

SUFFOLK POLICE AUTHORITY

**CONTRACT REGULATIONS
FOR THE PURCHASE
OF GOODS, SERVICES OR WORKS**

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CONTRACT REGULATIONS FOR THE PURCHASE OF GOODS, SERVICES OR WORKS

PREAMBLE TO THE REGULATIONS

- (A) The Regulations apply to the entering into of any commitment of a contractual nature, for the purchase of goods, services or works. While they refer to “contracts”, no matter what the value, they are equally applicable to “orders” for purchase, except where an order is placed under an existing contract.
- (B) Local Authorities are required to demonstrate public accountability and impartiality in the contracting process. These Regulations are constructed to comply with statutory requirements and to ensure that there is a transparency to the contracting process. For the purposes of demonstrating the integrity of the process, for amongst other things, internal audit and the Freedom of Information Act 2000, proper records must be maintained of all decisions taken and transactions incurred. A secondary objective of the process is to enable staff and members to answer and respond to challenges by demonstrating that due process has been complied with, that no abuse or favouritism has taken place and that account is being taken of national procurement strategies issued by the Association of Chief Police Officers (ACPO).
- (C) Although the Regulations do not generally require competitive tenders to be invited where the contract value is less than £30,000, competitive tenders must be sought below this threshold if, in the opinion of the Chief Constable, it is considered in the interests of public accountability and impartiality in the contracting process to do so.
- (D) All purchases of goods, services and works should be arranged by the Head of Procurement, or through facilities approved by the Head of Procurement, except where alternative arrangements are agreed in writing by the Chief Constable.
- (E) Any specific delegation in these Regulations to an officer may be exercised by their Deputy or by another officer specifically designated in writing by the officer in accordance with any general directions issued by them.
- (F) Working instructions to be known as the Procurement Policy shall be prepared (and kept under review) by the Chief Constable in consultation with the Chief Executive explaining the day to day application of these Regulations in greater detail. The instructions will, amongst other things, provide for how, and in what format, evidence of all decisions and actions will be retained.
- (G) The Chief Constable will provide to the Chief Executive and Treasurer to the Authority (Treasurer) such information as is required by them to perform their statutory duties or duties placed upon them by the Authority.

GENERAL APPLICATION AND EXCEPTIONS

1. Every contract shall comply with these Regulations and, subject to any direction of any other body for whom the Authority is acting as agent, no exception from any of the following provisions shall be made unless, in respect of Regulations 15-19, an exception is made by the Chief Constable, in consultation with the Chief Executive. No other exception shall be made otherwise than by direction of the Authority. In cases of urgency, the Chief Constable may make a direction after consultation with the Chair, Chief Executive, and Treasurer to the Authority. Such action shall be reported to the next meeting of the Monitoring and Audit Committee for endorsement.
2. Contracts shall only be entered into where the cost can be met from an approved revenue or capital budget.
3. All contracts shall comply with all relevant United Kingdom law and European Directives.
4. The Chief Constable shall have available for inspection by members of the Authority at anytime, a book "the Contract Book" in a form specified by the Chief Executive containing details of the various matters required by these Regulations.
5. The Head of Procurement will advise about processes for the purchase of goods, services or works. All key decisions, and their rationale, made under these instructions should be documented and retained for audit purposes.
6.
 - (i) For the purposes of clauses C and D to the Preamble to the Regulations, and clauses 1, 7(i), 7(iv), 7(v), 7(vi), 16, 17, 19, 22, 26(iv), 26(vi), 29(ii), 29(iii) and 36 to the Regulations the references to the Chief Constable shall, where the entering into of any commitment of a contractual nature for the purpose of goods, services or works is primarily and directly for the Authority itself, be read as meaning the Chief Executive;
 - (ii) for the purposes of clause 34 to the Regulations the reference to the Assistant Chief Officer (Resources) shall in circumstances as set out in clause 6(i) above, be read as meaning the Deputy Chief Executive;
 - (iii) the Chief Constable should, in circumstances not covered by clause 6(i) above, consult with the Chief Executive and Treasurer before entering into any contract for goods, services or works that impact upon their statutory responsibilities or responsibilities placed on them by the Police Authority.
7. These Regulations require the invitation of competitive tenders for the supply of goods, services and works except where:
 - (i) the estimated figure does not exceed an agreed figure (£30,000) and in the opinion of the Chief Constable it is not considered necessary in the interests of public accountability and impartiality in the contracting process to do so. In such cases terms from alternative available suppliers should be sought in order to ensure value for money and compliance with the Procurement Policy;

- (ii) they are obtainable only from one source;
- (iii) the price is wholly controlled by government order or other organisation and no reasonable satisfactory alternative is available;
- (iv) the goods or services to be supplied or the work to be executed constitute an extension in the length of an existing contract provided that no restriction was imposed at the commencement of the contract;

The above exceptions require the authority of the Chief Constable (with the exception of where the supplier is listed on the Head of Procurement's approved list), he having been provided with a full evaluation of any alternative, if appropriate, in writing, together with a statement in support from the Head of Procurement. All such authorisations shall be recorded in the Contract Book.

The following exceptions are also permitted:

- (v) where, in the case of urgency, it is necessary to maintain operational viability and the provision of effective services. In all such circumstances the Chief Constable shall be empowered to obtain the necessary goods and services or order the necessary works to be undertaken immediately and, after consulting the Chief Executive and Treasurer, shall report to the next meeting of the Monitoring and Audit Committee if the expenditure is not otherwise provided for. All urgent decisions made under this paragraph shall be recorded in the Contract Book;
- (vi) through the nature of its business, the Authority is able to obtain goods, services and works through contracts that have been negotiated nationally or in collaboration with other public authorities without the need for going through the competitive tendering process otherwise provided for by these Regulations. However it should not be automatically assumed that these arrangements will provide value for money and accordingly the Chief Constable shall fully evaluate all contracts before they are entered into.

8. In respect of any goods, services or works that are regularly purchased, the Head of Procurement shall consider whether the interests of the Authority would be best served by compiling and maintaining a list of acceptable suppliers available to provide such goods and services and undertake such works. Any lists prepared should be reviewed in accordance with Regulation 23 below.
9. No action with regard to contracts shall be taken which has the effect of evading the application of these Regulations including in particular the issue of an order for a value less than the known requirements solely as a means of avoiding compliance.
10. The Head of Procurement shall continuously review purchases of goods, services and works in order to ensure compliance with the operation of these Regulations and shall, on an annual basis, report upon the application and operation of these Regulations to the Monitoring and Audit Committee.

PURCHASES THROUGH CONSORTIA OR SIMILAR BODIES

11. Purchases made through consortia or similar bodies to which the Authority has access, must comply with these Regulations. For such purposes:
 - (i) the Head of Procurement should undertake, and record, a proper evaluation of the proposed contractual terms and conditions including price, before making purchases through joint arrangements;
 - (ii) the Head of Procurement should ensure that where such arrangements are used, the lead authority has undertaken an appropriate tendering exercise in accordance with its own regulations which are compatible with these Regulations.
12. Where the Authority decides to collaborate with other bodies in order to procure goods, services or works, the parties will agree which is the lead authority and apply the lead authority's regulations which must be compatible with these Regulations.
13. Where the Authority acts as the lead authority for any form of consortium or partnership, these Regulations shall be applied as a minimum to any procurement of goods, services or works.

CONTRACT FORM AND TERMS

14. (i) Every contract
 - (a) shall be in the name of the Authority;
 - (b) shall be evidenced in writing;
 - (c) which is for goods, services or works which do not exceed or are not estimated to exceed £100,000 shall be signed by the Chief Constable or the Chief Executive;
 - (d) which is for goods, services or works above £100,000 shall be under seal (but without prejudice to the power of the Head of Procurement to accept a tender under Regulation 29);
- (ii) the form of all tender and contract documents shall first have been approved by the Chief Executive.
15. Every contract shall specify:
 - (i) the goods, services or works to be provided;
 - (ii) the consideration;
 - (iii) the time within which the contract is to be performed; and
 - (iv) the terms and conditions for payment.
16. Every contract shall ensure that the contractor indemnifies the Authority against all losses in connection with injury to or death of any person, or damage to property, happening as a result of or in connection with the carrying out of the contract. The contractor shall also be required to effect and maintain insurance which provides both the contractor and the employer with full cover in respect of any liability against which the contractor is required to indemnify the employer. The Chief Constable shall stipulate the minimum amount of insurance after consultation with the Treasurer.

17. Liquidated Damages: Every contract which is estimated to exceed £30,000 shall provide for liquidated damages to be paid by the contractor if the terms of the contract regarding the period of the works are not duly performed. The Chief Constable may require sufficient security for the due performance of any such contract.
18. Default Clauses: Contracts which are estimated to exceed £30,000 shall provide that should the contractor default in the terms of the contract, the Authority, without prejudice to any remedy for breach of contract, shall be at liberty to purchase other goods, services or works as appropriate of the same or similar description to make good any default. Every contract shall provide that the amount by which the cost of purchasing other goods, services or works (including the expenses of acquiring the new supplier) exceeds the amount which would have been payable to the contractor shall be recoverable from the contractor.
19. Transfer or Assignment of Contracts: Every contract which is estimated to exceed £30,000 shall prohibit the contractor from assigning the contract or sub-letting any portion of the contract work without the written consent of the Chief Constable.
20. Prevention of Corruption: In every contract a clause shall be inserted to secure that the Authority shall be entitled to cancel any contract and to recover from the contractor the amount of any loss resulting from such cancellations if the contractor or any person employed by them or acting on their behalf (whether with or without the knowledge of the contractor) shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing something in relation to the obtaining or execution of any contract with the Authority, or shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916, or shall have given any fee or reward the receipt of which is an offence under subsection 2 of Section 117 of the Local Government Act 1972.
21. Exclusion of third party rights: Unless precluded by statute every contract shall exclude the ability of third parties to claim the same rights and remedies as those enjoyed by the main parties to the contract. The rights of permitted successors to or assignees of the rights of a party shall not be excluded.

TENDER FORM AND TERMS

22. There shall be competitive tendering where the estimated contract expenditure may exceed £30,000. Contracts estimated to exceed £30,000 shall be advertised in accordance with the open or selective tendering procedures set out below. Where selective tendering is not undertaken, the reasons shall be documented and approved by the Chief Constable. Selective tendering shall be on the basis of standing lists of selected tenderers.
23. Standing Lists of selected tenderers shall be produced in accordance with the following:
 - (i) each Standing List shall specify the category of goods, services or works;

- (ii) a public advertisement shall be placed by the Head of Procurement in appropriate newspapers or journals circulating among such persons as undertake such contracts (including at least one local publication). In addition a public advertisement may be placed on the Constabulary website. The public advertisement shall set out particulars of the kind of contracts into which the Authority might wish to enter and invite persons interested to apply for inclusion in the List. The advertisement shall state the last day by which applications will be received and which shall not be less than thirty days from the date of placement;
 - (iii) in preparing the Lists the Head of Procurement shall take all reasonable steps to be satisfied as to the financial viability and competence of the applicants under consideration and shall ensure where practicable the composition of the List will permit those on it to be invited to tender for a contract at least once in the life of that List;
 - (iv) the Lists, as amended from time to time shall be recorded in the Contract Book;
 - (v) Lists shall be formally reviewed by the Head of Procurement in accordance with these Regulations at intervals not exceeding four years, and will include a readvertisement as set out in (ii) above. As part of such review each person whose name appears on the List shall be asked whether they wish their name to remain thereon and shall be given at least ten days in which to respond. Evidence of the review will be retained for the length of the Select List.
24. In the case of contracts exceeding £30,000, and where selective tendering is not undertaken, invitations to tender shall be sought by public notice given in appropriate newspapers or journals, including at least one local publication. In addition, a public advertisement may be placed on the Constabulary website. The public notice shall express the nature and purpose of the contract, invite tenders, and state the last day by which tenders are to be returned and which shall not be less than fourteen days from the date of placement.
25. In the case of contracts exceeding £30,000 and where the use of the Standing List of selected tenderers is appropriate, the Head of Procurement shall send an invitation to tender to those persons on the Standing List.

OBTAINING AND HANDLING OF TENDERS

26. Without prejudice to Regulations 22-25, the following requirements shall apply to the obtaining and handling of tenders:
- (i) each invitation to tender shall state that tenderers have the option of either:
 - (a) sending their tenders in plain sealed envelopes bearing the word "Tender" followed by the contract reference number;
 - (b) sending their tenders by e-mail to a designated mailbox;
 - (ii) where tenderers chose option (a) above the tenders shall remain in the custody of the Chief Constable until the time appointed for their

opening or such later date as is fixed in accordance with paragraph (vi) below;

- (iii) where tenderers chose option (b) above, the mailbox shall not be accessed until the time appointed for opening the tenders or such later date as is fixed in accordance with paragraph (vi) below. The mailbox shall be accessed in accordance with paragraph (iv) below. The mailbox option shall provide for the recording of any unauthorised access to the mailbox, the date when it was accessed and by whom;
- (iv) tenders, whether received by post or e-mail, shall be opened at one time in the presence of two officers authorised by the Chief Constable. Before opening any tenders, the officers will verify that the mailbox has not been opened in advance. If any envelopes, or the electronic mailbox, are found to have been opened, all circumstances must be reported to the Chief Constable and the Chief Executive for review.

If considered necessary, the process may be declared void and repeated, or other action taken, as deemed appropriate by the Chief Constable in consultation with the Chief Executive. A record of such decisions will be retained. All tenders shall be entered by the Chief Constable in the Contract Book and the date and time of opening, the signature of the officers present, the names of those submitting the tenders, and where practicable the amounts of the tenders shall be recorded;

- (v) where a tender is received by post or e-mail after the appointed time, the officer who records the details of the tender in the Contract Book shall:
 - (a) record the details of the tender including the date and time of its receipt; and
 - (b) return the envelope and contents back to the tenderer, or in the case of e-mail delete it from the mailbox and e-mail the tenderer explaining what has occurred. An acknowledgement of delivery should be obtained if possible;
- (vi) the Chief Constable may decide to postpone the appointed time for opening tenders where he deems it in the best interests of the Authority to do so, and that in that event shall, at the same time, take steps to inform accordingly all those who were invited to submit tenders, of the new appointed time. The reasons for any postponement and the change to dates will be recorded in the Contract Book.

NEGOTIATIONS WITH TENDERERS

- 27. Where the Head of Procurement considers it in the best interests of the Authority, negotiations can take place with any tenderer.
- 28. Where it is found that a tender is either lower in respect of purchases, or higher in respect of a sale or disposal, than the tenderer intended owing to an error or omission on their part, they shall be given the option of either adhering to the terms of the tender or withdrawing it.

ACCEPTANCE OF TENDERS

29. The Head of Procurement may accept a tender, subject to contract, provided that:
- (i) the expenditure or income relates to a purpose or project included in an approved revenue or capital budget; and
 - (ii) the tender is the lowest received in the case of expenditure and the highest in the case of income. The Chief Constable may waive this paragraph provided that in each instance there is a good reason for doing so. Such reasons will be recorded in the Contract Book, and may include quality, service delivery, cost of use and final disposal, and effective partnering between the Authority and tenderer;
 - (iii) the tender is one which the Authority should accept, unless the Chief Constable or the Authority have reserved the right to make the final decision, having regard to the written advice of the Head of Procurement;
 - (iv) the tender meets the tender specification.
30. In all other cases the tender must be submitted for approval to the Authority or, in cases of urgency, through the procedure under paragraph 9 of Part 1 of the Arrangements for Discharge of Functions.
31. Details of tenders accepted together with details of all other tenders invited and received shall be recorded in the Contract Book.
32. Unsuccessful tenderers shall be advised in writing or by e-mail and where requested shall be given a debrief but insofar as it is possible under the Freedom of Information Act 2000 without breaching the commercial confidentiality of the accepted or other tenderers.

CONSULTANTS

33. "Consultant(s)" shall mean any person(s) not currently employed by the Authority having a specialism or expertise which is not readily available from amongst those employed by the Authority and who is appointed in any advisory capacity or to act for the Authority as if he or she were an employee.
34. When engaging the consultant, the Assistant Chief Officer (Resources) shall ensure that the various financial and non-financial benefits of competing firms have been properly evaluated, and that an estimate of the financial commitment involved has been obtained before entering the contract. Written evidence of the evaluation will be retained by the Head of Procurement.
35. Where the amount or the accumulated amount paid to any one consultant exceeds, or is reasonably likely to exceed £30,000, competitive tenders will be invited in accordance with these Regulations.
36. Where it is known that consultants will need to be engaged for certain types of work from time to time, the Head of Procurement may compile a Standing List of consultants for the particular category of work. The choice of consultants to be included on the List shall be by the Chief Constable who

must record in the Contract Book the name of the consultant selected for each contract.

OTHER PARTNERING SCHEMES

37. Partnering, joint ventures and other similar schemes differ from the traditional supply of goods and services. In particular they are output rather than input based. Such schemes are not required to adhere strictly to these Regulations. All proposals and arrangements for the use of such schemes shall be approved by the Authority as advised by Chief Constable, Chief Executive and Treasurer who shall arrange for the preparation of contract conditions and approve the legality of any arrangements.