

STANDING ORDERS

PART 3 – TENDER AND CONTRACT PROCEDURE RULES

July 2007

2nd Draft @23.06.07

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Version	Detail of Changes Made (Para/Section etc)	Approved at Board Meeting Date
1	Total new Standing Orders	June and July 2007

NEW NCH TENDER AND CONTRACT PROCEDURE RULES

Section 1: Scope of Tender and Contract Procedure Rules

1. Introduction

These tender and contract procedure rules are adapted from the Joint Local Government Task Force / CIPFA publication Contract Procedure Rules recommended for public authorities. They demonstrate best practice in the public sector whilst also enabling Nottingham City Homes to procure and contract its business professionally as a private company.

2. Basic Principles

All purchasing (and disposal) procedures must –

- Achieve Best Value for the Company
- Be consistent with the highest standards of probity
- Ensure fairness in the allocation of contracts
- Comply with all legal requirements
- Ensure that non-commercial considerations do not influence any contracting decision
- Support the Company's corporate and departmental aims and policies
- Be consistent with the Company's Procurement Strategy

3. Responsibilities

The **Purchasing Manager** (or senior manager with purchasing responsibilities for the Company) shall designate a **Purchasing Officer** from the Purchasing department to undertake and be responsible for each purchasing exercise and for ensuring that the Responsible Officer receives appropriate training for this purpose and is fully conversant with these Rules and the requirement to comply with them in all respects

Purchasing Officers in the Purchasing Department undertaking purchasing (or disposal) must comply with these Contract Procedure Rules. They must –

- Ensure that any agents, consultants or contractual partners acting on NCH's behalf also comply
- Check whether a suitable City Council or NCH Corporate Contract already exists before seeking to let another contract, and if so seek the Purchasing Managers instructions as to whether to purchase through this Corporate Contract or use the opportunity to test best value through a market testing exercise
- Maintain records as set out in section 2.2

- Seek all necessary advice from their Director, Purchasing Manager or Company Secretary and implement this advice
- Assume responsibility for the following stages of the purchasing process –
 - From receipt of client department instructions to despatch of tender invitation documents and,
 - From the conclusion of the tender opening procedure through to contract completion

Client Department Directors shall designate a **Client Contract Officer** for each purchasing exercise, and must ensure that the Client Contract Officer receives appropriate awareness training in these Tender and Contract Procedure Rules and complies with his/her responsibilities to provide appropriate client brief and instructions to the Purchasing Department, and to represent the client during the currency of the contract.

Where the purchasing activity is of a specialist nature where technical or professional best practice has been developed in that category of supply, it is the responsibility of the Purchasing Manager and Purchasing Officer to identify and obtain the appropriate specialist advice in the preparation and implementation of the purchasing activity, either from in-house (where it exists) or external sources.

The **Director of Property Services** is responsible for ensuring that these Contract Procedure Rules are consistent with the Company's Procurement Strategy, and for advising of the need to amend these Rules to comply with new legislation or developing best practise.

As part of the Company's Standing Orders, the **Company Secretary** is responsible for

- ensuring that these Tender and Contract Procedure Rules are maintained and adhered to throughout the Company,
- each purchasing exercise in relation to the stages of tender receipt, tender storage and security and tender opening
- maintaining registers of Tender Openings, Contracts, and Exemptions, and making these available to the Board as required.

4. Exemptions

The Board have powers to waive or grant exemptions from the need to comply with these Tender and Contract Procedure Rules, and this is delegated to the Chair of the Performance and Regulatory Committee on the recommendation of the Director of Property Services and supporting recommendation of the Director Finance. Where an exemption is recommended by the Purchasing Officer, the procedure to seek approval to the exemption is as set out in Appendix 1.

5. Collaborative Arrangements

In order to secure Best Value the Company may enter into collaborative procurement arrangements. Such arrangements are only acceptable where they have received Board approval and are consistent with the Company's Procurement Strategy.

Where collaborative purchasing arrangements have been sanctioned, then all purchases and contracts entered into by the consortium or its lead partner, that satisfy the contract procedure rules of the consortium or lead partner, will be deemed to have satisfied the Company's Contract Procedure Rules, and no exemption is required.

6. E-Procurement

The use of e-procurement technology does not negate the requirement to comply with any aspect of these contract procedure rules

7. Relevant Contracts

All relevant contracts must comply with these procedure rules. A relevant contract is any arrangement made by, or on behalf of, the Company for the carrying out of works or for the supply of goods, materials or services. These include arrangements for –

- The supply or disposal of goods
- The hire, rental or lease of goods or equipment
- The delivery of services, including those related to –
 - The recruitment of staff
 - Land and property transactions
 - Financial and consultancy services

Relevant contracts do not include –

- Contracts of employment that make an individual a direct employee of the Company
- Agreements for the acquisition, disposal or transfer of land (see Financial regulations)

Section2: Common Requirements

1. Steps Prior to Purchase

Client Contract Officers must set out the purchasing requirement and its objectives in the form of a brief and instruction to the Purchasing Department using the template set out in Appendix 2.

Purchasing Officers must appraise the purchase in a manner commensurate with its complexity and value, taking into account the requirements from any Best Value review, the availability of budget, the need for the expenditure and its priority, cost benefit analysis, and any business case for purchase where there is no identified budget

Purchasing Officers must -

- Assess the risks associated with the purchase and how to manage them
- Consider what procurement method is likely to best achieve the purchasing objectives
- Consult with the Client Contract Officer about the proposed procurement method, contract standards and performance an user satisfaction monitoring
- Draft the terms and conditions that are to apply to the proposed contract, using the Company's standard template (see standard Purchase Order Appendix 3) and consulting with the Purchasing Manager on any variations to this
- Set out these matters in writing where the whole life cost of the purchase is estimated to exceed £5000.00

2. Records

Where the whole life cost of the purchase is estimated not to exceed £5000.00 the following records must be kept by the Client Contract Officer –

- Invitations to quote and the quotations received
- A record of the reason if the lowest price is not accepted
- A record of communications with the successful contractor

Where the whole life cost of the purchase is estimated to exceed £5000.00 the following records must be kept by the Purchasing Officer –

- The method for obtaining bids
- The procurement decision and the reason for it

- Any exemption under Section 1 Para 4
- The award criteria
- Tender documents sent out and received back from bidders
- Pre-tender market research
- Record of any tender clarifications or post-tender negotiations
- The contract documents
- Post-contract evaluation and monitoring
- Communications with all bidders and with the successful contractor throughout the period of the contract

These records must be kept for 6 years after the end of the contract in accordance with the Company's Records Retention Policy.

In addition, for purchases exceeding £5000.00 the Company Secretary must retain the following records –

- The Register of Tenders documenting the tender opening procedure
- The Contracts Register
- The Register of Exemptions from Contract Procedure Rules

3. Identifying and assessing Potential Bidders

Purchasing Officers must ensure that potential bidders are identified and assessed through a defined process.

<i>Whole Life Cost</i>	<i>Process for Identifying and Assessing Potential Bidders</i>	<i>Responsibility</i>
Less than £5,000.00	<ul style="list-style-type: none"> • Bidders must be appropriate and have the competence and capacity to deliver to the Company's requirements. Bidders may be identified from a variety of sources including previous suppliers to the Company with a good track record. 	Client Contract Officer advised by Purchasing Dept. as necessary
Above £5,000.00 but less than current EU threshold	<ul style="list-style-type: none"> • Approved Lists maintained by the Company or City Council or other Board approved procurement consortia and compiled following responses to a public advertisement or, • Shortlists assessed from pre-qualification expressions of 	Purchasing Officer

	interest in a particular contract submitted in response to a public advertisement or,	
Above current EU threshold	<ul style="list-style-type: none"> • Potential bidders identified following a public advertisement process complying with EU procedures or, • Approved Lists maintained by Board approved procurement consortia that comply with EU procedures 	Purchasing Officer

The wording of any public advertisements, where required, must be signed off by the Purchasing Manager. Examples of where advertisements may be placed include –

- The Company's website
- Relevant national or local newspapers and journals
- The Official Journal of the EU (even if below the EU threshold)
- Source Nottingham

NCH Approved Lists may be used by the Purchasing Department, subject to compliance with the following –

- They may be compiled only following the advice and direction from the Purchasing Manager.
- The criteria for short listing from lists must be documented and agreed with the Purchasing Manager
- No company or person may be added to a list until there has been an adequate investigation into both their financial standing and their technical ability to perform the contract, unless such matters are to be investigated each time bids are invited from the List.
- The List is to be compiled following a public advertisement
- The List and short listing criteria must be reviewed annually and re-advertised at least every 3 years
- Records must be maintained of additions to and deletions from the List, including dates and reasons

Exercises to prepare shortlists from pre-qualified bidders responding to Expressions of Interest public advertisement must be undertaken in consultation with the Purchasing Manager, who must sign off the proposed advertisement, the brief or contract description, the pre-qualification questionnaire, and the short listing criteria.

Section 3: Conducting Purchase and Disposal

1. Competition Requirements

1.1 Purchasing

<i>Whole Life Cost</i>	<i>Tender/Quotation Requirements</i>	<i>Short listing to identify bidders</i>
Less than £5,000.00	Two written quotations	Client Contract Officer and Line Manager
Above £5,000.00 but less than current EU threshold	Tender exercise, inviting tenders from no less than 3 and no more than 8 bidders	Client Contract Officer, Purchasing Officer and Purchasing Manager
Above EU threshold	EU Procedure	Client Contract Officer, Purchasing Officer, Purchasing Manager, Client Department Director

The Purchasing Officer must estimate the whole life cost. In so doing, the Purchasing Officer must not enter into separate contracts nor select a method of estimating the whole life cost in order to minimise the application of these contract procedure rules.

Disposal

Assets (other than land), surplus or obsolete stocks, stores or equipment, must be disposed of to secure Best Value for the Company on the advice of the Purchasing Manager.

Bidding to Provide Services to External Purchasers

The Company may bid to provide services to external purchasers only in the following circumstances –

- Where the business opportunity is sanctioned by the Company's Business Development Strategy or Strategic Plan
- Where a thorough risk appraisal has been carried out
- Where the competence, experience and capacity to deliver the service has been confirmed
- Where the comments of the Purchasing Manager on the invitation to tender documentation have been obtained and assessed
- Where legal advice on the proposed Contract has been obtained
- With the approval of the Board

The fixing of the tender price to be submitted is to be approved by the Board or other panel as delegated by the Board for each tendering occasion.

Collaborative and Partnership Arrangements

Proposals to enter into collaborative or partnership arrangements must be approved by the Board following advice from the Purchasing Manager and legal advisors. Such arrangements are subject to all UK and EU procurement legislation and must follow these contract procedure rules.

1.5 The Appointment of Consultants

This section refers to the engagement of outside parties to provide consultancy services to the Company. It should not be confused with the engagement of outside parties (who may call themselves consultants) for the provision of staff replacement services – for example as agency staff or interim managers.

All technical and professional consultants shall be selected and commissions awarded in accordance with the general purchasing requirements set out in Para 1.1 above.

The engagement of a consultant shall follow the agreement of a brief that adequately describes the scope of the services to be provided and shall be subject to completion of a formal Consultancy Agreement (see appendix 4 for standard template)

Consultants shall be required to provide evidence of, and maintain professional indemnity insurance for the periods specified in the agreement for services.

2. Pre-tender Market Research and Consultation

As part of pre-tender market research, and prior to the issue of the Invitation to Tender, the Purchasing Officer may, in addition to consultation with the Purchasing Manager, consult potential bidders about the market, the nature,

level and standard and specification of the supply, contract, and other relevant matters.

However, the Purchasing Officer must not use or apply information so gained so as to prepare an Invitation to Tender that restricts or prejudices the ITT in favour of or against any potential bidder, including those that have provided such information.

3. Standards and Awards Criteria

Where there are relevant British or European Standards that apply to the subject matter of the contract then they should be stated to describe the required quality.

The Responsible Manager must define Award Criteria that are appropriate to the purchase and designed to secure an outcome giving Best Value to the Company. The basic criteria will be –

- 'Lowest Price' where payment is made by the Company (i.e. purchase)
- 'Highest Price' where payment is to be received (i.e. disposal)
- 'Most economically advantageous' where considerations other than price also apply. This is the default option and will apply in most cases

Where the 'most economically advantageous criterion is adopted, it must be further defined by sub-criteria, which may include, for example –

- Price
- Service
- Customer Service
- Whole Life Costs
- Quality of Goods
- Running Costs
- Technical Merit
- Previous Experience
- Delivery Date
- Cost Effectiveness
- Quality
- Relevant Environmental Considerations
- Aesthetic and/or Functional Characteristics
- Safety
- After-Sales Service
- Locality/origin/distance of supply

4. Evaluation Process

The Purchasing Officer, together with the Client Contract Officer must identify an appropriate evaluation process for considering the tenders received. This may

involve the identification of a Panel (with membership pre-determined) who will collectively score the bidders against the agreed award criteria.

The process may also involve short listing the bidders to a smaller number who would then be required to attend an interview which would probe contractors' responses relating to the award criteria.

In such circumstances, the following guidelines for selecting the Panel should be followed –

- The Panel should always include the Purchasing Officer and Client Contract Officer
- Where the purchase is of a specialist nature, the Panel should include specialist advisors, either in-house or external
- Where the purchase is of particularly significance, the Purchasing Officer should establish the requirement or desirability for an Executive Director or Board member to participate in the Panel
- Where the purchase is of a product or service impacting on tenants directly, consideration should always be given to the involvement of tenants on the Panel
- The Panel membership must remain consistent throughout the process. There should not be, for instance different members of the panel scoring the bidders from their tender returns to membership of the Panel who would consider the contractors at subsequent interview, However, it is acceptable for an interview panel to include members who were not involved in the scoring of contractors from tender returns, provided the interview panel continues to also include those who were involved in that scoring.

5. Invitations to Tender / Quotations

All Invitations to Tender shall include the following –

- A specification that describes the Company's requirements in sufficient detail to enable the submission of competitive offers
- A description and definition of the Award Criteria, including any relative weightings between the criteria
- A description of the Evaluation Process, including whether this will include an interview stage
- The Terms and Conditions of Contract that will apply, including –
 - That the contractor may not assign or sub-contract without prior written consent
 - An insurance requirements
 - Health and safety requirements
 - Ombudsman requirements
 - Data Protection requirements
 - Race Relations requirements

- Disability Discrimination Act requirements
- Freedom of Information Act requirements
- Right of access to relevant documentation and records of the contractor for monitoring and audit purposes
- Contract disputes procedure
- NCH's Standard 'Submission of Tender' conditions template (see appendix 6), completed as appropriate by the Purchasing Officer

6. Submission, Receipt and Opening of Tenders / Quotations

Bidders must be given an adequate period in which to prepare and submit a proper Quotation or Tender, consistent with the complexity of the contract requirement. (For EU Procedure contracts specific timescales are stipulated).

The Purchasing Officer is to inform the Company Secretariat of a pending tender exercise by submission of the completed form set out in appendix 5

All tenders are to be returned to the Company Secretary at Hounds Gate.

The Company Secretary shall be responsible for the period of the tender process following the despatch of the Invitation to Tender until the completion of the tender opening exercise, and shall ensure the following –

- The proper receipt, acknowledgement, and recording of tenders at Hounds Gate, including the verification of date and exact time of tender receipt
- The safety and security of each tender between date/time of receipt and the tender opening exercise, in order to guard against amendment of its contents
- The proper administration of the tender opening procedure
- The proper recording of the tender opening and of tenders received and of their key details – eg tender sum, construction period, delivery date etc – in the Company's Tender Register

Whole Life Cost	Responsibility during tender/quotation invitation process	Present at Opening of tender/quotation	How documented
Below £5,000.00	Client Contract Officer	Client Contract Officer plus Line Manager, at place of convenience	Records retained by Client Contract Officer
Above £5,000.00 but below EU threshold	Company Secretary	Purchasing Officer + Company Secretariat rep. + 2 Directors or Assistant	Tender Register completed by Company Secretariat

		Directors or Heads of depts, at Hounds Gate	
Above EU threshold	Company Secretary	Purchasing Officer + Company Secretariat rep. + 2 Directors or Board Members, at Hounds Gate	Tender Register completed by Company Secretariat

7. Post-Tender Clarification and Negotiation

Post-tender clarification may be undertaken with bidders only where it is essential in order to be completely clear about any fundamental aspect of the tender submission before the completion of the tender evaluation process is possible. Such communication should solely about seeking clarification and explanation, should be conducted in writing and all correspondence retained.

Post-contract negotiation is completely different to clarification and should be the exception not the norm.

Any proposals to undertake post-contract negotiations must be sanctioned by and supervised by the Purchasing Manager. It can only be undertaken with the bidder who has submitted the best tender and after all unsuccessful bidders have been informed of the outcome.

Any post-tender negotiations must be recorded and agreed in writing with the successful bidder. Tendered rates and prices may only be adjusted by agreement or by corresponding adjustments in the scope or quantity included in the tender documents. Where such negotiation results in a fundamental change to the specification (or contract terms) the contract must not be awarded but re-tendered. Whether such a fundamental change has occurred shall be determined by the Purchasing Manager whose decision shall be final.

8. Evaluation of Tenders

The evaluation of tenders shall proceed in accordance with the process for evaluation established at the pre-tender stage in accordance with para 4 above – Evaluation Process.

The Contract must be evaluated and awarded in accordance with the Award Criteria. Within this process, the Purchasing Officer shall ensure that submitted tender prices are compared with any pre-tender estimates and that any discrepancies are examined and resolved satisfactorily.

The arithmetic in compliant tenders must be checked. If arithmetical errors are found they should be notified to the bidder who should be requested to confirm or withdraw from their tender. Alternatively, if the rates in the tender, rather than the overall price, were stated in the tender invitation to be dominant, a corrected tender price may be requested to accord with the rates given by the bidder.

9. Award of Contract

Quotation or tender of successful bidder may be accepted and contract awarded by the following

Whole life cost	Contract award recommended by	Contract award approved by
Up to £5,000.00	Client Contract Officer	Client Contract Officer's Line Manager
Above £5,000.00 and below EU threshold	Purchasing Officer in consultation with Purchasing Manager	Client Department's Director, following recommendation countersigned by Director of Property Services and supported by Finance Dept.
Above EU threshold	Purchasing Officer in consultation with Purchasing Manager	Client Department's Director, following recommendation countersigned by Director of Property Services and supported by Director of Finance

Approval to contract award may only be made following a tender evaluation report provided by the Purchasing Officer. Such report should reflect the scale and complexity of the contract but should contain at least the following –

- Confirmation and summary of quotations/received
- Evaluation of quotations/tenders against award criteria
- Recommendation of contract award

Where the whole life cost exceeds £5,000.00, the Purchasing Officer must notify all tenderers simultaneously of the intention to award the contract to the successful contractor. Unsuccessful tenderers must be allowed a period of at least 5 days (10 days for schemes above EU threshold) in which to challenge the decision before the contract may be formally awarded. If the decision is challenged the contract may not be awarded and the matter must be referred to the Purchasing Manager for his/her instructions.

10. Debriefing Candidates

The Purchasing Officer shall debrief in writing within 15 days of contract award to all tenderers who submitted a bid about the characteristics and relative advantages of the successful bidder. No information, other than the following, should be given without consultation with the Purchasing Manager –

- How the award criteria were applied
- The prices or range of prices submitted, in either case not related to tenderers names
- The names of tenderers where there were 3 or more valid bids made

If requested, this information may also be provided to potential bidders who were de-selected in a pre-tender short listing process.

Section 4: Contract and Other Formalities

1. Relevant Contracts

All relevant Contracts shall be in writing, and shall clearly state –

- What is to be supplied – i.e. the works, services etc
- The provisions for payment - the price to be paid and when
- The time within which the contract is to be performed
- The quality standards required of the contractor
- The indicators of performance that will be measured and monitored
- Standard Company requirements, such as in the areas of health and safety, and equality and diversity
- The provisions for the Company to terminate the contract

The Company's standard purchase order form that sets out the Company's standard terms and conditions (see appendix 3) should be used whenever appropriate.

The advice and guidance of the Purchasing Manager must be sought on contracts that are complex in any way.

2. Contract Formalities

<i>Whole life cost</i>	<i>Method of Completion</i>	<i>By</i>
Up to £5,000.00	Signature	Client Contract Officer's Line Manager
Above £5,000.00 but less than EU threshold	Signature	Director of Property Services plus Company Secretary or 1 other Director
Above EU threshold	Signature	Director of Property Services plus Company Secretary or 1 other Director

All contracts to be completed as per the above table.

All contracts must be executed formally in writing before the supply, service or construction work begins. An award letter is insufficient. Exceptions to this only

where sanctioned by the Purchasing Manager and with the written consent of the Director of Property Services Director.

The Purchasing Officer must also ensure that the person signing the contract for the contractor has the necessary authority to bind it.

3. Sealing

The Company seal shall only be used with the specific or general authority of the Board, and where such general authority is determined this shall be set out in appendix 7. The Board may determine who shall sign any instrument to which the seal is affixed and unless otherwise so determined it shall be signed by a Board Member and by the Company Secretary or a second Board Member. The seal and seal register are held by the Company Secretary who shall oversee any use of the seal within the authority of the Board.

4. Bonds and Parent Company Guarantees

The Purchasing Officer must seek the direction of the Director of Finance as to whether a Parent Company Guarantee is required of a tenderer who is a subsidiary of a parent company only when –

- The whole life cost exceeds the EU threshold, or
- The award is based on evaluation of the parent company, or
- There is some concern about the stability of the tenderer

The Purchasing Officer must seek the direction of the Director of Finance about whether a bond is needed only when –

- The whole life cost exceeds the EU threshold, or
- Where it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the contract, and
- There is concern about the stability of the tenderer.

5. Prevention of Corruption

Along with all Company staff, all staff involved with any purchasing activity, including the Purchasing Officer and Client Contract Officer must comply with the Company's Code of Conduct, and specifically in relation to

- the acceptance of gifts
- the acceptance of hospitality
- the requirement to declare any relevant interests

Given the roles of the Purchasing Officer and Client Contract Officer in the purchasing process, the highest standards of probity and integrity are required to be maintained at all times. Any queries or uncertainties in this matter must be referred to the Director of Property Services or Director of Organisational Development for direction.

Negotiations with bidders and contractors must only take place accompanied by another NCH colleague and all matters agreed confirmed in writing.

High standards of conduct are obligatory. Corrupt behaviour will lead to dismissal and is a criminal offence under the statutes identified below.

The following clause is to be included in all Company contracts –

“The Company may terminate this 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:

- Offer, give or agree to give to anyone any inducement or reward in respect of this or any other Company contract (even if the contractor does not know what has been done), or
- Commit an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117(2) of the Local Government Act 1972, or
- Commit any fraud in connection with this or any other Company contract whether alone or in conjunction with Company board members, contractors or employees.

Any clause limiting the contractor’s liability shall no apply to this clause.”

Section 5: Special Circumstances

1. Negotiated Repeat Contracts

In the following specific circumstances only, it will be acceptable to negotiate a repeat contract with a current contractor –

- Where the contractor has completed a contract for the Company within the last 6 months
- Where the Company was completely satisfied with the performance of the contractor
- Where a further contract is available from the Company of a fundamentally similar nature (such to be determined by the Purchasing Manager whose decision shall be final)
- Where terms can be negotiated with the contractor on the same rates as the previous contract uplifted only by reference to a recognised and relevant independent index or by written assurance of any consultant engaged that the proposed rates reflect good value for money in the prevailing market conditions at the current time
- Where the proposed repeat contract is for a term no longer than the original contract on which the repeat contract is being based

A negotiated repeat contract may only be entered into on one occasion with the same contractor within a 2 year period, and where this does not contravene EU procurement legislation on value thresholds.

2. *Extensions to Existing Contracts*

In the following specific circumstances only, it will be acceptable to negotiate an extension to an existing contract –

- Where the Company is completely satisfied with the performance of the contractor
- Where terms can be negotiated with the contractor using the same rates as the current contract uplifted only by reference to a recognised and relevant independent index or by written assurance of any consultant engaged that the proposed rates reflect good value for money in the prevailing market conditions at the current time
- Where the extension to the contract is for works or services of a fundamentally similar nature to that of the current contract (such as to be determined by the Purchasing Manager whose decision shall be final)
- Where such an arrangement offers a Best Value solution to the Company
- Where the term of the proposed extension period will not exceed the term of the existing contract and does not contravene EU procurement legislation on value thresholds.

An extension to an existing contract may only be undertaken once.