

# Services Contract for Maintained Schools Guidance on the documents

May 2015 (updated March 2018): Contracts Team

[www.southwark.gov.uk](http://www.southwark.gov.uk)

**Legal Services in Southwark Council have produced a precedent contract which maintained schools are encouraged to use when procuring services from external contractors. This note contains guidance on the contract, the documents and how to use them.**

## When should this contract be used?

This contract is appropriate where:

- The total value of the services to be procured do not exceed the EU threshold – approximately £181,000.
- There are no workforce issues (TUPE/pensions) involved.
- The services are not construction related services.

## What rules must I comply with to purchase services using this contract?

All schools maintained by the council are required to have regard to Southwark Council's Contract Standing Orders (CSOs) as best practice when entering into contracts for services and must comply with:

- the current Southwark Scheme for Financing Schools – if your total contract value is £5,000 or more, you must obtain the written permission of the Director of Education of Southwark Council before the proposed contract is signed
- the Schools' Contract Standing Orders
- EU procurement requirements (although this contract should not generally be used for procurements above the EU threshold, the EC Treaty of Rome principles such as equal treatment and transparency must still be complied with
- CSO 3.4 (contracts in writing) 6.1 (contracts less than £5,000) and 6.2 (contracts from £5,000 to £75,000) unless an exemption to CSOs is approved under CSO 7.6

[Link to Council's Contract Standing Orders](#)

## What documents form part of my contract?

This will depend upon the nature and value of the services:

<b>Document</b>	<b>What is it</b>	<b>When do I need it</b>
Letter inviting quotations	Sets out how the quotation process will operate	If the services are valued at between £5,000 - £75,000
Invitation and Instructions for tendering	Sets out how the tendering process will operate	If the services are valued at over £75,000
Quotation	Supplied by the providers setting out their fixed price	If the services are valued at between £5,000 - £75,000
Form of Tender	To be completed and returned by each tenderer with their tender price and any breakdowns or schedule of prices etc	If the services are valued at over £75,000
Specific Terms	Contains the particular details of your project, for example, contract term, start date, price. There are also a number of optional clauses which need to be chosen	Always – core document
General Terms	These are the main terms and conditions which apply to your project. There is no need to vary or amend this document as any options or revisions should be contained in the specific terms	Always – core document
Specification	Sets out the service specific requirements of the school against which the Providers will offer a fixed price	Always – core document - to be produced by the school for each procurement. May be more or less detailed depending upon the value and complexity of the services
Specification Appendix 1 - Safeguarding	Schools Safeguarding Policies	Optional – depending on the nature of the services
Confidentiality Undertaking	An undertaking that each organisation bidding for the services will keep certain information confidential	Optional – if your documents are going to include confidential information that you wish to specifically protect then this confidentiality undertaking must be signed by each organisation before they are sent/provided with the documents
Provider's Proposal	Supplied by the providers setting out their detailed proposals on how they will meet the requirements set out in the Specification and containing the information needed to evaluate their offer	Always – may be more or less detailed depending on the value and complexity of the services

Letters and minutes of meetings	Written evidence of any clarifications or amendments to Provider's Proposal, the price or the terms and conditions	Always confirm any oral agreements in writing and incorporate into your contract to ensure they are binding on your provider
Letter of award	Issued to the successful company, setting out the start date and requiring a formal contract to be entered into	Always – this letter can not be used for over EU procurements as a more detailed debrief is required

<b>Other documents provided which do not form part of contract</b>	
Letter to unsuccessful bidders	Issued to companies not awarded the contract This letter can not be used for over EU procurements as a more detailed debrief is required
Guidance Note and Checklist	For the assistance of maintained schools and their governing bodies only – not to be disclosed generally or provided to external contractors

## Specific Terms: How to complete them

The Specific Terms is the document where you need to add all the information relevant to your particular project and the document uses square brackets and yellow highlights to prompt you. There are also some options which need to be considered. If you are undertaking a quotation or tendering exercise then some but not all of this information should be included in the draft Specific Terms sent out to prospective Providers – other details, such as the Fee, will need to be included once agreed for the final agreement to be signed.

**[Square brackets] and highlighting are used in the precedent document to indicate where information needs to be considered and included. The [square brackets] and highlighting should then be deleted and should not appear in your signed off contracts.**

**Title of Contract** - include a brief title for the contract services.

**Date** – this should be written in once the contract has been signed by the Provider and the Governing Body.

**Providers' Details** - leave this blank at quotation/tendering stage and complete including the registered name and registered office or principal place of business of your Provider once known – make sure that the name is correct and included in full and that address is current. If the Provider is a company their registered office should be included – this can be checked via the Companies House website.

**School Details** – Every maintained school must have a governing body, which is a body corporate (s19 Education Act 2002). The governing body's broad powers are contained in paragraph 3 of Schedule 1 and include at paragraph 3(1) the power to enter into contracts. Therefore the party to this agreement must be the Governing Body and the School details – name and address – should be entered here.

**Contract Documents** – your agreement will be made up of the documents you list in the Specific Terms – this **must** include the Specific Terms **and** the General Terms and Conditions.

Your contract should also include:

- any quotation or tendering documents,
- a Specification or description of the services to be provided,
- any Provider's Proposal if received as part of a submission and it contains nothing which contradicts the terms and conditions or specification;
- and any other documents which include important information about how the service will be provided e.g. method statements, timetables, letters, minutes of meetings

**All contract documents must be attached to the Specific Terms before sending out for signature by the Provider.**

**Authorised Officer** – include full name, address, phone, email etc details of the officer who will be authorised by the Governing Body to give the Provider instructions.

**Service Description** - Include a fuller description of the Services to be provided.

**Fee** (excluding VAT) – leave this blank at quotation/tendering stage and complete including the total agreed Fee in figures and words when the agreed Fee is known.

**Indexation** – an optional clause 3.7 has been included which enables the Governing Body to agree an annual variation of the Fee. The options are:-

“3.7 will not apply” – no annual Fee variation. This is the suggested default position and should be chosen unless indexation provisions can be expressly justified;

“3.7(a) will apply” – this increases the Fee in line with any Governing Body budget increase

“3.7(b) will apply” – this increases the Fee in line with CPI indexation

“3.7 will be replaced with the following clause:-“ - this enables you to replace the whole of Clause 3.7 with an alternative annual Fee review. This option should only be included with the assistance of the Contracts Team.

## **Insurance**

- **Employers' Liability Insurance** – by law, an employer must have Employers' liability compulsory insurance for at least £5m. This covers the costs of compensation and legal fees for employees who are injured or made ill at work through the fault of the employer. Most insurers automatically provide cover of at least £10m and this is what it is suggested the Governing Body should require.
- **Public Liability Insurance** - covers the Provider for any damages that a member of the public may be awarded as a result of injury or damage to them or their property caused by their business. It also covers legal fees and other expenses to do with defending any claim. £5m minimum cover is usual and this should not be controversial. However, if absolutely pressed and if there is not anything that actually has any significant liability exposure and it would be disproportionately expensive to go to £5m the Governing Body could agree £2m – however this should be as a last resort.
- **Professional Indemnity Insurance** – if the contract concerns the Provider selling their knowledge or skills you may want to include a PI insurance requirement. This would cover compensation sought by the Governing Body if the Provider has made mistakes or is found to be negligent in some or all of the services provided. Most professionals such as architects, consultants, advertising and PR agencies carry PI cover. If there is a PI exposure to personal injury then arguably you should have the same limit as Public Liability (£5m). In practice though the cost of PI insurance is going to be much more expensive than PL. You should therefore consider carefully whether it is necessary and could drop to £2m minimum cover depending on the nature of the contract or whether there is any significant exposure.

**Liability – Clause 6.3** is an optional financial cap clause which limits the amount of the Provider's liability (excluding death and personal injury claims) to a maximum amount set out in the Specific Terms. You should always consider whether such a cap (often linked to the amount of insurance cover) should

be included. A cap should only be included where it offers value for money, as risk passes back to the Governing Body for sums over the cap. However, a financial cap on liability is often sought by bidders.

**Local Authority** – this is Southwark Council being the local authority with educational responsibility for the maintained school. In connection with a maintained school's delegated budget, any amount made available by the local authority to the governing body when spent by the governing body is taken as spent by the body as the authority's agent.

**London Living Wage – Clause 4.9:** Southwark Council is an accredited London Living Wage Employer and includes LLW provisions in our contracts where appropriate. The Governing Body is encouraged to include LLW provisions where appropriate.

**Monitoring** – 2 options are available:

- clause 5.4(a) provides that monitoring and reports should be in a format and timetable agreed at the Start Date.
- clause 5.4(b) provides that monitoring should be in accordance with the specific requirements identified in the Specific Terms.

**Payment Periods** – It is suggested that the standard payment period should be quarterly in arrears and the amount and date of each payment should be specified in the Specific Terms before they are signed – the percentage of the total Fee can be included if obtaining quotations/tenders. An alternative payment period, such as monthly, could be included here if appropriate – for example, because the term of the contract is quite short. Ideally payments should be made in equal instalments however the Provider may wish to negotiate larger initial payments to help with set up costs. This is fine as long as they are reasonable and not excessive. There may also be occasions where the Provider negotiates for payments in advance – this may be acceptable in limited circumstances – where set up costs may otherwise be prohibitive, for example. However, there are considerable risks associated with large upfront payments and these should not be agreed without prior discussion with the education team.

**Period of Appointment** – include either the end date (where the contract is for a fixed time) OR include “until completion of the Services” if the appointment is for an unspecified period of time.

**Providers' Representative** – leave this blank at quotation/tendering stage and complete with full details once the Provider is known.

**Safeguarding** – An optional Clause 4.7 requires the Provider to comply with Safeguarding provisions set out in Schedule One of the General Terms and Conditions and the Governing Body's Safeguarding Policies which are attached to the Contract. You will therefore need to consider whether these policies are relevant to your project and state whether clause 4.7 is applicable or not applicable in the Specific Terms. If they are applicable make sure that the policies are appended to your contract.

**School** – insert the name of the School

**Staff** – Clause 4.6 enables the Governing Body to require the Provider to stop a particular member of staff providing the Services. The period for removing and replacing a notified member of staff under this clause is to be inserted into the Specific Terms. The standard period to be included is 7 days but you should consider whether this is appropriate given the nature of your services.

**Start Date** – include an indicative start date at quotation/tender stage and include the agreed start date prior to signature.

**Timetable** – if there are any key stages in your project, or agreed milestones these should be included here.

**Signature** – check your Financial Scheme of Delegation to confirm who has authority to approve the award of the contract and who has authority to sign the contract on behalf of the Governing Body – these may not be the same.

# General Terms: Guide for Governors and School Commissioning

The General Terms and Conditions should not normally need to be amended or negotiated with your Provider. However, there may still be areas where the Governing Body and the Provider have different views on what should be included. One of the purposes of this note is to help explain some of those clauses or requirements and to help you to choose which optional clauses are appropriate.

## 1. Overall Aim

This clause sets out the parties joint commitment to high quality Services, continuous improvement and co-operation.

## 2. Provision of the Services – Your Obligations

This clause identifies the primary obligations of your Provider which is to provide the Services in accordance with the Agreement, the Governing Body's reasonable requests, relevant legislation, government best practice and Governing Body Rules (which are defined in the Specific Terms). Some specific legislation is also identified which must be complied with and the Provider must also help the Governing Body to comply with our statutory obligations, for example, under the Human Rights Act and the Modern Slavery Act.

**Clause 2.2** in particular reflects the Governing Body's concern that an organisation should be mindful not to do anything detrimental to your image or reputation, given that you are paying for the services provided.

**New: Clause 2.5 - Clause 2.6** reflect the general duty on the Governing Body to have "due regard to the need to prevent people from being drawn into terrorism" in the exercise of our functions – the "Prevent" duty in the Counter-Terrorism and Security Act 2015 (CTSA15). Southwark council is expected by Government, where appropriate, to ensure that the principles of this duty are written into new services contracts. To assist Governing Bodies in meeting this duty, similar clauses requiring external contractors to comply and be mindful of the Prevent Duty have been included in this contract.

The government has issued ["Guidance for specified authorities in England and Wales on the duty in the Counter-Terrorism and Security Act 2015 to have due regard to the need to prevent people from being drawn into terrorism"](#) under s29 CTSA15. The Governing Body must have regard to that guidance and its aim is assist the Governing Body in deciding what the Prevent duty means in practice. It identifies best practice and describes ways in which we can comply with the duty. It includes sources of further advice and provides information on how compliance with the duty will be monitored.

## 3. Payment and Invoicing

The amount of the Fee, the Payment Periods and whether payments are in arrears or in advance must be set out in the Specific Terms (see above). These clauses require the Provider to give the Governing Body an invoice when payment is due and the Governing Body must pay within 28 days of receipt.

**Deductions** – money can only be deducted from an invoice and not paid if the Governing Body follows the process set out in this clause. You must notify the Provider as soon as you become aware of a problem and give them a reasonable time to put it right. Only if the problem remains outstanding can the Governing Body then refuse a payment in respect of those services and provide written reasons. If the Provider disagrees with this they can start internal mediation provisions.

**Interest** – the Provider can claim interest on late payments at 4%. If this rate were not included a higher statutory rate would apply.

**VAT** – the Fee in the Specific Terms is stated as excluding VAT, it is for each individual Provider to decide whether they do or do not charge VAT.

If a variation or extension is agreed between the Governing Body and the Provider any additional Fee or applicable hourly rates must also be agreed and set out in writing.

**Annual Fee Increase** – this is an optional clause where the Governing Body may agree to an annual variation of the Fee. The options are:-

“3.7 will not apply” – no annual Fee variation. This should be the usual position because your provider should be able to take a view on cost rises during your contract period and provide the Governing Body with a fixed price. Over longer periods providers should be expected to build in efficiencies to compensate for no indexation allowance;

“3.7(a) will apply” – this increases the Fee in line with any Governing Body budget increase;

“3.7(b) will apply” – this increases or decreases the Fee in line with CPI indexation. Indexation provisions should only be included where absolutely necessary and before including this provision you must be aware that it is a contractual obligation, so the Governing Body will be bound to pay the revised amount and this would therefore need to be taken into account when considering your budget for the project;

“3.7 will be replaced with the following clause:-“ - this enables you to replace the whole of Clause 3.7 with an alternative annual Fee review. This option should only be included with the assistance of the Contracts Team.

#### **4. Staff**

The Provider must appoint a representative (identified in the Specific Terms) who is authorised to act on their behalf for your contract and any replacement must have equivalent experience and qualifications.

There must be sufficient staff and supervisors and the Provider must try to ensure that those staff are honest, reference checked etc. Where specific staff have been identified by the Provider in their quotation or tender you should be notified of any replacements who should have equivalent experience and qualifications. Where appropriate DBS checks and any other statutory checks will be required to ensure the staff are suitable to provide the Services. Any concerns about suitability must be discussed with the Authorised Officer. All staffing provisions can apply where appropriate to volunteers (see definition in Specific Terms).

**Removal of staff** (clause 4.6) – it is a standard provision in Southwark Council contracts that where the Council has reasonable concerns regarding a person providing services it can request that person no longer provide those services. This provision is included here but it often causes concern with Providers. The clause does not mean (as is commonly misinterpreted) that this person is sacked, only that they are no longer used to provide the services under this agreement for the Governing Body. Were the Governing Body to have serious concerns and not include this provision, you might be forced to terminate the entire contract instead. The standard period for requiring a member of staff to be removed from providing the services is 7 days, but if this is not appropriate due to the nature of your contract this may be amended in the Specific Terms, for example, where there is likely to be a direct relationship with pupils a shorter time period or immediate removal may be more appropriate.

An optional clause 4.7 has been included regarding safeguarding provisions set out in Schedule 1. You must consider whether these provisions are relevant or necessary to the subject matter of your contract and if they are make sure to indicate this in the Specific Terms and also include the Governing Body's Safeguarding documents with the contract. This clause also now specifically refers to the Prevent Duty obligations.

**Clause 4.8** is a “no poaching” clause which applies to both the Governing Body and the Provider and requires the other party's consent before any employment offers are made to the others staff for 12 months after the end of the contract. This does not apply however, if the employment offer is made as a result of an openly advertised recruitment process.

**Clause 4.9 London Living Wage:** Southwark Council is an officially accredited London Living Wage Employer and aims to include LLW provisions in all appropriate service contracts. The council therefore strongly encourages the Governing Body to include London Living Wage provisions where this is considered appropriate on a case by case basis. More information is available [Home | Living Wage](#).

## 5. Information

A number of different types of information provisions are included here under separate headings – including the information which the Governing Body will provide, the final report from the Provider, a mutual confidential information provision, co-operation, complaints handling and publicity. Plus:

**Monitoring** – there are two monitoring options and the right one for your contracts should be set out in the Specific Terms. Either you and the Provider agree the format and timetable for monitoring at the start of the contract OR the monitoring must be done in accordance with specific requirements already known which are then detailed in the Specific Terms and attached to the contract.

**Inspection** – there are a number of bodies such as the auditors, the Council or the Local Government Ombudsman who may wish to obtain information or inspect documents relating to your contract. The Provider is required to assist and provide access to documents.

**Copyright** – all copyright and intellectual property rights in work created by the Provider under your contract remains their property. However, the Governing Body, the Council or a third party has a licence to use it for business that is reasonably related to the Services. However, if your contract is specifically a design contract then you should contact the Contracts Team for advice in amending this clause to provide for the intellectual property rights to transfer to the Governing Body.

**Data Protection** – these data protection clauses have been updated to reflect the requirements of the General Data Protection Regulations from 25 May 2018 and should only be used where the DPA risk has been assessed as low/medium – unlikely that any personal data will be accessed or processed by the provider. However, if your initial review of the services required indicates a higher level of risk, then advice must be sought from the contracts team. Annex A should be completed as appropriate.

**Information Requests** – the Governing Body and the Council are obliged to respond to requests for information under a number of different pieces of legislation. The Provider is required to help the Governing Body and the Council to respond promptly to those requests. It is the organisation receiving the request who ultimately decides whether the information must be disclosed, although a Provider should have their views taken into account.

## 6. Insurance, Indemnity and Liability

The Provider must have insurance to cover their potential liability under the Contract – the minimum levels are set out in the Specific Terms and an explanation of the different types of insurance which may be required is set out in the Guide to the Specific Terms.

The Provider will be liable for claims for death, personal injury, loss of or damage to property and other expenses caused by their actions or negligence in providing the Services.

**Clause 6.3** is an optional financial cap clause which limits the amount of the Provider's liability (excluding death and personal injury claims) to a maximum amount set out in the Specific Terms. You should always consider whether such a cap (often linked to the amount of insurance cover) should be included. A cap should only be included where it offers value for money, as risk passes back to the Governing Body for sums over the cap. However, a financial cap on liability is often sought by bidders. You should take into account the nature of the services being provided and the likely financial impact of a serious breach by the Provider to ensure any cap is at a sufficient level to cover any costs incurred by the Governing Body.

## 7. Dispute Resolution

Any disputes should follow the process set out in this clause of initial internal discussions escalating from the Authorised Officer and the Providers Representative to senior managers and members of the Governing Body. Either party may then refer the dispute to an external organisation – the [Centre for Effective Dispute Resolution \(CEDR\)](#). Although this will incur a cost, mediation is a cheaper option than litigation as is often required as a first stage by the Courts.



Although this contract should not be used for construction related services, in the event that your contract is construed to be a “construction contract” then any adjudication of a dispute will follow the TeCSA Adjudication rules.

## **8. Termination**

Your Agreement will end on the completion of the Period of Appointment set out in the Specific Terms unless both parties have agreed to an extension.

If the contract (or part of it) is to be terminated early there are 3 ways this can happen:-

- If the Provider is seriously failing to deliver the Services or materially (seriously) breaching the Agreement or the Governing Body has persistently failed to comply with your payment obligations and this has been discussed, either party can give one months written notice of termination.
- If the Provider becomes bankrupt, makes any fraudulent claims or an employee breaches the rules on gifts/inducements etc, then you can immediately terminate the Agreement by written notice.
- The Governing Body can terminate all or part of the Agreement by giving 3 months written notice to the Provider. As this contract was created for low value, low risk and probably short term arrangements it was felt that a 3 month period would be appropriate

If the contract is terminated by 3 months notice, the Provider may claim winding down costs from the Governing Body. The costs have to be direct, reasonable and evidenced and they are also under a duty to mitigate those costs.

## **9. Miscellaneous Provisions**

This includes a number of provisions under separate headings dealing with some of the administrative/legal issues such as governing law and delivering notices.

Sub-contracting is allowed with the written agreement of the Governing Body, which will not be unreasonably withheld.

**Clause 9.7** The Local Authority may enforce this agreement under the Contracts (Rights of Third Parties) Act 1999.

## **Quotation Process**

Southwark Council's Contract Standing Orders require contracts between £5,000 and £75,000 to be awarded following a quotation exercise. This means that a number of organisations are invited to submit a Quotation setting out their price, plus submit a brief proposal demonstrating the quality of their service provision. All the quotations received are then evaluated and the successful provider will then be awarded the contract by letter.

## **Documents**

### **Specific Terms**

These will be submitted to the bidders as a draft containing as much of the specific contractual details for your project as is known or proposed at this stage. It should set out the payment stages, proposed contract period, levels of insurance required, any key milestones and the Governing Body's named contact. The Governing Body must finalise the Specific Terms with the successful Provider before the contract is awarded and they will form part of the signed contract. You should make sure that the Provider's Quotation does not include their own terms and conditions either by reference or on the back.

In addition to the core documents (General Terms, Specific Terms and Specification) you will need to issue to the bidders:

- **Letter Inviting Quotations**

This sets out when and how the quotations should be submitted and what other information might need to be provided. You will need to add information highlighted in yellow and consider in particular:

- Whether you require additional information to that already listed
- What percentage split is appropriate for price and quality
- Whether there are specific evaluation criteria you wish to add

## Tender Process

Southwark Council's Contract Standing Orders require contracts over £75,000 to be awarded following a tendering exercise. This means that a number of organisations are invited to complete a Form of Tender setting out their bid price, plus submit a Providers' Proposal demonstrating the quality of their service provision. All the tenders received are then evaluated by a panel using pre-agreed criteria of cost and quality, interviews may be held and the bid which scores most highly will then be awarded the contract by letter.

### **Documents**

In addition to the core documents - General Terms, draft Specific Terms (see above) and Specification - you will need to issue to the bidders:

- **Tender Invitation and Instructions**

This document sets out all the information the tenderers need to submit their tender, for example, what information you have to provide and when and where it should be sent etc. You will need to add information highlighted in yellow and consider in particular:

- Whether you require additional information to that already listed
- What percentage split is appropriate for price and quality
- An example table of quality award criteria, sub-criteria and weightings has been included. You will need to review this and consider what is appropriate for your specific project.
- Complete the indicative tendering timetable

- **Form of Tender**

This document is to be completed by each Tenderer with their fixed Tender price. It also contains a number of anti-collusion and anti-corruption statements which the Tenderers must agree to.