



West Dunbartonshire
Community Health & Care Partnership

Guidance on Purchasing and Contracting of Care and Support Services

September 2011

CONTENTS

Section	Page
1. Background	3
2. Introduction	3
3. EU Procurement Directives and Council Standing Orders	3
4. Guiding Principles for Procurement	4
5. Contracts and Contract Values	6
6. Tenders	6
7. Exceptions to Tendering	6
8. Types of Tender	7
9. Tender Process	7
10. Types of Contractual Arrangements	9
11. Contract Duration	9
12. Service Specifications	10
13. Sustainability	10
14. Appendix 1	11

1. Background

- 1.1** West Dunbartonshire Council is committed to managing its procurement activity to achieve the maximum efficiency, effectiveness, and achieve value for money in the acquisition of goods, services and works. This guidance has been developed in recognition that the procurement of care and support services requires particular consideration within a public body's overall approach to the procurement of goods, works and services because of the significant impact that it has on the quality of life, health and well-being of service users and carers.
- 1.2** This guidance provides information primarily on the procurement of new or reconfigured care and support services in West Dunbartonshire from external service providers. It does not apply where services are provided in-house, delivered through shared services arrangements between public bodies or secured through grant funding.
- 1.3** The guidance has been informed by:
- **Council Standing Orders relating to contracts**
 - **'Procurement of Care and Support Services'** published by the Scottish Government in September 2010; **'and**
 - **The 'Corporate Procurement Manual'** produced by West Dunbartonshire Council's Corporate Procurement Section in 2011.

2 Introduction

- 2.1** Public procurement rules apply to the purchasing and tendering of all public sector contracts. Council Officers must be guided by Council Standing Orders and EU Public Sector Procurement Regulations. The rules are designed to ensure open and transparent access to, and competition for, public sector contracts. They set down procedures for advertising, selecting, and evaluating tenders.
- 2.2** The following guidance will identify procurement routes and detail some of the critical elements involved in a tendering process. The information in these guidelines are intended as a guide and should not be considered as exhaustive and consultation with the Quality Assurance and Commissioning Team is recommended.
- 2.3** All Council Officers purchasing services from external service providers should ensure their familiarity with the detail of Council Standing Orders as these contain the requirements and procedures for tendering and contracting.

3 EU Procurement Directives and Council Standing Orders

- 3.1** Our procurement activity is governed by a legal framework which includes principles deriving from the Treaty on the Functioning of the European Union, the European Procurement Directives. These "Treaty principles" have been implemented in national

legislation and European Court of Justice and national case law. They have established procedures which must be followed by all public bodies whenever they purchase services from external suppliers or service providers.

- 3.2** The key obligations in the context of public procurement include:
- transparency – contract procedures must be transparent and contract opportunities should generally be publicised;
 - equal treatment and non-discrimination – potential suppliers must be treated equally;
 - proportionality – procurement procedures and decisions must be proportionate to the outcome desired; and
 - mutual recognition – giving equal validity to qualifications and standards from other Member States, where appropriate.
- 3.3** The EU Procurement Directives divide services into Part A and Part B services. Most Social Work and Health services purchased will fall in to the Part B category. Part A services are subject to the full EU Procurement Regulations while Part B is subject to a lesser regime. Although Part B services are not bound by the full requirements of the EU Procurement Regulations, including the requirement for advertising in the Official Journal of the European Union (OJEU), the application of competition, fairness and transparency still apply.
- 3.4** The Community Health and Care Partnership (CHCP) is also bound by Part IV of the Standing Orders of West Dunbartonshire Council with regard to the purchasing, commissioning and contracting of all care and support services. Standing Orders have been designed to ensure that the Council Procurement complies with all relevant national and European statutory and regulatory requirements for local authority purchasing. These arrangements are assured in co-operation with the Council's Department of Legal and Administrative Services. The Standing Orders are available on the Council intranet <http://newintranet.west-dunbarton.gov.uk/> under Public Folders.
- 3.5** Arrangements for the tendering for services are included within the Standing Orders. The tendering process places demands upon Council Officers to operate within prescribed procedures and time-scales when involved in commissioning and purchasing services.

4 Guiding Principles for Procurement

- 4.1** In their '**Procurement of Care and Support Services**' published in September 2010, the Scottish Government highlighted the following 12 Guiding Principles for the procurement of care and support services to reflect the complexity of procuring care and support services and the challenges associated with upholding values, delivering high standards and responding to individuals' needs whilst complying with procurement rules and securing best value. Taken together, the principles should govern all procurement activity:

- **Outcomes** – achieve positive outcomes for service users and carers through the delivery of good quality, flexible and responsive services which meet individuals' needs and respect their rights;
- **Strategic commissioning** – place the procurement of services within the wider context of strategic commissioning, reflecting strategic and service reviews;
- **Personalisation** – secure personalised services which provide independence, choice and control for service users;
- **Involvement** – involve service users and carers as active partners in defining their needs and the outcomes they require and take these into account in the design of services;
- **National Care Standards** – ensure services meet the National Care Standards and adhere to the principles underpinning the Standards (dignity, privacy, choice, safety, realising potential and equality and diversity);
- **Professional Codes of Practice (Scottish Social Services Council)** – ensure staff involved in procuring services promote the interests and independence of service users and carers, protect their rights and safety and gain their trust and confidence; ensure employers provide training and development opportunities which enable staff involved in procuring services to strengthen and develop their skills and knowledge;
- **Best value** – secure best value by balancing quality and cost and having regard to efficiency, effectiveness, economy, equal opportunities and sustainable development;
- **Benefit and risk** – base strategic decisions concerning the procurement of services on benefit and risk analysis of the potential effects on: the safety and well-being of service users and carers; the quality and cost of services; and partnership working with service providers and workforce issues;
- **Procurement rules** – ensure procurement exercises comply with the principles deriving from the Treaty on the Functioning of the European Union, the requirements of the Public Contracts (Scotland) Regulations 2006, statutory guidance issued under section 52 of the Local Government in Scotland Act 2003 and Scottish public procurement policy;
- **Leadership** – ensure senior managers give a high priority to the procurement of care and support services, setting clear strategic goals and managing performance through the production of commissioning strategies and purchasing plans;
- **Workforce** – ensure the procurement of services takes account of the importance of a skilled and competent workforce in delivering positive outcomes for service users; and

- **Partnership** – promote collaboration between public bodies and partnership working across the public, private and voluntary sectors to make the best use of the mixed economy of care and bring about cultural change in all sectors.

5 Contracts and Contract Values

- 5.1** Council Officers who purchase a service should note that the figure stated in 5.2 below is the accumulative cost of the service over the life of the Contract and are not values per annum. The levels are subject to change but the thresholds will be dictated by any changes to the EU Directives and/or Standing Orders.
- 5.2** Any service with an accumulative contract value of £156,442 or above is subject to EU regulations. Legal & Administrative Services, the CHCP Quality Assurance Section, and Corporate Procurement should be consulted regarding the most suitable route in this case.

6 Tenders

- 6.1** Once it has been decided to proceed with a tender for a new or reconfigured service then approval must be sought. A report must be submitted to the Tendering Committee clearly identifying what tendering considerations have taken place, proposed tendering route to be used (open, restricted or single tender) and the reasons for seeking committee approval and the expenditure involved. Following the tender process a further report is required to the Tendering Committee advising of the outcome and recommending a supplier to be awarded the contract.

7. Exceptions to Tendering

- 7.1** Tenders may not be required in the following situations:-

- (a) Save for contracts predominantly involving the provision of Social Care which are dealt with in Standing Order 39(g) below, where the estimated expenditure is less than £50,000 and is authorised by the Director of the CHCP.
- (b) Standing Order 39 (g) “In the case of a Social Care package or placement, either (a) the contract is for a single package or placement of less than £150,000 or (b) exceptionally that the contract is for a single package or placement exceeding the said levels and the specialist nature of the service is such that no market of suitable providers exist. In any case of such Social Care or Education package utilising the procedure at paragraph 39(g)(i)(b), the following provisions will apply, (i) the contract must have prior approval, following proper assessment or review of arrangements for care management by the Director of the Community Health and Care Partnership and/ or the Executive Director of Educational Services, (ii) the contract must be reported to the next appropriate meeting of the relevant Committee and (iii) the contracting department must record its reasons for determining that a proposed contract is exempt from the requirement to tender and must be able to evidence those reasons as well as providing all details

required to enable the publication of any necessary contract award notice after the award of the contract. Nothing herein will permit the avoidance of the application of any National or European Procurement rule.

(ii) In the case of a Social Care or Education package or placement, where by reason of an ongoing or extended requirement for care, which was not foreseeable at the time of the original contract being put in place, a contract will exceed the threshold of £150,000, the Director of the Community Health and Care Partnership and/ or the Executive Director of Educational Services, as the case may be, may approve such additional package provided they are satisfied that, having regard to the service user's needs and the requirement for value, the existing contractor / supplier continues to provide the most appropriate solution."

8 Types of Tender

- 8.1** There are three main types of tenders that could be used in any exercise the CHCP conduct they are; **Open, Restricted and Single.**
- 8.2** The **Open Tender Procedure** is open to any provider and usually follows an advert seeking interest. It is a one-stage procedure whereby all service providers are invited to tender for the contract or framework agreement. This procedure is appropriate when there are a limited number of providers expected to tender.
- 8.3** The **Restricted Tendering Procedure** is used when we want to tender from a limited number of providers. It is a two-stage procedure whereby service providers are required to complete in the first stage a Pre-Qualification Questionnaire (PQQ) and must satisfy certain selection criteria. They may then, in the second stage, be Invited To Tender (ITT) for the service.
- 8.4** The **Single Tender Procedure** is used to invite a tender from a single provider. It is normally used to commission specialist services. Of the three tendering approaches this is the likeliest to be challenged by providers excluded from the opportunity to tender and so should be used with caution. Before using this procedure advice will be sought from Legal, Administrative & Regulatory Services and Corporate Procurement.

9 Tender Process

- 9.1** The Quality Assurance Section is responsible for overseeing the administration and planning of the tendering process and for providing advice and guidance to commissioning staff involved in the process. It will be for the commissioning staff to draft the service specification. **(See flowchart at Appendix 1 for process)**
- 9.2** As stated previously, any tender exercise undertaken must be approved by the Council's Tendering Committee. When the exercise is completed approval must also be given by the Tendering Committee to proceed to contract.

- 9.3** When the Tendering Committee has given approval to proceed, contact must be made with the Legal, Administrative & Regulatory Services and Corporate Procurement to ensure the correct procedures are adopted thereby minimising the risk of subsequent challenge to the tendering and contracting process and increasing the avoidance of fraudulent misrepresentation within the tender documentation.
- 9.4** All Tender documentation used should provide Tenderers with background information about West Dunbartonshire Council and specify the services required, as well as setting out the detailed requirements. Tender documentation will typically comprise instructions to Tenderers and the Invitation To Tender (ITT). Instructions to Tenderers provide information on the tender process, the services that are required, evaluation criteria and the proposed terms, time frames and conditions of the final contract.
- 9.5** Effective evaluation is a critical element of any tender procedure and the criteria used for this should be established at the earliest opportunity. Tenders may be evaluated on either on the Most Economically Advantageous Tender (MEAT) or Lowest Price/Cost to the Council. The MEAT method will be a combination of both Price and Quality elements. The purpose of the evaluation process is to consider the degree to which potential bidders will meet the specification for service delivery and provide best value to the CHCP.
- 9.6** The issues of fairness, transparency and objectivity are critical to a successful tender evaluation. Invitation to Tender documents must state the method for evaluation; whether it is MEAT or Lowest Price/Cost to the Council. ITT's should also state the criteria weightings and the method for scoring the evaluation. Scoring must be in a consistent, non-discriminatory, and fair manner.
- 9.7** In the tendering process we must be clear on the distinction between Selection and Award criteria. Questions raised and criteria used at selection stage cannot be used again at evaluation (award) stage. Criteria must be verifiable, have clarity in that it is interpreted by all Tenderers, and cannot be changed once in the Contract Notice.
- 9.8** Selection criteria are backward looking and should focus on the Provider. Exclusion of Tenderers can be made on the basis of ineligibility or failure to meet minimum standards. Appropriate selection criteria will enable us to select the bidders which are capable of delivering the service and eliminate others.
- 9.9** Award criteria are forward looking and must focus on criteria that can demonstrate an economic advantage to the Council in the performance and delivery of the actual tender. The criteria must be relevant and proportionate to the particular requirement and should therefore be determined on a case by case basis.
- 9.10** After the closing date for submissions and the evaluation of tender documentation, the recommendation of which tender to accept must be put to the Tendering Committee at the earliest opportunity for their agreement. Once approval to proceed has been given it is essential that the CHCP committee and Councillors are issued with a brief note informing them of the outcome, this must take place before the contract is awarded.

10 Types of Contractual Arrangements

10.1 In the purchase of social care, any one of a number of differently named contracts may be cited as the preferred method of operation, however, there are three contract types (others are a variation on one of these three) these are:

- **Block Contract** - A contract with a fixed payment for a specified level of service. Block Contracts have the advantage of guaranteeing to both purchaser and provider that a specified volume of service will be provided for an agreed fee. A drawback is that they tend to be service rather than needs or outcomes led and they may stunt efficiency;
- **Call Off Contracts**- These are agreed on a case by case basis. Call Off Contracts can take a number of forms: they may be written from scratch for each contract, use standard conditions which the Service Provider signs upon acceptance each time or be a set of standard conditions in the form of a Pre-Purchase Contract which is agreed between the purchaser and the provider. They offer the widest choice to prospective users and they may offer a more individual need led approach; and
- **Cost and Volume Contracts**- A halfway option between Block and Call Off contracts. Cost and Volume Contracts normally set a minimum guaranteed level of business (volume) for an agreed payment (cost). The contract then sets out the basis on which additional units of service in excess of the agreed minimum may be purchased, and defines the price for each additional unit of service.

10.2 A **Framework Agreement** is a contractual arrangement using 'Call Off' Contracts and can allow for efficiency gains and encourage mini competition, and allow maximum flexibility in purchasing. After the Tender exercise a restricted number of Providers are invited to join the Framework agreement. Individual service packages are then "called off" from the Framework by way of an Individual Service Contract (ISC) or placement letter. This will be for a fee that has been agreed in advance and detailed by the Provider in their Tender submission. Framework Agreements will typically have 1 or 3 or more suppliers included and contract duration of 4 years maximum.

11 Contract Duration

11.1 For care and support services there are no explicit limits in public procurement law on the duration of a contract, although excessively long contracts may be open to challenge on the grounds that they are designed to distort markets/competition. Contract duration should be determined on a case by case basis, taking into account the CHCP's requirements and the needs of service users.

11.2 The length of time of the contract has to be stated in any formal Tendering process. The CHCP may decide to award contracts of longer duration where necessary to ensure continuity of service for service users. It has to be stressed that all contracts will be subject to monitoring and a review of service delivery at appropriate intervals.

12 Service Specifications

- 12.1** All contracts and Tender documentation used must have a Service Specification included or attached as a schedule. Devising the specification is one of the most crucial tasks in the commissioning process and should be completed, by the commissioning staff, before the start of any tendering exercise. It sets down the responsibilities of the two parties in relation to the service, including the expected outcomes and dictates many of the terms of the contract. It also reflects the operational detail, future monitoring, contract compliance and evaluation arrangements.
- 12.2** It is important that commissioning staff whenever possible consult the service user and/or their carers when devising the specification. Involving service users in drafting the service specification, drawing on their perspectives about what are the key determinants of success will ensure outcomes are user focussed.

13 Sustainability

- 13.1** Sustainable procurement is a process where the CHCP meets the needs for care and support services in a way that achieves value for money on a whole life basis and generates benefits not only to the organization, but also to society, the economy and the environment. All aspects of sustainability must be considered at the outset and if we use sustainable criteria in tender evaluation it must be relevant and proportionate to the subject matter of the procurement.
- 13.2** Sustainability of contracts and services are also covered by the Contract Monitoring process. Our process involves a range of 'stakeholder' consultations, file audits and service review.
- 13.3** All our procurement exercises have to undertake an 'Equality Impact Assessment', and it is essential in the areas of award criteria and service specification to monitor what the impact will be on different groups.

Tendering Flowchart

