Code of Practice for Contractors, Suppliers and Service Providers for all organisations who wish to contract with the Council

Procurement Team
3rd Floor
Lewisham Town Hall
Catford
London SE6 4RU
020 8314 8548
procurement@lewisham.gov.uk
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1. Introduction

1.1 The Council's Codes of Conduct

1.1.1 The Council is committed to the highest standards of behaviour in public life. To promote this commitment, the Council has adopted two Codes of Conduct, one applying to members of the Council and one applying to its staff. These Codes are available on the Council's website.

1.1.2 If you believe that a member of the Council's staff has breached the Employee Code of Conduct, please report it to the Council; we treat all complaints under this Code very seriously and will investigate any allegation received. Details of the Council's Complaints Procedure can be found at: http://www.lewisham.gov.uk/CouncilAndDemocracy/HavingYourSay/CommentsComplaintsAndCompliments/.

1.1.3 If you believe that a councillor has breached the Member Code of Conduct, then those complaints should be referred to: The Monitoring Officer, London Borough of Lewisham, Town Hall, Catford, London SE6 4RU (Telephone number 020 8314 7648, e-mail address: monitoring.officer@lewisham.gov.uk fax number 020 8314 3107).

1.1.4 The Council has also adopted a whistleblowing policy to deal with allegations of malpractice or misconduct by its members, staff or contractors. That policy is also available on the Council's website. The policy is publicised throughout the borough and can be used by anyone with a complaint if they feel that other available channels for raising concerns would be inappropriate, or if they fear repercussions.

1.1.5 The Council's Head of Law is responsible for dealing with allegations raised under this procedure. If you have any query about the whistleblowing policy, or the Member and Employee Codes of Conduct please contact: Kath Nicholson, London Borough of Lewisham, Town Hall, Catford, London SE6 4RU (Telephone 020 8314 7648, E-mail address kathy.nicholson@lewisham.gov.uk)

1.2. The Code of Practice for Contractors, Suppliers and Service Providers

1.2.1 As well as the Codes of Conduct adopted for members of the Council and its staff, the Council has established this Code of Practice for Contractors, Suppliers and Service Providers under specific powers set out in its Standing Orders.

1.2.2 All contractors, suppliers and service providers will be expected to satisfy the Council of their ability to comply with the Code before they are considered for any contract to be let. Contractors, suppliers and service providers will also be expected to comply with this Code during the currency of a contract and failure to do so could result in the termination of the contract and the imposition of restrictions on the opportunity to tender for future Council contracts.

1.2.3 The Council may in certain exceptional cases give exemptions from certain requirements of this Code where the size or nature of the contract or contractor, supplier or service provider does not warrant its fullest application.

1.2.4 This Code applies to all persons working on any Council contract and the main contractor, supplier or service provider cannot avoid responsibility by sub-contracting out the whole or part of the work. All references to a contractor, supplier or service provider therefore apply equally to a sub-contractor.

2. Conditions

2.1 Apprenticeships and work placements

The Council is committed to improving opportunities for young people to obtain work placements and apprenticeships to gain work skills and increase their opportunity of obtaining permanent employment. In pursuance of this commitment, it requires Contractors, suppliers and service providers to:

- use its best endeavours to provide work placements and apprenticeships for young persons resident within the Borough during the currency of any contract or agreement;
- comply with, and deliver its obligations under any contract or agreement in a manner which is consistent with achieving the key performance indicators relating to any arrangements for work placements and apprenticeships; and
- assess its performance in relation to this requirement throughout the currency of any contract or agreement and report to the Council on a regular basis.

2.2 Asbestos

The Council considers that all asbestos, including waterborne asbestos, is potentially dangerous and that there is no safe limit of exposure. Accordingly, the Council has banned the use of all asbestos products in the construction of any new Council building or in any alterations done to existing buildings.

It is the Council's policy that the removal of asbestos and related products is undertaken by specialist contractors licensed for the purpose by the Health and Safety Executive. If any asbestos is discovered by a contractor, other than a licensed one, during the course of contract, work must cease immediately and the Supervising Officer must be contacted for advice.

2.3 Best Value

The Local Government Act 1999 places a duty of Best Value on local authorities to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness. Lewisham has added equality, environmental impact and electronic service delivery to these measures of continuous improvement.

Contractors, suppliers and service providers will take reasonable steps to co-operate with and assist the Council in fulfilling this duty, in particular to secure continuous improvement in the provision of works, supplies and services.

2.4 Bonding

The Council requires all contractors, suppliers and service providers to provide sufficient bond or surety for contracts where it is deemed appropriate. The Council will normally require contractors, suppliers or service providers to obtain a bond through its nominated bonding agent to the value of 10% of the contract value, but may in appropriate circumstances accept a nomination by the contractor, supplier or service provider or a cash deposit in lieu of a bond.

2.5 Bribery, Gifts and Inducements

Lewisham has as a result of the enactment of the Bribery Act 2010 produced an Anti-Bribery Policy (link required) which covers its elected Members, officers as well as its contractors. The policy requires that contractors, suppliers and service providers act honestly and with integrity at all times.

Our contract documents have been changed to include anti-bribery terms and conditions, and we are requesting that our contractors, suppliers and service providers adopt a similar approach with any sub-contractors.

Whilst the Council will always consider the facts of every individual case, if it is proven to its satisfaction that any such fee or reward is offered then any contract the contractor, supplier or service provider has with the Council is likely to be terminated and damages sought from the contractor, supplier or service provider. In addition, the contractor, supplier or service provider concerned will almost certainly be removed from any Council Approved List, Preferred List, Framework, Select or Tender List for which the organisation is being considered or has been approved.

2.6 Business Continuity

Under the Civil Contingencies Act (2004) local authorities have a legal duty to promote business continuity internally, as well as promoting it to the wider business community. Contractors, suppliers and service providers should themselves have business continuity plans in place such that, if a major incident befell them disruption to their organisation would be kept to a minimum.

Such business continuity or disaster recovery plans should cover a range of issues such a fire, flood, loss of staff, power, premises and any other issues that would affect the ability of the business to function. Plans should be available upon request together with documented evidence that plans are reviewed and tested at least annually.

Further information on Business Continuity can be found at:
http://www.direct.gov.uk/en/Governmentcitizensandrights/Dealingwithemergencies/Preparingforemergencies/DG_175927

2.7 Carbon Emissions

Compelling scientific evidence on the environmental impacts of human activity has raised global awareness on the threats of climate change and has triggered intense target-setting among governments at all levels.

The UK is setting ambitious sustainable development goals, particularly regarding the reduction of greenhouse gas emissions. Local authorities, through their renewed planning and economic development duties, have the potential to play a significant role in bringing these goals forward. Lewisham is among the first to sign up to the national indicator 186 - Per capita CO_2 emissions in the local authority area.

As such, the evaluation criteria applied in assessing the suitability of any tenderer may include an examination of its energy usage within the London Borough of Lewisham:

The indicator includes CO_2 emissions from the industrial and commercial sector. In particular:

- electricity use
- gas use
- oil and solid fuel use
- waste
- agricultural processes and fuel use
- off road machinery
- road transport
- railways

Contractors, suppliers and service providers will provide the Council on request with a report on their local emissions and demonstrate their commitment to carbon reduction in 3 sectors – Energy, Waste and Travel.

2.8 **Collusive Tendering**

Contractors, suppliers or service providers must not collude with another in the pricing or submission of any tender. If such collusion is proven to the satisfaction of the Council then the contractor, supplier or service provider concerned will be removed from any Council Approved List, Preferred List or Framework Agreement and any contracts obtained by such methods may be terminated by the Council.

2.9 **Considerate Constructor Scheme**

All construction or refurbishment contracts/projects in excess of £100,000 or 6 weeks in duration must be registered with the Considerate Constructor Scheme (CCS) and all contractors working on these projects need to adhere to the rules of the scheme. The registration must be undertaken by the principal contractor, who should detail on the CCS documentation the name and contact details of the Lewisham principal contact for each project. Costs of the scheme are to be met by the contractor.

Further information on CCS can be found at:
http://www.considerateconstructorsscheme.org.uk

2.10 **Environment and Sustainability**

The Council is committed to continuous improvements in environmental performance. It has identified all the significant environmental impacts of its activities and has set long term improvement objectives for each of these.

Where activities with significant impacts are carried out on its behalf by contractors, suppliers or service providers the Council requires such organisations to help achieve the relevant objectives. It will therefore include the objectives in contract specifications and invites tenderers to state how they will meet them.

Contractors, suppliers and service providers are advised that they will be expected to demonstrate their commitment to environmental sustainability, and to support the Council's aims as set out in its 'Guide to Green Procurement'.

Information on the guide can be found at:
http://www.lewisham.gov.uk/Environment/CleanerGreenerLewisham/SustainableEnergy/EnergyManagementLewishamCouncil/GreenProcurementGuide.htm.

2.11 **Equality and Diversity**

The Council believes that the diversity of its population and workforce is one of its greatest strengths. Equality of opportunity and freedom from discrimination are

fundamental rights and this Council has a duty to exercise leadership to promote these rights. We promote equality and prevent discrimination through our roles as:

- service provider
- employer
- community leader.

Contractors, suppliers and service providers must not treat any person less favourably than another person because of his or her race (including ethnic or national origins, colour and nationality, age, disability, gender (including gender reassignment, pregnancy and maternity), religion or belief, or sexual orientation in any recruitment, training, promotion, delivery of goods, provision of services or undertaking of works.

Contractors, suppliers and service providers must follow best practice and comply with all legislation in relation to equality and diversity and be consistent with Lewisham's Comprehensive Equality Scheme (the Council's key equality policy document).

Contractors, suppliers and service providers will provide the Council on request with copies of:

(a) Instructions to those concerned with recruitment, promotion and training.
(b) Equality & diversity policies, procedures and other documents available to employees, recognised trade unions or other representative groups of employees.
(c) Recruitment advertisements or other literature.

In order to assist the Council in its objectives under the Equalities Framework for Local Government (EFLG), contractors, suppliers and service providers must demonstrate that they have an understanding and commitment to the principles and practice of equality in the services they provide. They must also regularly review their services and access to them to ensure they continue to be appropriate and accessible to Lewisham's diverse communities.

Further information on Equality and Diversity can be found at:
http://www.equalityhumanrights.com/

2.12 **FairTrade**

The Council wishes to encourage contractors, suppliers and service providers engaged to work for the Council to show a commitment to FairTrade. The Council is committed to Lewisham achieving and maintaining "FairTrade Borough" status by meeting the five goals necessary to become a designated FairTrade Borough.

Further information on FairTrade can be found at: http://www.fairtrade.org.uk

2.13 **Financial Viability**

The Council will require contractors, suppliers or service providers to provide copies of audited accounts, auditors and directors' reports or latest management accounts in order that financial viability may be assessed.

Contractors, suppliers and service providers will be subject to a periodical review of their financial situation and must satisfy the Council of their continuing financial capability to resource any prospective contracts.

2.14 **Fraud and Corruption**

The Council expects all of its contractors, suppliers, agents, partner organisations and individuals, to act with honesty and integrity. Client officers will be responsible for monitoring their actions and for ensuring that their terms of reference, agreements and/or contracts include a clause to the effect that contractors, suppliers and service providers must abide by the Council's Fraud Policy and co-operate with fraud investigations by Council officers.

Agency employees engaged by the Council are bound by the same rules as direct Council employees and are expected to uphold those principles contained in the Code of Conduct. Failure to do so will result in termination of their engagement.

2.15 **Freedom of Information Act**

The Freedom of Information Act (FOIA) provides a general right of access to information on public contracts and procurement activity held by public authorities, subject to certain conditions. This means that the Council will be obliged under the Act to release certain information about the suppliers it contracts with, into the public domain, within certain limits and according to relevant exemptions.

The main exemption relevant to procurement will be Commercial Interests, which means trade secrets and information likely to prejudice the commercial interests of any person (including the public authority) holding it. However, this is a qualified exemption, and the Council can only refuse to disclose information where having decided the exemption applies the Council considers the public interest in withholding disclosure is greater than the public interest in disclosure.

Further information on the FOIA can be found at:
http://www.justice.gov.uk/guidance/guidancefoi.htm .

2.16 **Health and Safety**

All contractors, suppliers and service providers must provide the Council with a copy of their health, safety and welfare policies and procedures. In assessing the adequacy of these documents the Council will take into account the nature of the work, supply or service to be undertaken, and the size of the contractor, supplier or service provider.

Contractors, suppliers and service providers must keep copies of their health and safety policies and procedures on site and at all locations from which the contractor, supplier or service provider operates and the policy must be practised and subject to regular review.

All contractors, suppliers and service providers must comply with the Health and Safety at Work Act 1974 and such other specialised safety regulations and/or insurance requirements that may apply to the type of work, service or supply involved.

Further information on Health and Safety can be found at: http://www.hse.gov.uk

2.17 **Insurances**

All contractors, suppliers and service providers employed by the Council must maintain such insurance policies as are necessary to cover any liability which may arise under the contract.

For contractors, suppliers and service providers wishing to tender for contracts, the following policies will be required as a minimum:

- Public Liability with a minimum indemnity limit of £5m in respect of each and every claim
- Employers' Liability with minimum indemnity limit of £5m in respect of each and every claim
- Professional Negligence insurance with a minimum indemnity limit of £2m in the annual aggregate

The insurance policies must be maintained with reputable insurers and approved by the Council. The Council may in certain circumstances amend the required level of cover where a risk assessment of a contract indicates such a level is appropriate.

2.18 **Lobbying**

Contractors, suppliers or service providers must not lobby or canvass either a member or an employee of the Council in an endeavour to obtain a contract. In addition, all contractors, suppliers and service providers will be required to disclose at the time of tendering the nature of any relationship with an employee or a member of the Council.

2.19 **Local Employment, Local Business**

Contractors, suppliers and service providers engaged to work for the Council must show a commitment to the borough, its residents and businesses.

Where it is necessary for employees to be recruited to work on Lewisham contracts, contractors, suppliers and service providers must use best endeavours to appoint Lewisham residents. This can be expedited by notifying the Council of job vacancies in advance of general advertisement, who will offer assistance with publicising the role locally.

Where a part or the whole of the awarded contract is subcontracted, contractors, suppliers and service providers must use best endeavours to appoint a business based in Lewisham borough. This can be expedited by notifying the Council of subcontract work packages available, who will offer assistance with finding suitable local businesses to be included in the tender process.

It is acknowledged that where contracts being let are above the EU threshold in value requiring compliance with the EU public procurement regime, the Council is constrained from imposing requirements upon bidders to use local labour in such a way that it breaches EU principles guaranteeing the free movement of workers and the right to equal treatment in respect of access to employment. However, this should not be taken to avoid the recruitment of local labour where no breach of these rules would occur and the Council will expect all its contractors to take positive steps to recruit local labour and help towards the sustainability of the local economy where it is able to do so lawfully.

2.20 **London Living Wage**

The Council supports the establishment of the London Living Wage, set at a level calculated by the Greater London Authority Living Wage Unit to avoid poverty wages being paid in the capital.

Local authorities have a duty under the Local Government Act 2003 to obtain best value in the procurement of works, services and supplies and to secure continuous improvement in the way they carry out their functions, having regard to a combination of economy, efficiency and effectiveness.

This means that when procuring contracts, the Council will, on a case by case basis, weigh up the costs of the contract against the benefits of fair employment terms for contractors' employees and any resulting benefit to the Council.

There is scope for giving some weight at the tender evaluation stage to the attitude of contractors, suppliers and service providers to fair employment clauses including the London Living Wage within the parameters of the Council's fiduciary duty to tax payers and obtaining best value. Each case will be considered separately and flexibly, with any impact on costs fully assessed and justified.

Further information on the London Living Wage can be found at:
http://www.london.gov.uk/mayor/economic_unit/workstreams/living-wage.jsp

2.21 **Materials, Plant, Equipment and Machinery**

All materials, plant, equipment and machinery used on Council contracts must comply with the specification(s) in the contract documents or if none is so specified, the most suitable materials, plant, equipment and machinery reasonably obtainable. Where a British Standard or equivalent international standard applies then materials, plant, equipment and machinery that meet the latest standard must be used.

2.22 **Prompt Payment**

All contracts will require contractors, suppliers and service providers to pay their sub-contractors, through the supply chain, within 30 days from receipt of an undisputed invoice (where no other reasonable mutually agreed terms exist).

All contractors, suppliers and service providers will be required to provide consolidated electronic invoices on a weekly/monthly basis and in addition will be required to accept payment by Government Procurement Card in those instances where supplies (under a monthly total of £5k) are made ancillary to the main contract.

The Council is committed to the Prompt Payment Code, to which it has become an Approved Signatory. Contractors, suppliers and service providers engaged to work for the Council are encouraged to adopt the Code throughout their own supply chains.

Further information on the Prompt Payment Code can be found at:
http://www.promptpaymentcode.org.uk/

2.23 **Quality Management**

Whilst it is not a requirement for contractors, suppliers or service providers to be formally Quality Assured with an accredited certification body, it is a requirement that organisations have a quality management system in place that is at least to the standard of the ISO 9000 series (or equivalent).

Further information on Quality Management can be found at:
http://www.bsigroup.com/en/Assessment-and-certification-services/management-systems/Standards-and-Schemes/ISO-9001/

2.24 **Sub-Contracting**

Any contractor, supplier or service provider wishing to sub-contract must submit the name of the sub-contractor to the Council for approval. The main contractor, supplier or service provider will be responsible as far as practicable for the compliance with this Code by any sub-contractor employed on a contract and the contractor, supplier or service provider must enforce its provisions against the sub-contractor if necessary.

When seeking written permission from the Council to sub contract, the main contractor must satisfy the Council of the intended sub contractor's competence and provide written evidence of having assessed the sub contractor in the following areas:

- experience in the type of work to be done;
- health and safety policies and practices;
- recent health and safety performance (number of accidents etc);
- qualifications and skills;
- safety method statement;
- health and safety training and supervision provided;
- arrangements for consulting the workforce;
- any independent assessment of their competence;
- memberships of a relevant trade or professional body; or
- whether they or their employees hold a 'passport' in health and safety training.

The degree of competence required will depend on the work to be done, and the level of risk involved.

The Council will treat a breach of this Code by a sub-contractor as if it were a breach by the main contractor, supplier or service provider and will be entitled to take action against the main contractor, supplier or service provider accordingly.

The main contractor, supplier or service provider must make it a requirement in any sub-contract that the sub-contractor complies with this Code and the main contractor, supplier or service provider must supply a copy to the sub-contractor.

2.25 **Technical Competence**

The Council will satisfy itself of a contractor's, supplier's or service provider's technical competence and ability to undertake work for which they may be considered. In assessing such suitability, account will be taken of similar work undertaken recently, the size and qualifications of the contractor's, supplier's or service provider's workforce relevant to its ability to resource the particular type of work, and accreditation under any regulatory registration schemes. The contractor, supplier or service provider must provide such relevant information and reasonable access for the Council to assess such suitability.

2.26 **Tipping, Removal and Disposal of Waste**

Contractors must satisfy the Council that they have and maintain satisfactory arrangements for the removal and disposal of rubbish and waste materials. The Council will require contractors to prove that such arrangements have been made.

2.27 **Transfer of Undertakings (Protection of Employment) Regulations**

The Transfer of Undertakings (Protection of Employment) Regulations [or 'TUPE'], provide that, if an undertaking is transferred by one employer to another, the staff of the undertaking are

(a) entitled to employment by the new employer, with the same conditions of service as before,
(b) not entitled to redundancy payments from their old employer. The Regulations (as amended by the Trade Union Reform & Employment Rights Act 1993) incorporate into UK law the EC Acquired Rights Directive.

The TUPE Regulations will not apply to all Council contracts, but where they do, contractors, suppliers and service providers will be expected to make provision for their implementation in any tenders. Where a bid is submitted on the basis that TUPE would apply, the Council will need to be satisfied that the Tenderer is proposing to offer pension arrangements which are broadly comparable to those currently available to the staff.

Under the Local Government Pension Scheme (Amendment etc) Regulations 1999, the Scheme is modernised to allow the entry of specific types of employers by means of admission agreements. This entry ['Admitted Body Status'] may be available to companies bidding for Council contracts, and allows the transferred staff to maintain their current pension arrangements. Tenderers should seek their own independent professional advice in these cases.

3. Enforcement of the code

3.1 The Council will seek to ensure that all contractors, suppliers and service providers whom it employs comply with this code.

3.2 Any duly accredited representative(s) of the Council will have the contractual right at all reasonable times to enter any site, depot, workshop or office of the contractor, supplier or service provider (or the sub-contractor if appropriate) to ascertain whether or not this Code is being complied with. During any such visit the representative(s) may be accompanied by the contractor, supplier or service provider or their representative(s).