



Contracts

Upper Medway IDB

Technical Document for Contract and Procurement
Standing Orders

March 2022

Upper Medway Internal Drainage Board

Contract Standing Orders

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THIS DOCUMENT SHOULD BE USED IN CONJUNCTION WITH THE POLICY AND PROCEDURE FOR THE RESPONSIBLE PROCUREMENT AND MANAGEMENT OF CONTRACTORS DOCUMENT.

In this document the Upper Medway Drainage Board is referred to as Board.

Joint Purchases / Contracts are for the Joint Services Committee to act upon when necessary.

There has also been new guidance issued on further options available to us for 'below threshold' (the old EU values remain the same in UK legislation now we have exited the EU) procurements:

- Reserve the procurement by supplier location - this means being able to run a competition and specify that only suppliers located in a geographical area can bid. This could be UK-wide to support domestic supply chains and promote resilience and capacity, or where appropriate, by county (metropolitan or non-metropolitan) to tackle economic inequality and support local recruitment, training, skills and investment. Supplier location should be described by reference to where the supplier is based or established and has substantive business operations and not by the location of the corporate ownership.

AND

- Reserve the procurement for Small and Medium sized Enterprises (SMEs – no more than 250 employees) / Voluntary, Community and Social Enterprises (VCSEs) - this means being able to run a competition and specify that only SMEs and VCSEs can bid.

These options should be considered on a case-by-case basis and can be exercised on their own or together. Organisations may still choose to compete below threshold contracts on an open basis without any reservation for supplier type or supplier location. To ensure value for money, Organisations should not direct award when reserving procurements under this policy.

1. Introduction

Purpose of the Contract Standing Orders

- 1.1 Purchasing decisions and processes are important because the money involved is public money. The purpose of these Contract Standing Orders is to provide a structure within which purchasing decisions are made and implemented and which ensure that the Board:
 - Furthers its corporate objectives.
 - Uses its resources efficiently.
 - Purchases quality goods, services, and works.
 - Safeguards its reputation from any implication of dishonesty or corruption.
- 1.2 Purchasing by the Board, from planning to delivery, shall incorporate (where appropriate) principles of sustainability, efficiency, whole life costings and cost savings.
- 1.3 These Contract Standing Orders are made in accordance with the requirements of Section 135 of the Local Government Act 1972.
- 1.4 These Contract Standing Orders do not provide guidelines on the best way to purchase works, supplies (goods) and services but set out minimum requirements to be followed. Further information and guidelines are set out in the Board's Purchasing Guide, Procurement Strategy, Code of Conduct, Safety Policy, Equal Opportunities Policy, Local First Policy, Safeguarding Policy, , Protected Disclosure Policy (Whistleblowing) and Data Quality Standard.

2. General Principles

Application and Compliance with Contract Standing Orders

- 2.1 These Contract Standing Orders apply to the purchase by or on behalf of the Board's works, supplies (goods) and services.
- 2.2 These Contract Standing Orders apply to all contracts including all purchase orders, concessions and contractual arrangements entered into by or on behalf of the Board, except for the specific types of contracts and purchasing methods which are listed in 2.3.
- 2.3 These Contract Standing Orders do not apply to:
 - Employment contracts.
 - **Contracts relating solely to the purchase or sale of interests in land.**
 - Contracts for retention of legal counsel and the appointment of expert witnesses in legal proceedings.
 - Service level agreements setting out the conditions which the Board apply to their funding of particular voluntary sector bodies.
 - Contractual arrangements with other government authorities or similar bodies where the Board are not the lead authority in which case the lead authority's Standing Orders shall prevail. For contracts involving shared services, the lead authority in the partnership shall apply even if different from the Board's.

3. General Principles Applying to All Contracts

- 3.1 All orders used in connection with Contracts shall be on the Board's official order template.
- 3.2 The Board's standard contract clauses or other terms and conditions approved in advance by Finance, shall be used in all contracts of a value of £10,000 or more.
- 3.3 As a minimum, all contracts of a value of £10,000 or more shall include clauses which set out:
- The works, supplies (goods), services, material, matters or things to be carried out or supplied.
 - The time within which the contract is to be performed.
 - Quality requirements and / or standards which must be met.
 - Including arrangements for securing good data quality.
 - Requirements on the contractor to hold and maintain appropriate insurance/s / licences.
 - What happens if the contractor fails to comply with its contractual obligations (in whole or in part).
 - Requirements on the contractor and sub-contractors to comply with all relevant equalities and health and safety legislation.
 - That the Board shall be entitled to cancel the contract and recover losses in the event that the contractor does anything improper to influence the Board to give the contractor any contract or commits an offence under the Prevention of Corruption Acts 1889 to 1916 or s117(2) Local Government Act 1972.
 - Arrangements required to address Public Interest Disclosure (Whistleblowing) issues that arise.
 - Reference to the Bribery Act 2010.
 - All contracts above the relevant EU/UK threshold must contain reference to the Social Value Act, consideration of the Act should also be made in relation to contracts below the relevant EU/UK threshold.
 - Reference to the Data Protection Act 2018.
 - All contracts with a bronze, silver or gold level of safeguarding assurance must have adequate provision to ensure that appropriate safeguarding measures are in place throughout the life of the contract.
 - Reference to the Freedom of Information Act 2000
 - Reference to the Modern Slavery Act 2015
 - Reference to the Government's Prevent requirements.
- 3.4 Written contracts shall not include non-commercial terms unless these are necessary to achieve best value for the Board. In this context, "non-commercial" means requirements unrelated to the actual performance of the contract.
- 3.5 All contracts shall include relevant specifications and / or briefs / technical requirements which are prepared taking into account the need for effectiveness of delivery, quality, sustainability and efficiency (as appropriate) and the information set out in the Board's Purchasing Guide. All procurement documentation including specifications and / or briefs / technical requirements and relevant contractual documentation need to be advertised all at the same time regardless of the procurement procedure.

3.6 All contracts of a value of £10,000 or more or which involve a substantial risk to the Board are subject to a written risk assessment, which should be kept on the contract file and updated when required.

4. Regulatory Context

4.1 All purchasing shall be conducted in accordance with Regulatory Provisions which are:

- All relevant statutory provisions.
- The Contract Standing Orders, Financial Regulations and Scheme of Delegation.
- The Board Purchasing Guide and other policies and procedures of the Board's as appropriate.

5. Responsibilities of Clerk

5.1 The Clerk shall:

- be responsible for the purchasing.
- be accountable to the Board for the performance of his duties in relation to purchasing.
- comply with the Board's decision-making processes including, where appropriate, implementing and operating a Scheme of Delegation.
- take immediate action in the event of breach of these Contract Standing Orders.

5.2 A Responsible person is an employee with responsibility for conducting purchasing processes for the purchase of works, supplies (goods) or services on behalf of the Board.

5.3 Duties in respect of purchasing are to ensure:

- compliance with all Regulatory Provisions and integrity of the tender process.
- compliance with the relevant statutory provisions and the Board's requirements relating to declarations of interest affecting any purchasing process.
- that there is an appropriate analysis of the requirement, timescales, procedure, and documentation to be used.
- the purchasing process, from planning to delivery incorporates (where appropriate) principles of sustainability, efficiency, whole life costings and cost savings.
- compliance with the Board's decision-making processes.
- that all contracts of a value of £5,000 or more are included on the Board's Contract Register
- that proper records of
 - all contract award procedures, waivers, exemptions, and extensions are maintained, with separate files for each purchase of a value of £10,000 or more.
- All Contracts over £10,000 will be:
 - In the form approved by The Clerk.
 - a minimum of three copies of this contract are required; one to be stored in the Board's safe the second to be sent to the winning bidder/s and the third to be sent to the Clerk.
 - An electronic copy of the signed / sealed contract is to be retained.
- that value for money is achieved.

- that a risk assessment is carried out to ascertain whether a bond or guarantee is required to protect the Board's in the event of non-performance.
- 5.4 In considering how best to procure works, supplies, and services, the Clerk and Chairman of each Board (as appropriate in the context), shall take into account wider contractual delivery opportunities and purchasing methods including the use of Purchasing Schemes and e-procurement / purchasing methods, and the availability of charging and trading powers under the Local Government Act 2003.
- 5.5 It is a disciplinary offence to fail to comply with these Contract Standing Orders and the Board's Purchasing Guide. All employees have a duty to report breaches of Contract Standing Orders to the Clerk or Chairmen of the Board
- 5.6 Any person suspects any misconduct or corruption in relation to the purchase by or on behalf of the Board, supplies (goods) and services must immediately report that suspicion to the Head / Chairman of Internal Audit.

6. Scheme of Delegation

- 6.1 Purchasing may only be undertaken by the Clerk and his delegated authority to a member of staff who has the appropriate skills and knowledge for the task and such delegation shall be recorded in writing.

7. Financial Thresholds and Procedures

- 7.1 The table below sets out the general rules applying to the choice of purchasing procedure for contracts at the stated threshold values. All Figures quoted in this document are exclusive of VAT.
- 7.2 There is a general presumption in favour of competition. Wherever possible, contract opportunities should be advertised by way of a public notice. At the time of writing, the Board must consider the potential effect of a contract on interstate trade (at a European level). If a contract may be of interest to contractors from other member states then this may result in a need to advertise in a manner which ensures that potential contractors from other member states are aware of the opportunity, even for small value contracts or contracts under the E.U./UK Threshold levels outlined below.
- 7.3 The public notice referred to at 7.2 may take the form of a notice or advertisement in an electronic or paper format, on an easily accessible website or other electronic media and / or in the press, trade journals or Find a Tender Service (from 1 January 2021, as appropriate. The Clerk may choose to place one or more public notices in different media. As a minimum any Request for Quotation or tender valued £100,000 or above will be advertised on <https://www.medwayidb.co.uk/news>.

7.4 Table setting out financial thresholds and procedures.

Total net value (£)	Type of contract	Procedure to be used
£0 to £4,999	works, supplies, and services	<ul style="list-style-type: none"> a) At least one quotation in advance b) All purchases however small to be in writing, on an official order. c) Approved by the Clerk or authorized employee. d) Be able to provide a rationale for why they selected the provider used. e) All consultancies costs should be in agreement with the relevant Chairman of Finance.
£5,000 to £10,000	works, supplies, and services	<ul style="list-style-type: none"> a) At least one quotation in advance b) One off, non-routine spend should be agreed by relevant Finance Chairman c) Commissioning & Procurement need to be made aware of any procurement where the whole life value is >£5,000. d) All purchases however small to be in writing, on an official order. e) Approved by the Clerk. f) Explain why they selected the provider used. g) Contract award details provided for publication on the contract register for transparency purposes at award stage.
£10,000 to £99,999	works, supplies, and services	<ul style="list-style-type: none"> a) At least three tenders b) Spend should be agreed by relevant Finance Chairman. c) Consideration given to Purchasing Scheme e.g., to provide better V.F.M. d) Financial appraisals shall be carried out. e) Contracts in writing using the standard clauses and to include the core clauses as set out showing terms and conditions approved by the Finance committee. f) Records maintained to demonstrate probity and V.F.M. obtained. g) Contract award details provided to procurement for publication on the contract register for transparency purposes at award stage.
£100,000 and above	works, supplies, and services	<ul style="list-style-type: none"> a) At least three tenders. b) Spend should be agreed by relevant Finance Chairman. c) Risk assessment conducted (in writing) and kept on the file. d) As a minimum to be advertised at https://www.medwayidb.co.uk/news. e) Tenders opened at the same time by the Clerk, Board Member and a suitable person from the Office f) Financial appraisals shall be carried out. g) Award of contract approved by the Clerk and signed by signed by Chairman of the Board and Chairman of the Finance Committee h) Contracts in writing using the standard clauses and to include the core clauses and conditions approved in advance.; i) Record to be entered on the Board's Contract Register at award stage.

- 7.5 Financial appraisals shall be carried out by the Clerk on all contracts over £10,000 prior to award. They shall also have a financial appraisal undertaken annually on or near the anniversary date of the contract award date.
- 7.6 Contracts with a high degree of complexity or where there is a lack of knowledge in house may require the assistance of a consultant and Board Member for approval.

8. Financial Thresholds and Processes

Applying to Approval and Execution of Contracts

- 8.1 For contracts over the relevant EU/UK Threshold (in force at the time), the choice of purchasing procedure to be used and the decision to proceed to advertisement must be authorised in writing.
- 8.2 When a decision is made to award a contract then the Clerk must, in addition to complying with his / her general obligations under these Contract Standing Orders ensure, that:
- the appropriate approvals have been obtained to authorise that decision, and,
 - where appropriate, a standstill period complying with the EU Rules / Public Contracts Regs is incorporated into the final award process.
- 8.3 All contracts valued at £100,000 or above must be reported to the Board(s) for approval and shall be executed as a deed where there is a 5-calendar day call in period post, once the Minutes have been published All other contracts may be signed by the Clerk with appropriate delegated authority. £99,999 shall be the threshold.
- 8.4 Electronic signatures may be used by both the Clerk and the Supplier in accordance with the Electronic Signature Regulations 2002 provided the sufficiency of security arrangements has been approved by the Board's.
- 8.5 Electronic signatures will, in line with the Electronic Communication Act 2000, be accepted as a fair representation of a willingness to enter a contract by and with the Board, insofar as the e-signature is a true representation of the authorised person's written signature and (a) and (b) below apply (to the supplier), in which case an e-signature and a signature will be referred to as the same.
- the Contract will be entered into in relation to being either under seal or under hand; and
 - is supported with a contemporaneous document of authenticity and authorisation from the Supplier.

9. Calculating the Contract Value

- 9.1 The starting point for calculating the contract value for the purposes of these Contract Standing Orders is that it shall be the genuine pre- estimate of the value of the entire contract (whole life value) excluding Value Added Tax. This includes all payments to be made, or potentially to be made, under the entirety of the contract and for the whole of the predicted contract period (including proposed extensions and options).

- 9.2 Contracts may be split into lots where it is practical to do so. However, the aggregated cost of the lots shall determine the contract's whole of life value and the procurement process to be followed. Artificial splitting of a contract to avoid the application of the procurement rules or these CSOs is not permitted. However, should lots not be used for tenders over the EU/UK threshold, then Reg. 84 applies i.e., individual report as to why lots were not used.
- 9.3 The EU Rules / Public Contracts Regs cover contracts which are below the stated EU/UK threshold where they constitute repeat purchases and / or purchases of a similar type in a specified period. In these circumstances should therefore seek advice on the application of the rules where they envisage that they may require repeat purchases and / or purchases of a similar type.

10. Principles Underlying Tendering Processes and Tender Evaluation

10.1 All tendering procedures (including obtaining quotes), from planning to contract award and signature, shall be undertaken in a manner to ensure:

- Sufficient time is given to plan and run the process.
- Equal opportunity and equal treatment.
- Openness and transparency.
- Probity.
- Outcomes which deliver sustainability, efficiency, and cost savings (where appropriate).

11. Submission and Opening of Tenders

11.1 An Invitation to Tender shall be issued by the Board for all contracts over £100,000 and tenders shall be submitted in accordance with the requirements of the Invitation to Tender.

11.2 Any tenders received (other than those received electronically, to which 11.3 shall apply) shall be:

- addressed to the Clerk.
- in a sealed envelope marked "Tender" followed by the subject matter to which it relates and not displaying the name of the tenderer.
- kept in a safe place by the Office Manager.
- retained unopened until the date and time specified for its opening.

11.3 Where the Board have indicated in the Invitation to Tender that a tender can or must be submitted electronically, then those tenders shall be submitted via email.

- addressed to the e-mail address as notified in the Invitation to Tender.
- in the format specified in the Invitation to Tender.
- stored as unread by the Clerk or any other Board Member.
- retained unread until the date and time specified for its opening.

11.4 No tender received after the time and date specified for its opening shall be accepted or considered by the Board unless they are satisfied that there is sufficient evidence of the tender having been dispatched in time for it to have arrived before the closing date and time, or other exceptional circumstances apply, and the other tenders have not been opened.

11.5 All tenders of £100,000 and above are to be opened in the presence of the Clerk, Finance Chairman and one other member of Staff.

11.6 An immediate record shall be made of the tenders received including names and addresses and the date and time of opening, this record to be retained.

12. Evaluation of Quotes and Tenders

12.1 All quotes and tenders shall be evaluated in accordance with evaluation criteria notified in advance to those submitting quotes / tenderers. Evaluations shall be undertaken in accordance with the Board evaluation procedure.

12.2 Tenders subject to the EU Rules / Public Contracts Regs shall be evaluated in accordance with the EU Rules / Public Contracts Regs.

12.3 Save in exceptional circumstances approved in advance by the relevant Director, all contracts shall be awarded based on the quote or tender which represents the Most Economical and Advantageous Tender to the Board and not based on lowest price.

12.4 Post tender negotiations will only be used in special circumstances and after approval from the relevant Chairman of the Board.

13. Waivers

13.1 The requirement for the Board to conduct a competitive purchasing process for contracts in excess £10,000 may be waived in the following circumstances.

- For contracts which are not subject to the EU Rules / Public Contracts Regs, the work, supply or service is required as a matter of urgency and a delay would be likely to lead to financial loss, personal injury or damage to property; or
- the circumstances set out in EU / Public Contracts Regulation 14 apply (whether the contract is of a type which is subject to the application of the EU Rules or not); or
- the contract is awarded under a Purchasing Scheme of a type where a competition has already been undertaken on behalf of the Board or
- at the discretion of the Clerk who may for contracts exceeding £10,000 but not exceeding £30,000 proceed in a manner most expedient to the efficient management of the service / Board with reasons recorded in writing.

13.2 The Clerk seeking a waiver of Contract Standing Orders, shall do so only in advance and only in exceptional circumstances.

13.3 All waivers from these Contract Standing Orders must be:

- Fully documented.
- Subject to a written report in an approved format. For contracts not exceeding £99,999 the report shall be submitted in advance to the Board and include the reasons why the waiver is genuinely required. For contracts of £100,000 and above the report shall be submitted to the appropriate Board.
- Subject to agreement in advance by the Chairman of the Finance Committee as appropriate, who shall, for contracts exceeding £10,000 but not exceeding £99,999, record that they have

considered the reasons for the waiver and that they are satisfied with the circumstances justifying the waiver. Waivers from competitive purchasing processes for contracts of £100,000 and above must be approved in advance by the Board.

13.4 All decisions on waivers must consider:

- Probity.
- Best value / value for money principles.

13.5 For contracts subject to the EU Rules / Public Contracts Regs, any waiver from the requirement for competition must meet the conditions set out in the EU Rules / Public Contracts Regs in addition to the general requirements above.

13.6 A waiver shall not be applied for reasons of poor contract planning.

13.7 A waiver may only apply to the omission/s of certain item/s therefore, will be required to follow all other criteria in CSOs other than what has been approved and agreed in the submitted waiver.

14. Extensions to Existing Contracts

14.1 Where extensions to existing contracts are made the extensions must be determined in accordance with the advertisement / contract terms, for a specified period and made in accordance with the principles set out in the Board's Purchasing Guide.

14.2 Any extension must be:

- Fully documented.
- Subject to a written report in an approved format. For contracts where the extension value is not exceeding £99,999, the report shall be submitted in advance to the relevant Board Chairman and include the reasons why the extension is required. For contracts where the extension value is £100,000 and above the report shall be submitted to the appropriate Board.
- Subject to approval in advance by the Clerk who shall, for contracts where the extension value is not exceeding £99,999, record that they have considered the reasons for the extension, there is an extension option on the contract and that they are satisfied with the performance of the contract. Extensions for contracts where the extension value is £100,000 and above must be approved in advance by the appropriate Board Chairman.

14.3 Any extension must consider:

- Probity.
- Best value / value for money principles.

14.4 For contracts subject to EU Rules / Public Contracts Regs, any extension must meet the conditions set out in the EU Rules / Public Contracts Regs in addition to the more general requirements set out above.

15. Purchasing Schemes

- 15.1 A Responsible person may use Purchasing Schemes subject to the following conditions and the Purchasing Guide.
- 15.2 The Responsible person must check in advance that:
- He / she is legally entitled to use the Purchasing Scheme.
 - The purchases to be made do properly fall within the coverage of the Purchasing Scheme.
 - The establishment and operation of each Purchasing Scheme follows the EU Rules / Public Contracts Regs (where they apply) and meets the Board's own requirements.
- 15.3 A "Purchasing Scheme" may include:
- Purchasing arrangements set up by central purchasing bodies and commercial organisations.
 - Consortium purchasing.
 - Collaborative working arrangements.
 - Formal agency arrangements.
 - E-procurement / purchasing schemes and methods.
- 15.4 Where a Purchasing Scheme is used then there shall be a whole or partial exemption from the obligations under these Contract Standing Orders in respect of the choice and conduct of procedures to the extent permitted.
- 15.5 Prior to using any purchasing scheme, the Clerk should consider whether the works, goods or services required can be procured locally.

16. Review and Changes to these Contract Standing Orders

- 16.1 These Contract Standing Orders shall be reviewed and updated on a regular basis at least once annually or on changes to legislation.

Oliver Pantrey

Clerk

Amendments March 2022

- Removed Lower Medway IDB References
- Removed plural use when referring to the Board
- Changed Clerk of Works to Clerk