

Article 24 - CONTRACT STANDING ORDERS

(Approved at Policy & Resources Committee 15th January 2013)

(Amended 6th January 2014 to reflect new EU thresholds)

1 INTRODUCTION

- 1.1 These Contract Standing orders aim to explain in simple terms the procedures for obtaining written quotations and competitive tenders from suppliers for the provision of Authority works, goods and services.
- 1.2 The Authority's Constitution incorporates Financial Regulations and Financial Procedure Rules that provide a framework for managing the Authority's financial affairs. They apply to every Member and Officer of the Authority and anyone acting on its behalf.
- 1.3 The Contract Standing Orders should be read in conjunction with both the Financial Regulations and the Scheme of Delegation which is also found in the Constitution.

2 HOW THE AUTHORITY BUYS

- 2.1 The appropriate procedure to be followed is based upon the total estimated value of the contract (please note that the total value of the contract means the value of the contract over the total number of years it will remain in force – not just the initial purchase cost) :

FOR ALL GOODS, SERVICES AND WORKS

- **Under £5,999:** Works, good and services (with the exception of public utility services ie gas, electric, and periodical payments) maybe procured using an official order. Officers are responsible for ensuring that value for money is achieved.
- **Between £6,000 and £29,999:** At least two written quotations must be sought and obtained.

FOR GOODS & SERVICES

- **Between £30,000 and £99,999:** For goods and services, procurement involvement is required, and the Request for Quotation procedure must be followed.
- **Between £100,000 and** For goods and services, procurement involvement is required, and a Tendering

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| £172,513: | procedure must be followed. |
| <ul style="list-style-type: none"> • Over £172,514 (€200,000): | For <u>goods</u> and <u>services</u> , EU Procurement Regulations must be complied with. |
| FOR WORKS | |
| <ul style="list-style-type: none"> • Between £29,999 and £499,999 | For <u>works</u> , procurement involvement is required and a Request for Quotation procedure must be followed. |
| <ul style="list-style-type: none"> • Between £500,000 and £4,322,011 | For <u>works</u> , procurement involvement is required, and a Tendering procedure must be followed. |
| <ul style="list-style-type: none"> • Over £4,322,012 (€5,000,000) | For <u>works</u> , EU Procurement Regulations must be complied with. |

2.2 The Request for Quotation procedure will utilise market intelligence or suppliers registered on the e-tendering system to seek competitive bids for goods, services and works. The Tendering procedure will necessitate an advertisement to be published on the e-tendering system, to invite expressions of interest from interested parties before the submission of competitive bids for goods, services and works.

2.3 No Request for Quotation or Tendering procedure need to be obtained in respect of:

- Contracts for the purchase of goods in respect of which tenders have been obtained from a purchasing consortium or other recognised Government agency (such as The Consortium).
- Contracts for the supply of goods which CLG have specified as the type of goods which should be used for a particular purpose and only one supplier of such goods exists.
- Contracts for the supply of goods or services the price of which is fixed by a trade organisation or government department and no reasonably suitable alternative is available.
- There is no genuine competition for the goods, works or services being procured. Examples of this would include a requirement to utilise the services of suppliers such as United Utilities, Criminal Records Bureau, OFCOM and EdExcel.
- A contract for the engagement of counsel

COMPLIANCE WITH CONTRACT STANDING ORDERS

Every contract made by the Authority or on its behalf shall comply with the EU Treaty and all relevant EU and domestic legislation, these Contract Standing Orders, Financial Regulations and the Scheme of Delegation. In particular the Authority shall comply with the fundamental principle of equality of treatment of contractors.

It shall be a condition of any contract between the Authority and anyone who is not an officer of the Authority, but who is authorised to carry out any of the Authority's contracts functions, that they comply with these Contract Standing Orders and the Financial Regulations of the Authority as if they were an officer of the Authority.

Every contract must be authorised, and signed by the Director of Legal Services or their nominated Deputy, as outlined in the Scheme of Delegation.

3 *EXEMPTIONS TO THE CONTRACT PROCEDURES*

- 3.1 The Budget Holder must obtain approval to apply **ANY** exemption to the contract procedures outlined above, with a report identifying the reasons justifying the exemption.
- 3.2 Exemptions to the contract procedures are permitted where it can be proven that it is inefficient or uneconomic to comply with the above requirements. Examples are detailed below:
 - The goods, works or services are of a specialised nature carried out by only one firm with no reasonably satisfactory alternatives available.
 - The procurement involves the purchase of proprietary or patented goods or services obtainable from one firm; are sold at a fixed price and no reasonably satisfactory alternative is available.
 - The goods, works or services constitute an extension of an existing contract which is allowed within the contract terms, or the goods/materials, works or services consist of repairs to, or the supply of parts for, existing proprietary plant or equipment.
 - That new works or services are required which are a repetition of works or services carried out under an original contract.
 - That goods are required as a partial replacement for, or addition to, existing goods or installations and obtaining them from another source would result in issues with compatibility or disproportionate technical difficulties in operation or maintenance.
 - Tenders are invited on behalf of any consortium or collaboration, of which MFRS is a member, in accordance with any method adopted by that body. Where however, an MFRS officer invites

tenders on behalf of the consortium the receipt, opening and acceptance of tenders must comply with the MFRS Financial Regulations and Financial Procedure Rules or any overriding National or European Union legislation.

- The goods, works or services are of a sensitive nature (such as security) where publication of the tender documents would constitute a security breach and undermine the effectiveness of the final product.

No exemptions will be granted which would result in a breach of European or domestic law.

- 3.3 For procurement projects under £172,514 for Goods and Services and £4,322,012 for Works, the Head of Procurement or their nominated deputy, and a Director must approve any exemption, prior to any commitment being given by the Authority to any supplier. The Chief Fire Officer will keep a register of exemptions granted detailing the nature and value of the contract, the circumstances justifying the exemption and the name of the contractor awarded the contract.

4. *ADVERTISING OF CONTRACTS*

- 4.1 All contracts with a total value that exceeds EU procurement thresholds must be awarded in accordance with EU Procurement Rules relating to public authorities. Thresholds from 01.01.14 are as follows:

Supplies	Services	Works
£172,514	£172,514	£4,322,012

Works to be procured above these limits must be advertised in the OJEU (Official Journal of the European Union), with the exception of some services. Please see <http://www.ojec.com> for more detailed information.

5 *PRE QUOTATION/TENDER REQUIREMENTS*

- 5.1 Enquiries of contractors may be made before tender or quotations are invited in order to :
- a) Establish whether the goods, works or services that the Authority wish to purchase are available, and within what price range
 - b) Establish whether particular contractors wish to be invited to submit a quotation or tender, should the procurement progress

In making enquiries :

- a) No information shall be disclosed to one contractor which is not then disclosed to all those of which enquiries are made, or which are subsequently invited to tender or quote
- b) No contractor shall be led to believe that the information they offer will necessarily lead them to be invited to tender or quote, or awarded a contract
- c) A written record, including notes or any meetings held, the responses and the names of all individuals present shall be kept on the contract file.

5.2 Before obtaining quotations or tenders for a contract estimated at a value of £30,000 or more, a detailed output specification must be prepared by the project manager/budget holder. The specification is a description of the services, supplies or works that the Authority wants and what the supplier/contractor is expected to quote/tender against and provide.

It will incorporate performance targets or criteria for acceptance of the services, supplies or works and be included in the request for quotation/invitation to tender documentation. It must be agreed with the supplier awarded the contract and form the major part of the formal contract agreed between the Authority and the supplier.

6 *E-TENDERING*

GOODS AND SERVICES

- 6.1 If a company wishes to be considered as a potential supplier to the Authority it can register on the North West Authorities e-tendering portal (www.supply4nwfire.org.uk) at no cost to the company.
- 6.2 If the company is asked to submit a quotation or tender, they will be asked to provide sufficient information for MFRS officers to conduct an assessment on their capacity to undertake the work on behalf of the Authority.

WORKS

- 6.3 The Authority will utilise the Constructionline Approved Contractors database as a pre-qualification criteria for Works projects.

7 HOW THE REQUEST FOR QUOTATION PROCESS WORKS

- 7.1 The request for quotation procedure can be used for all contracts other than :
- a) a contract for the engagement of counsel
 - b) a contract which constitutes a call off under a framework agreement (but not the framework agreement itself)

A shortlist of suppliers is drawn up, using companies registered on the e-tendering portal and/or appropriate market intelligence. These suppliers are then asked to complete a priced submission for evaluation.

- 7.2 Three responses must be received to ensure that a Best Value evaluation can take place. In the event that three responses are not received, an application for an exemption of contract procedures must be completed and approved before contract award.

8. HOW THE TENDERING PROCESS WORKS

- 8.1 All tendering requirements must be advertised to ensure that the process is competitive and secures good value for money. There are two main methods of tendering through advertisement utilising the e-tendering portal -

- Open Competitive Tendering - This is a one-stage process, where all interested providers responding to an advertisement may submit a tender. The contract notice will be advertised on www.supply4nwfire.org.uk as well as on Business Links 'Contracts Finder'. The advertisement will state how interested parties may obtain tender documents and the last date that tenders must be received. Whilst this method ensures absolute fairness, because no contractor is excluded from the process, there is a significant risk that the number of responses received will be either insufficient or excessive. It may also be difficult to

accommodate an adequate financial and technical appraisal within the time constraints of the tendering process.

- Restricted Tendering (utilising a Pre Qualification Questionnaire or Constructionline) - This is a two-stage process in which potential contractors expressing an interest in bidding for a specific contract are evaluated first. If a Pre Qualification Questionnaire is used, the contract notice will be advertised on www.supply4nwfire.org.uk as well as on Business Links 'Contracts Finder'. The advertisement will state how interested parties can obtain a Pre Qualification Questionnaire (PQQ) and the last date completed PQQ's must be received. A shortlist is then drawn up from the evaluation exercise for the sole purpose of inviting bids.

8.2 Three responses must be received to ensure that a Best Value evaluation can take place. In the event that three responses are not received, an application for an exemption of contract procedures must be completed and approved before contract award.

9 NEGOTIATION

9.1 Negotiation of Quotations/Tenders must only take place when the Request for Quotation/Invitation to Tender documents state that a negotiated procedure will be used, and that the Authority reserves the right to enter into post tender negotiations on any aspect of the Quotation/Tender.

9.2 Any discussion with a contractor to discuss their submission, should:

- **Be undertaken only by the Head of Procurement or their deputy in the presence of at least one officer from another department, not involved in the procurement project (the independent observer).**
- **All negotiation must be conducted in a manner which provides and maintains the highest levels of probity.**
- **A written record of all discussions and negotiation is maintained by the Head of Procurement, and verified by the independent observer.**
- **At the conclusion of negotiations each contractor who has provided a quotation must be invited to submit a best and final quotation/tender.**

10 INVITATION AND SUBMISSION

10.1 Instructions must be issued to those companies invited to submit a quotation or a tender, asking them to complete and return the required documents by a specified date and time. These documents will usually contain the following information:

- Letter of invitation and instructions about the process;
- Form of tender;
- Specification and/or schedule of rates;
- Contract conditions or conditions of purchase;
- Any relevant supporting information (maps etc);
- A pre-addressed return envelope;
- Where bids are to be evaluated on the basis of Quality and Price, the tender documentation must also specify the criteria for evaluation.

***Note:** Procurement are responsible for making arrangements to receipt, store and open tender documents.*

10.2 Both tenders and quotations **MUST** be returned by the date and time specified. Late tenders and quotations must be opened and witnessed after the contract has been awarded and returned to the tenderer/supplier. This is to ensure a fair process. All tender documents are opened at the same time, in the presence of a representative from the budget holders department, Finance and Procurement at an appropriate level commensurate with the importance of the quote/tender.

In the case of paper based Quotations and Tenders must be submitted in the pre-addressed return envelope provided. On receipt, these envelopes will be date stamped, grouped in order of receipt and retained unopened until the deadline. Save for bearing the words 'Tender' or 'Quotation', as appropriate, and the title of the works, goods or services being supplied, the return envelopes should not bear any distinguishing marks intended to indicate the identity of the sender. Firms must be informed that their bids will only be considered if these rules are followed. An example is included below:

TENDER/QUOTATION FOR: Supply and maintenance of photocopiers
CLOSING DATE: 16.00 hours on Monday 01 November, 2006

In the case of an e-tendering submission an electronic file must be delivered to the designated e-tendering system by bidders prior to the stated closing date and time.

- 10.3 It is important that firms are given sufficient time to adequately research and compile their bids. This includes enough time to seek accurate estimates from their subcontractors. The Authority's minimum time for the return of priced tenders is 14 days from date of issue, although best practice suggests that at least 21 days should be allowed.
- 10.4 The specified time to submit tenders/quotations may be extended in exceptional circumstances provided that all suppliers involved in the process are notified of the revised date and time and no potential supplier is disadvantaged by the deadline extension.
- 10.5 Paper based sealed bids will be held securely in the Procurement department until the specified date and time for opening. E-tendering submissions will be held on the system until the specified opening time.

11. *OPENING OF TENDERS*

- 11.1 On the date of the designated deadline for submission of tenders or quotations, the Procurement department will co-ordinate the collection of envelopes ready for opening. Checks will be made to ensure no envelopes are held at reception or in 'alternative' mailboxes so no valid quote or tender is omitted in error. Where e-tendering is utilised, all submissions will be retained in a virtual 'locked box' until the designated opening time.
- 11.2 All tenders must be opened in the presence of representatives from the budget holders department, Finance and Procurement. An officer from Procurement will facilitate the tender opening procedure and a written record indicating the name of the supplier and the value of the tender must be completed and signed by the officers opening the submitted bids

12. *EVALUATION OF TENDERS AND QUOTATIONS*

- 12.1 An evaluation must be made of tenders submitted, comparing the tender sum against the estimate for the works, goods or services prepared in advance of the firms being invited to tender/quote. Where errors or discrepancies are found that may affect the tender sum, the tenderer may be notified and afforded an opportunity to confirm the submitted sum without amendment, amend their bid to correct an arithmetical error, or withdraw their bid. A written record of any revisions or withdrawals must be maintained.
- 12.2 The Authority evaluate and award contracts to the Supplier it considers offers the best value for money having regard to both price and quality factors. This is sometimes referred to as the 'most economically

advantageous tender' (MEAT) and provides for the contract to be awarded to the company best able to meet the Authority's specification.

12.3 To ensure fairness the quality criteria (or award criteria) and evaluation method must be clearly defined in the tender documentation. Award criteria will vary depending on the type of contract. Some examples of criteria included are:

- Technical suitability
- Financial viability and stability
- Quality systems
- Customer care and after sales service
- Experience and past performance
- Aesthetic and functional characteristics
- Delivery date and other management factors
- Commitment to Equality & Diversity and Sustainability

Where the lowest tenders are for £100,000 or more the Responsible Officer shall obtain the following information in respect of the lowest 2 tenders :

- The Authority's internal financial appraisal of the lowest 2 tenders
- An independent financial appraisal supplied by a business information service

13. POST TENDER/QUOTATION CLARIFICATION/NEGOTIATION

13.1 After the receipt of tenders, officers may need to contact tenderers to clarify technical and contractual information as part of the evaluation process. Any such communication must be confidential and a written record made of the reason for contact and the decision made.

13.2 Any negotiation with a contractor to discuss the pricing submitted should:

- Be undertaken only by the Head of Procurement or their nominated deputy in the presence of at least one officer who isn't involved in the project (the Independent Observer). All negotiations must be conducted in a manner which provides equal opportunity for all contractors who have provided quotes and which maintains the highest levels of probity.
- At the conclusion of negotiations each contractor must be invited to submit a best and final price.

14 CONTRACT AWARD – TENDERS AND QUOTATIONS

14.1 The successful contractor should be notified promptly following acceptance of the tender, and the contract must be issued for signature by the Supplier. On receipt, the Authority will sign the contract to form the legally binding agreement. Authorised signatories are the Director of Legal Services and their nominated deputy.

All unsuccessful tenderers should also be notified promptly in writing.

14.2 All submissions and supporting documentation should be retained for seven years by the Procurement department, before being destroyed.

15 *CORRUPT PRACTICES*

15.1 In every written contract a clause must be inserted to ensure that the Authority is entitled to terminate the contract and recover from the contractor the amount of any loss resulting from such termination, if the contractor has offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or not doing anything related to the contract or any other contract with the Authority or for favouring or not favouring any person in relation to such contract, or similar acts have been done by any person employed by the contractor or acting on their behalf, or the contractor or any person employed by them or acting on their behalf has committed any offence under the Bribery Act (2010) or any amendment of them or shall have given any fee or reward, the receipt of which is an offence under the local Government Act 1972.

16 *THIRD PARTIES*

16.1 In cases where a third party, such as a local authority or private architect or consultant, is employed to act for the Authority in the carrying out of works or purchase of supplies, it shall be a term of their appointment that they shall:

- Observe or otherwise secure the observance of the procedures prescribed within these Standing Orders.
- Produce on demand, all records maintained by them in relation to the contract; and
- On completion of a contract, transmit all such records to the Chief Fire Officers or the Treasurer.

17 *ASSIGNMENT*

17.1 In every written contract for the execution of work or the supply of goods or services the contractor shall be prohibited from transferring or

assigning or novating directly or indirectly to any person or persons whatever, any portion of his contract without the written permission of the Authority. Sub-letting, other than that which may be customary in the trade concerned, shall be prohibited.

18 SEALED CONTRACTS

- 18.1 All contracts and orders shall be in writing and made in the name of the Authority.
- 18.2 All contracts which relate to the purchase of land, or have potential long term liabilities and would benefit from the added legal protection afforded by the process of sealing shall be made by affixing the Common Seal. This shall only be attested by the Clerk to the Authority.

19 TERM OF CONTRACT

- 19.1 The term of a contract may be extended with the approval of the budget holder if there is provision within the contract terms and conditions to extend and the agreement of the Treasurer has been received with regards to budgetary provision. If the contract has already been extended to the full extent within the provisions of the existing contract, it cannot be extended further.
- 19.2 If there is no provision within the contract terms and conditions for the contract to be extended the approval of the Clerk to the Authority, and the Treasurer must be sought to any proposed extension of the term of the contract, and a record kept of the reasons.
- 19.3 The contract term cannot be extended where this would result in the value of the contract exceeding the European procurement threshold.

20. EU PROCUREMENT RULES

- 20.1 Where the estimated total value of a contract exceeds the figures below the procurement must be conducted in accordance with the appropriate EU Procurement Rules and the appropriate UK guidelines. The application of the EU Procurement Rules and the appropriate UK guidelines cannot be waived by the Authority.

Supplies	Services	Works
£172,514	£172,514	£4,322,012

Use of the Negotiated, Accelerated and Urgency procedures under the EU Procurement Rules must be documented and agreed with the Head of Procurement before any procedure commences.

20.2 *OPEN PROCEDURE*

20.2.1 The Procurement department will publicise the Authority's intention to seek offers in relation to the contract by send a notice to OJEU.

20.2.2 Any supplier can express an interest in the opportunity by responding to the notice, and submitting a tender.

20.3 RESTRICTED PROCEDURE

20.3.1 The restricted procedure is whereby tenders are selected from a restricted group using the following procedures.

20.3.2 The Procurement department will publicise the Authority's intention to seek officers in relation to the contract by advertising in the OJEU a notice inviting requests to be selected to tender.

20.4 NEGOTIATED PROCEDURE

20.4.1 The negotiated procedure may be used in limited circumstances and only where the competitive dialogue procedure is inappropriate.

20.4.2 The Procurement department will publicise the Authority's intention to seek bids in relation to the contract by advertising in the OJEU a notice inviting requests to be selected to negotiate

20.4.3 In certain limited circumstances the negotiated procedure may be used without prior publication of a contract notice. In those circumstances, an exemption will be required.

20.5 COMPETITIVE DIALOGUE PROCEDURE

20.5.1 The competitive dialogue procedure is to be used where the Authority wishes to award a particularly complex contract and the open or restricted procedure will not allow the award of that contract.

20.5.2 A particularly complex contract mean a contract where it is not possible to define the technical means capable of satisfying the Authority's needs or objectives or to objectively specify the legal or financial make up or a project or both.

- 20.5.3 The Procurement department will publicise the Authority's intention to seek offers in relation to the contract by advertising in the OJEU a notice inviting requests to be selected to participate.
- 20.5.4 Invitations must be sent simultaneously to each economic operator selected to participate in the dialogue.
- 20.5.5 The Authority may provide for the competitive dialogue procedure to take place in successive stages by applying the award criteria in the contract notice. The Procurement department will ensure that the number of contractors invited to participate in the final stage is sufficient to ensure genuine competition.
- 20.5.6 The Authority may continue competitive dialogue until one more solutions have been identified.
- 20.5.7 When each dialogue has been concluded, each participant must submit a final tender containing all elements required and necessary for performance of the project.