

**AGENDA ITEM:**

<b>REPORT TO:</b>	<b>MERSEYSIDE FIRE &amp; RESCUE AUTHORITY MEETING</b>
<b>DATE:</b>	<b>18<sup>TH</sup> MARCH 2010</b>
<b>REPORT NO.</b>	<b>CFO/034/10</b>
<b>REPORTING OFFICER:</b>	<b>CLERK TO THE AUTHORITY</b>
<b>CONTACT OFFICER:</b>	<b>SARAH BOURNE, DEPUTY CLERK TO THE AUTHORITY. EXTN. 4122</b>
<b>OFFICERS CONSULTED:</b>	
<b>SUBJECT:</b>	<b>AMENDMENTS TO THE CONTRACT STANDING ORDERS</b>

**APPENDIX A TITLE: DRAFT CONTRACT STANDING ORDERS**

**ATTACHED – HARD COPY**

**\*A Glossary of Terms has been provided at the end of this Report for your reference.**

Purpose of Report

1. To inform the Authority of the new Public Contracts (Amendment) Regulations 2009 (The New Regulations) which impose new debriefing and notification requirements to unsuccessful tenderers on public authorities; where the contract value exceeds specified thresholds; and to recommend changes to current Contract Standing Orders (CSOs) as a consequence of those changes and other matters.

Recommendation

2. That the Authority approve the revised Contract Standing Orders attached as Appendix A which:-
  - (a) Incorporate provisions as to notification and debriefing unsuccessful tenderers in line with the New Regulations.
  - (b) Amend references to the thresholds for EU contracts to reflect the updated threshold and figures.

- (c) amend CSO's to reflect the new structure and delete all references to the Executive Director of Law and HR and substitute with references to the Director of Legal Services.

## Introduction & Background

### The New Regulations

3. The New Regulations introduce an explicit obligation on Authorities to notify contractors when they are eliminated from a procurement exercise at any point before the contract award decision. In practice the Director of Procurement will always notify those who have been unsuccessful at various stages of procurement and therefore this should not impose additional burden but the duty should be stated in the CSO's to acknowledge the new requirement. (See Appendix A CSO 15.9)
4. The substantial changes in the New Regulations are in respect of debriefing unsuccessful tenderers. The 'Alcatel' or standstill letter sent to unsuccessful tenderers at contract award has been mandatory since the 2006 Regulations came into force. The provisions with regards to the standstill letter have been renewed and updated. The purpose of a standstill letter is to give unsuccessful contractors an opportunity to challenge the Authority's decision to award the contract to a particular tenderer before that contract has been entered into.
5. The standstill letter must now contain more information. It must contain the award criteria used to select the winning bid, the score obtained by the unsuccessful bidder, the score obtained by the winning bidder and the reasons for the decision including the characteristics and relative advantages of the successful tender. (See Appendix A, CSO 20.1(a))
6. The letter must also contain either the precise date when the standstill is expected to end and, if relevant, how that ending may be affected by any, and if so what, contingencies. OGC guidance has given an example that such contingencies may include explaining in the letter that the standstill period may be different for unsuccessful tenderers depending on the mode of communication of the notice (10 days from sending by fax or email and 15 days from sending by other means or 10 days from actual receipt by the recipient, whichever is the shorter). Alternatively the letter may state the date before which the Authority will not enter into the contract. (See Appendix A, CSO 20.1(a))
7. The requirement in The 2006 Regulations on replying to requests for feedback within 15 days from receipt of a written request remains, but only to the extent that the information has not already been given in the standstill letter.

### Thresholds

8. The thresholds for EU contracts have been amended and therefore should be substituted in the CSO's. The new thresholds are £156,442 for goods and services and £3,927,260 for works.

## Restructure

9. There are a number of references in the CSO's to the Executive Director of Law and HR. In view of the re-structure the CSO's have been amended to change this reference to 'Director of Legal Services'.

## Equality & Diversity Implications

10. There are no equality and diversity Implications arising directly from this report.

## Financial Implications & Value for Money

11. There are no financial implications arising directly out of this report.

## Health & Safety and Environmental Implications

12. There are no health and safety or environmental implications arising directly out of this report.

## Contribution to Achieving the Vision:

“To Make Merseyside a Safer, Stronger, Healthier Community”

13. Updating and application of updated Contract Standing Orders will assist in enabling procurements of premises, vehicles and goods being undertaken within the current legal framework, which are required by the Authority to enable it to achieve its vision.

## **Glossary of Terms**

CSO            Contract Standing Orders

The New Regulations – The Public Contracts (Amendment) Regulations 2009

The 2006 Regulations – The Public Contract Regulations 2006

## **BACKGROUND PAPERS**

The Public Contracts (Amendment) Regulations 2009

The Public Contract Regulations 2006

Implementation of the Remedies Directive: OGC

Guidance on the 2009 Amending Regulations.