



**NEW FOREST NATIONAL PARK AUTHORITY**

**STANDING ORDERS AS TO CONTRACTS**

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## 1 Introduction

- 1.1 The Authority has a statutory duty to make Standing Orders for the procurement of goods and execution of works in order to achieve competition and to regulate procedures for inviting tenders.
- 1.2 These orders are intended to provide rules and procedures to be followed in order to obtain best value, comply with the Law which governs spending and to safeguard public funds as well as to protect the interests of individuals involved in procurement. Contract Standing Orders provide the framework for the procurement of all works, supplies and services and must be complied with by all members, officers, consultants and other external agents appointed to act on behalf of the Authority in procurement matters.
- 1.3 Contract Standing Orders apply to all external procurement by the Authority regardless of the source of funding.
- 1.4 These Contract Standing Orders should be read in conjunction with Financial Regulations and any policies adopted by the Authority regarding sustainability, environmental, economic, equality and social issues.
- 1.5 Contract Standing Orders will be monitored and reviewed annually by the Authority's Chief Finance Officer and Monitoring Officer.

## 2 Definitions

In these Standing Orders the following definitions shall apply:-

<b>Authority</b>	New Forest National Park Authority
<b>Chief Executive</b>	Head of Paid Service
<b>Committee</b>	A meeting of any Committee or Sub-Committee of the Authority
<b>Contract</b>	A document setting out the terms and conditions for the supply of goods (supplies), works or services (as appropriate) as agreed between the Contractor and the Authority
<b>Contractor</b>	Any organisation external to the Authority seeking to supply goods, works, or services
<b>Director</b>	Head of a Directorate and the term 'relevant Director' means the Director responsible for the Service Area, the subject of the Contract

<b>Member</b>	Member of the Authority
<b>Supervising Officer</b>	Officer nominated to supervise the Contract on behalf of the Authority

### **3 Delegated authority**

- 3.1 The Director has ultimate responsibility for all contracts awarded by their Directorate. Authority to enter into contracts and make decisions under these Contract Standing Orders is delegated in accordance with the Authority's Scheme of Delegations and within the Code of Practice for the ordering and payment of goods and services.
- 3.2 Contract Payments must be authorised within the financial limits set out in the Code of Practice for the ordering and payment of goods and services, and the approved budget, and comply with Financial Regulations.

### **4 Exceptions**

- 4.1 The procurement rules in these Standing Orders do not apply where:
- 4.1.1 the Authority is to procure works, supplies or services through a Consortium or similar body, provided the Authority is a member of the Consortium and that body's own procurement rules are adopted;
  - 4.1.2 work is carried out under an Agency arrangement, which includes a provision that the Standing Orders of the Principal Authority will apply to any procurement;
  - 4.1.3 award of further work under an existing contract for works, services or supplies of goods is made; for this provision to apply, the Chief Executive will need to be satisfied that exceptional performance and value for money has been demonstrated. The further work should not exceed 50% of the original contract sum or £100,000 whichever is the lower and not exceed two years in duration;
  - 4.1.4 an existing contract for professional service is to be extended, and the Chief Executive is satisfied that value for money is being achieved;
  - 4.1.5 the goods or materials are proprietary items, or their prices are controlled by trade organisations or government order, or they are sold at a fixed price only provided that in each of these cases there is no reasonable satisfactory alternative product;
  - 4.1.6 a contract is awarded for the completion of work where a contractor becomes insolvent or, the employment of an existing contractor is determined. Both cases require the approval of the Chief Executive;

4.1.7 the procurement of works or services are required urgently and there is insufficient time to advertise the contract in the appropriate trade or professional journal; the Chief Executive may authorise the selection of the appropriate number of suppliers for invitation to tender from the Standing Approved List of Suppliers maintained by nearby local authorities or central government.

## **5 Procurement rules**

5.1 All procurement must conform with the current EU Procurement Directives and other legislation covering procurement by Public Bodies; this includes Local Government Act 1999 (Best Value), Local Government Act 2003, Local Government (Contracts) Act 1997 and the Public Contracts Regulations 2006.

5.2 The Treaty of Rome and the EU Directives on procurement require that all procurement, irrespective of value, is carried out in such a way as to ensure the non-discriminatory treatment of all competing suppliers. The Public Contract Regulations 2006 require that all works, supplies and service contracts above certain thresholds must be advertised in the Official Journal of the European Union.

5.3 The EU procurement thresholds are published on the website of the Office of Government Commerce and are revised annually; as at 1 January 2006 these are as follows:

	£
Works	3,611,319
Supplies	144,371
Services	144,371

## **6 Disaggregation**

6.1 Procurement must not be disaggregated to reduce individual contract sums in applying the procurement rules.

## **7 Selection of suppliers, consultants and contractors**

7.1 The following procedures apply where contracts for the supply of works, services or goods and materials are required by the Authority.

7.2 Where procurement is undertaken on behalf of the Authority by another local authority, that local authority's own Standing Orders as to Contracts and pre-qualification checks may be adopted (see paragraph 4.1.2).

- 7.3 For all contracts, the estimated value of which is between £25,001 and the EU threshold, the Chief Executive may make an exception under paragraph 4.1.7 and select for tender the appropriate number of suppliers from the Standing Approved Lists of Suppliers maintained by nearby local authorities or central government, instead of public advertisement of the contract.

**Works and contracts for services (other than consultancy) and supply of goods or materials:**

- 7.4 For works, services (other than consultancy) and supply contracts with an estimated value above £25,000, the contract must be advertised in one or more local newspapers or relevant trade journals. The notice inviting contractors to indicate their interest in tendering for the work is to include details of the nature and purpose of the contract.
- 7.5 Where the proposed contract is estimated to be above the minimum EU limit, the notice must also be published in the Official Journal of the European Union (provided always that the Official Journal notice appears before the notice in the newspaper or trade journal).
- 7.6 Before selecting the contractors to be invited to tender or quote, based on the risks involved in the contract, appropriate pre-qualification checks must be undertaken to determine the contractor's ability to carry out the contract. This applies irrespective of the value of the proposed contract.

**Consultancy Services**

- 7.7 For consultancy service contracts with an estimated value above £25,000, the contract must be advertised in one or more of the relevant professional journals.
- 7.8 Where the proposed contract is estimated to be above the minimum EU limit, the notice must also be published in the Official Journal of the European Union.
- 7.9 The selection of consultants to be invited to quote or tender for consultancy work must include appropriate risk based pre-qualification checks, to include professional competence and professional indemnity insurance. This applies irrespective of the value of the proposed contract.

**8 Procurement rules for contracts**

- 8.1 The table below provides a summary of the rules to be followed, based on the estimated contract value. It is an overriding principle in respect of the letting of any contract of whatever value, that the Authority and its officers must be able to demonstrate value for money and non-discriminatory treatment of suppliers.

<b>Works</b>	<b>Supplies and Services</b>	<b>Requirements</b>	<b>Procedure to follow</b>	<b>Selection of contractors</b>
Up to £5,000	Up to £5,000	At least 1 written quotation obtained	Determine specification;  obtain at least 1 quotation	Any relevant professional or trade list/source, or Other local authority/public body lists of accredited suppliers
£5,001-£25,000	£5,001-£25,000	At least 3 written quotations obtained	Determine specification:  obtain 3 quotations	Any relevant professional or trade list/source, or Other local authority/public body lists of accredited suppliers
£25,001 to EU threshold	£25,001 to EU threshold	At least 3 formal tenders obtained	Prepare specification;  obtain at least 3 tenders.	Advertise in one or more local papers and/or relevant national journals. Or, Selection from approved local authority/public body lists of accredited suppliers Organisations expressing an interest to the advert must be pre-qualified to the standards of the approved list prior to inviting to tender.
Above EU threshold	Above EU threshold	At least 5 tenders sought.  The tender process must comply with the EU Directives	Follow EU tender procedure	In accordance with EU Regulations

## **9 Mandatory requirements for all contracts**

9.1 The following are mandatory for every contract let by the Authority:

- i) The Authority must have a legal authority to enter into the contract.
- ii) An accurate and up to date estimate must be prepared for all contracts.
- iii) Adequate budgetary provision must exist for the provision of these goods, works or service.
- iv) All tenders, quotations, orders and contracts for procurement must be based on a specification.
- v) All contracts must be in writing. As a general rule, a standard form of contract must be used where relevant. The Authority's official order is a form of contract.
- vi) A performance bond must be provided for all works of £100,000 or more. The value of the bond shall generally be 10% of the contract sum.
- vii) A TUPE statement must be included where applicable in consultation with the Director of Corporate Services.

## **10 Mandatory contract clauses**

10.1 All contracts must include clauses on the following topics:

- i) Termination in the event of the appointment of a liquidator or receiver, or failure of the contractor to perform his obligations under the contract.
- ii) Cancellation in the event of Canvassing or Corrupt Practices.
- iii) Prohibition of Assignment without the prior consent of the Authority.
- iv) Avoidance of Restrictive Practices.
- v) Insurances; the Authority's current standards are:
  - £10million Public liability (for each and every claim);
  - £10million Employer's liability. Policy to include an indemnity to Principal's clause;
  - For services, Professional Indemnity cover to a level commensurate with the level of risk, in accordance with guidance from the relevant professional body. As a guide, the level of cover required will normally be in the range £500,000 – to £5million.

- Where it is considered that the levels are not commensurate with the risk, they may be varied with the agreement of the Chief Executive.
- vi) Freedom of Information and Data Protection.
- vii) Confidentiality.
- viii) Liquidated and Ascertained Damages (for works of £100,000 or more).
- ix) Provision for compensation in the event of default by the contractor.
- x) Tender evaluation criteria including a price to quality split.
- xi) Health and Safety.
- xii) Social considerations in respect of discrimination legislation (e.g. Race Relations Act, Age Discrimination legislation).

## **11 Procurement procedures**

### *Evaluation model*

- 11.1 Where the evaluation criteria include both price and quality, the model to be used for the evaluation must be agreed by the Director at the commencement of the procurement.
- 11.2 The criteria used in the evaluation model may include environmental, economic, social and other strategic objectives, provided these criteria are not anti-competitive.

### *Receipt of quotations and tenders*

- 11.3 **Quotations** must be in writing and sent to the Head of Office Services, who will maintain a record of all quotations received.
- 11.4 **Tenders** must be submitted in sealed envelopes endorsed with the details of the relevant tender, and addressed to the Chief Executive.
- 11.5 A Form of Tender Opening must be completed by the Supervising Officer; tenders must be date stamped on receipt and kept secure until the appointed opening time.

### *Opening of tenders*

- 11.6 All tenders must be opened at the same time by the Chief Executive with at least one other officer (normally the supervising officer) present. The Form of tender opening will be completed in full at the time and retained for a period of five years.
- 11.7 Where TUPE applies, further guidance should be sought from the Human Resources Manager.
- 11.8 Tenders received after the closing date and time will not be accepted and must be returned to the tenderer.
- 11.9 Where less than the requisite number of quotes or tenders is returned the Supervising Officer must decide whether a competitive price has been obtained and report to the Chief Executive. Where it cannot be demonstrated that a competitive price has been achieved then the contract must be re-tendered.
- 11.10 All tendered contracts shall be recorded in a register held by the Chief Executive and open for inspection.

### *Evaluation of quotations and tenders*

- 11.11 The arithmetic accuracy of quotations and tenders and reasonableness of any prices must be checked by the Supervising Officer.
- 11.12 For standard forms of contract the relevant contract rules for the treatment of errors will apply. For non standard forms of contract: where an arithmetic error is found in the most favourable tender, the tenderer must be required to stand by their quotation or tender or withdraw.
- 11.13 The Supervising Officer for the contract is responsible for carrying out the tender evaluation. The results must be checked by another independent officer. The evaluation results must be recorded in writing and retained for five years.
- 11.14 No qualified quotations or tenders may be accepted.
- 11.15 The Supervising Officer may clarify the quotation or tender prices with a tenderer provided all communication is by letter or e-mail and retained with the contract files.

### *Acceptance of quotation or tender*

- 11.16 A quotation or tender may be accepted if it is:
- within the approved budget, and
  - meets all other tender requirements, and
  - is either the most financially beneficial to the Authority (price only evaluation), or has the highest score (price/quality evaluation).

11.17 Where quotations or tenders do not meet the criteria in paragraph 11.16, the following actions must be adopted:

<b>Issue</b>	<b>Evaluation</b>	<b>Actions Required</b>
Accept tender other than lowest, and within budget	Price only evaluation	Approval from Chief Executive and Chief Finance Officer  Retain a formal written record of reasons
Accept tender with other than highest score and within budget	Price and quality evaluation	Approval from Chief Executive and Chief Finance Officer  Retain a formal written record of reasons
Most favourable tender up to 10% above budget	Price only evaluation And Price and quality evaluation	Request supplementary estimate or virement in accordance with Financial Regulations; Or Negotiate amended design or specification with the most favourable tenderer  Approval from Chief Executive and Chief Finance Officer  Retain a formal written record of all communications with tenderer.
Most favourable tender in excess of 10% above budget	Price only evaluation And Price and quality evaluation	Review and reduce specification and invite the three lowest tenderers to retender Or Undertake new tender process on revised specification Or Consult Chief Executive and Chief Finance Officer for another course of action or agreement for virement or supplementary estimate

*Disclosure of tender results and notifications*

11.18 The successful tenderer should be notified initially of the intention to award the contract before the unsuccessful tenderers are notified. All notifications must be in writing and also disclose the full list of tenderers, in alphabetical order, and a list of tender sums in descending order.

11.19 For contracts advertised in the European Journal, the notice of award of the contract must be submitted and the rules relating to any appeal period followed.

11.20 All contracts awarded must be reported on the Authority's website.

## *Form of Contract*

11.21 The conditions of contract must be either:

- The National Park Authority's own formal order form, or
- The National Park Authority's own contract conditions, or
- An industry standard form of contract (for example JCT or ICE Form of Contract).

In all cases, all documents must be approved initially by the Authority's own legal advisor.

11.22 All contracts must be in writing; the Authority's own formal order form is a contract.

11.23 Contracts must be signed or sealed prior to any supply, service or works commencing.

11.24 Where a contract is provided by a supplier, all documentation must be checked and approved by the Authority's legal advisor prior to signature or sealing.

11.25 A contract Register will be maintained by the Authority and contain the following details:

- contract name and value
- name of company or individual
- date contract awarded, start and completion dates
- exceptions to Standing Orders as to Contracts
- pre-defined scope for extension of contract.

## *Signing and sealing of contracts*

11.26 Contracts with a value in excess of £100,000 must be under seal. This provides a 12 year limitation period for actions to be taken arising from breaches of obligations under the contract (Limitations Act 1980). Contracts not under seal have a six year limitation period. The affixing of the seal shall be attested by the Chief Executive or other officer authorised by her for this purpose.

11.27 Where a contract is not made under seal it must be signed by the Chief Executive or other officer authorised by her for this purpose, or by two officers both of whom are authorised by the Chief Executive for this purpose.

## **12 E-procurement**

12.1 Where an e-procurement system is adopted by the Authority, any associated new procedures must adhere to the same legal and policy obligations that govern all public procurement. E-procurement must

comply with the rules of the European Commission and the Government's Value for Money Policy.

12.2 The European Commission (EC) Consolidated Directive (2004/18/EC) supports the adoption of e-procurement. The new provisions on e-procurement cover the following areas:

- electronic reverse auctions (e-auctions)
- dynamic Purchasing Systems for regularly purchased goods and systems
- rules applicable to communication
- requirements relating to equipment for the electronic receipt of tenders, requests to participate and plans and projects in design contests.

### **13 Contract monitoring**

13.1 All contract documentation, including quotations and tenders, specifications, variations and exemptions to Standing Orders as to Contracts, must be retained in accordance with the Authority's records retention policy.

13.2 It is a disciplinary offence to fail to comply with these Contract Standing Orders.

13.3 The Authority's Chief Finance Officer and the Monitoring Officer monitor compliance with these Standing Orders in accordance with their statutory responsibilities and to ensure good corporate governance.

13.4 Employees have a duty to report breaches of these regulations to their Director, who will report this to the Chief Finance Officer and the Monitoring Officer.

### **14 Suspension of standing orders**

14.1 Any clause within these Standing Orders may be waived in special circumstances provided this does not lead to a breach of EU Regulations.

14.2 Any request for a waiver must be in writing and clearly identify the reasons for the request. A copy of the waiver must be entered in the register held by the Chief Executive and be open for inspection.

14.3 For proposed contracts below £25,000 the approval of the Service Director and the Chief Finance Officer are required; for contracts between £25,001 and the EU threshold, the approval of the Chief Executive, in consultation with the Chief Finance Officer, is required.

14.4 Any proposal to suspend Standing Orders for contracts over the EU threshold will require the approval of the Authority.