the Approved List if it appears that it no longer offers Best Value to the Authority in comparison with other procurement processes.



**APPENDIX 1**

**Words and Phrases used in CSOs**

- 1.1 **“Approved List”** is a list drawn up for use under CSO 23
- 1.2 **“Authority”** (East Sussex Fire Authority) includes East Sussex Fire and Rescue Service.
- 1.3 **“Best Value”** means the duty of the Authority to make arrangements to secure continuous improvement in the way in which its functions are exercised, having a regard to a combination of economy, efficiency and effectiveness.
- 1.4 **“Chief Fire Officer”** includes their Deputy and any other officer(s) or the holder(s) of any other posts authorised in writing by them to act on their behalf.
- 1.5 **“Contract”** means a binding agreement which is intended to be enforceable at law made between two or more parties for purchasing Services, Supplies, and / or Works.
- 1.6 **“Contractor”** means any Person who may or has entered into a Contract with the Authority under these CSOs.
- 1.7 **“Contract Officer”** means any Person responsible for procuring a Contract for the Authority.
- 1.8 **“Procurement Manager”** means the Person appointed to be responsible for upholding the corporate procurement standards of the Authority in support of Principal Officers, by whatever title the postholder is known.
- 1.9 **“Contracts Register”** means the register kept under CSO 6 (Contracts Register).
- 1.10 **“Consortium”** means two or more local authorities or public bodies (including any companies controlled by them) acting jointly for the purpose purchasing Services, Supplies, and / or Works.
- 1.11 **“Cost of a (the) Contract”** means the estimated total value (net of value added tax) payable by the Authority to the Contractor over the term of the Contract, including allowable extensions. In the case of indefinite contract periods, the term of the Contract is assumed to be 4 years.
- 1.12 **“Dynamic Purchasing System”** means a completely electronic process for making commonly used purchases, the characteristics of which, as generally available on the market, meet the requirements of the contracting authority, which is limited in duration and open throughout its validity to any economic operator which satisfies the selection criteria and has submitted an indicative tender that complies with the specification.



- 1.13 **"Electronic Auction"** means a repetitive process involving an electronic device for the presentation of new prices, revised downwards, and/or of new values concerning certain elements of tenders, which occurs after an initial evaluation of the tenders, enabling them to be ranked using automated evaluation methods.
- 1.14 **"EU Procurement Directives"** or **"the Directives"** means the Directives and guidance of the European Union in relation to public procurement and any national laws implementing them in the United Kingdom, all as amended and replaced from time to time.
- 1.15 **"Framework Agreement"** means an agreement for a defined range of Services, Supplies, and / or Works, the terms of which are agreed through an initial competitive tendering exercise, and under which the Contractor undertakes to enter into Contracts for requirements called off as and when required.
- 1.16 **"Assistant Director"** means any Officer appointed as an Assistant Director of the Service.
- 1.17 **"Joint Commissioning"** means where the Authority jointly with one or more local authorities or public bodies enters into a Contract.
- 1.18 **"Lowest Cost"** in relation to a quotation or tender means the lowest price if payment is to be made by the Authority and the highest price if payment is to be made to the Authority and, in either case, refers to a Quotation or Tender which conforms to the Authority's tendering requirements.
- 1.19 **"Monitoring Officer"** includes their Deputy and (subject to consultation with the Chief Fire Officer) any other officer(s) or the holder(s) of any other posts authorised in writing by them to act on their behalf.
- 1.20 **"Most Economically Advantageous Quotation/Tender"** means the most economically advantageous Quotation or Tender to the Authority (determined by pre-set criteria adopted by the Authority such as quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost effectiveness, after sales, technical assistance, delivery date and delivery period and period of completion) and refers to a Quotation or Tender which conforms to the Authority's tendering requirements.
- 1.21 **"Partnership"** means two or more local authorities or public bodies (including any companies controlled by them) acting jointly to provide to each other Services, Supplies or Works.
- 1.22 **"Person"** shall include a firm, partnership, company or public authority.
- 1.23 **"Principal Officer"** means any Officer appointed as a Principal Officer of the Authority and includes the Chief Fire Officer, the Deputy Chief Fire Officer and the Assistant Chief Fire Officer.



- 1.24 **“Public Notice”** means giving notice by any one or more of the following methods: (a) on the Authority’s web-site, (b) in a local or national newspaper, (c) in a trade newspaper or journal, (d) in the Official Journal of the European Union
- 1.25 **“Quotation”** means a formal written statement setting out the price and any other relevant matter to provide Services (including consultancy), Supplies and Works on terms and conditions agreed with the Contractor.
- 1.26 **“Relevant Member of the Authority”** means the Chairman of the Authority (or the Vice Chairman of the Authority if the Chairman is not available) or in relation to any Contract for which a Member of the Authority has been designated the lead Member, that Member.
- 1.27 **“Services”** - a Contract for Services means a Contract having as its object the provision of Services.
- 1.28 **“Supplies”** (often referred to as goods and materials) – a Contract for Supplies means a Contract having as its object the purchase, lease, rental or hire purchase, with or without option to buy, of products.
- 1.29 **"Tender"** means a formal written proposal submitted in response to an invitation to Tender.
- 1.30 **“Treasurer”** includes their Deputy and (subject to consultation with the Chief Fire Officer) any other officer(s) or the holder(s) of any other posts authorised in writing by the Treasurer to act on their behalf.
- 1.31 **“Works”** - a Contract for Works means a Contract involving building or civil engineering activities whether in the form of a specific service or in the form of a series of services leading to the completion of a work that has an economic or technical function.

## **APPENDIX 2**

### **Procedures for obtaining Quotations or Tenders**

To help Contract Officers in their Contract preparations, this Appendix contains some information about the tendering procedures recognised in the EU Procurement Directives and equivalent United Kingdom regulations (primarily the Public Contracts Regulations 2006).

The Authority is most likely to use the restricted procedure, but occasionally the open procedure may be appropriate. The negotiated procedure and the competitive dialogue procedure are likely to be used very rarely and then only for major projects. The specialist procedures, particularly framework agreements, will be encountered increasingly where the Authority participates in Framework Agreements.

#### **1. Open Procedure**

This allows any Contractor to submit a Quotation or Tender in response to Public Notice. It does not enable the number of potential Contractors to be restricted. Any assessment of the suitability of Contractors has to be carried out as part of the Quotation / Tender evaluation process. For most Contracts, the Restricted Procedure is likely to be more appropriate.

#### **2. Restricted Procedure**

This enables a limit to be placed on the number of Contractors who will be asked to submit a Quotation or Tender. All those expressing interest in response to Public Notice are issued with a pre-qualification questionnaire. Invitations to submit Quotations or Tenders are issued only to those assessed as suitable after pre-qualification.

#### **3. Negotiated Procedure**

Where the Cost of a Contract is above the relevant threshold under the EU Procurement Directives, the power to negotiate a Contract with no or only limited competition is very closely controlled. Thus the negotiated procedure may be used in exceptional cases where the open or restricted procedures are not considered appropriate. The procedure might be used in cases where the requirement is difficult to fully specify, the requirement does not permit prior overall pricing, or in other special circumstances where Best Value is unlikely to be achieved by using the open or restricted procedures. If the Contract Officer considers that it might be appropriate to use the negotiated procedure, he will need to consult a Principal Officer as CSOs do not envisage that the Authority will use this procedure and it is likely that approval to do so will need to be sought from the Authority. The Principal Officer will need to ensure that the Chief Fire Officer, the Treasurer and the Monitoring Officer are satisfied that the procedure is appropriate. If the negotiated procedure is used, it will usually be necessary for Public Notice to be given and a pre-qualification questionnaire issued to all those expressing interest. An invitation to negotiate is only issued to those successful after pre-qualification.

#### **4. Competitive Dialogue Procedure**

Where the Cost of a Contract is above the relevant threshold under the EU Procurement Directives, the competitive dialogue procedure may be considered in exceptional cases where the Authority wishes to award a particularly complex contract and the open or restricted procedures are not considered appropriate. It may be a suitable alternative to the negotiated procedure. The Authority may be aware of its broad needs but does not know in advance what is the best technical, legal, or financial solution for satisfying those needs. Competitive dialogue is a structured process of identifying one or more solutions to meet the Authority's needs. It always involves a competitive tender, and the Most Economically Advantageous Tender award criteria must be used. If the Contract Officer considers that it might be appropriate to use the competitive dialogue procedure, he will need to consult a Principal Officer as CSOs do not envisage that the Authority will use this procedure and it is likely that approval to do so will need to be sought from the Authority. The Principal Officer will need to ensure that the Chief Fire Officer, the Treasurer and the Monitoring Officer are satisfied that the procedure is appropriate. If the competitive dialogue procedure is used, Public Notice is required. A pre-qualification questionnaire is normally issued to all those expressing interest. An invitation to competitive dialogue is only issued to those successful after pre-qualification.

#### **5. Specialist procedures**

The following specialist procedures are likely to be employed in some of the Framework Agreements. There may also be scope for Contract Officers to set them up under CSOs for the Authority alone, but before taking any steps to do so a Principal Officer would need to be consulted.

##### **5.1 Framework Agreements**

In the terminology of the EU Procurement Directives, a framework agreement is an agreement between one or more contracting authorities and one or more Contractors, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged. A framework agreement is likely to be suitable for repetitive purchases. It can be set up to identify one or more suppliers who will be able to meet the Authority's needs and can be asked to do so in accordance with a call-off contract each time the Authority wishes to make a purchase. Framework agreements may be set up in conjunction with the open procedure, restricted procedure, negotiated procedure, or competitive dialogue procedure set out above.

##### **5.2 Dynamic Purchasing System**

Dynamic purchasing systems are intended to address commonly used purchases. They are a kind of electronic framework agreement, which bidders can join at any point during its lifetime. The open procedure must be used to establish the system up to the award of contracts. The system must be wholly electronic. Public notice is required.



### **5.3 Electronic Auctions**

Electronic auctions may be used in conjunction with the open, restricted, negotiated, or competitive dialogue procedures, or the reopening of competition within a framework, or on the opening for competition of contracts to be awarded through a dynamic purchasing system.