

**DRAFT
CONTRACT
STANDING ORDERS
2009/10**

CONTRACT STANDING ORDERS

GENERAL

Interpretation

1.1. In these Contract Standing Orders and Codes of Practice, the following terms have the following meanings:-

Authority Approved List	A list drawn up for use under CSO7
Chief Officer	The Chief Fire Officer
Clerk	Director of Legal Services
CSO.	Contract Standing Order
Committee	Any Committee or Sub Committee of the Authority
Contract	Any agreement for the supply of goods, materials or services, the execution of works and the awarding of concessions
Contract File	A record of all matters relating to a contract
Contractor	A supplier of goods, materials, works, services or concessions to the Authority
Departmental List	A list drawn up for the use of a Department under CSO8
Director of Finance	Executive Director of Finance, ICT & Procurement
Disposal	The divestment of Authority ownership in any asset
EU Contract	A contract to which the Public Contracts Regulations 2006 (as amended) apply and in respect of which the aggregated value of the Contract exceeds the Relevant Threshold
Joint Procurements	A Contract which is jointly entered into by the Authority and one or more other Fire Authorities with a supplier for the supply of goods, materials, works, services or concessions to each contracting Authority
OJEU	The Official Journal of European Union
Regulations	The Public Contracts Regulations 2006 as amended by the Public Contracts (Amendment) Regulations 2009

Relevant Threshold Means the values specified in column 1 below in relation to the type of procurement specified in the corresponding part of column 2 below.

Column 1	Column 2
193,000 Euro (currently £156,442)	EU Contracts for Services or Supplies.
4,845,000 Euro (currently £3,927,260)	EU Contracts for works

Responsible Officer or RO The Chief Fire Officer, and any permanent or temporary staff member or any other person properly authorised to carry out any of the Authority's contract functions

1.2. Periods for taking action run from the day after the day that action is taken, and shall be extended where necessary to include 2 working days or to end on a working day (Regulation, 2(1))

2. Compliance with Contract Standing Orders and Legislation

2.1. Every contract made by the Authority or on its behalf shall comply with the EU Treaty and all relevant EU and domestic legislation, these CSOs and the Authority's Financial Regulations. In particular the Authority shall comply with the fundamental principle of equality of treatment of contractors which underlies the community rules.

2.2. 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 CSO's and Financial Regulations of the Authority as if they were an officer of the Authority.

3. Exemptions from Contract Standing Orders

- 3.1. The RO may seek an exemption in a report which sets out the reason for requiring the exemption and the CSO's from which exemption is required. The report may highlight any future commitments (whether or not of a financial character) which the proposed contract might entail. The RO shall consult the Director of Procurement to ensure that, where an Authority Contract covering the proposed procurement exists, the implications of not using it have been considered (LGA 1972, S.135).
- 3.2. Where an exemption is sought from tendering or price testing, the report shall in addition usually be expected to justify the use of an alternate method of contractor selection so that propriety, value for money and compliance with EC and domestic legislation can be demonstrated, and shall include reasons such as the following:
- (a) That only one contractor is able to carry out the work or service or to supply the goods for technical or artistic reasons or because of exclusive rights (Regulation, 14(1)(a)(iii));
 - (b) That time limits required for tendering cannot be met for reasons of extreme urgency (and, in the case of EU contracts, the reasons were unforeseen and unattributable to the Authority) (Regulation, 14(1)(a)(iv) ; Regulation, 16(6)(a));
 - (c) That additional works or services (not exceeding 50% of the value of the original contract in the case of EU contracts) are required which, through unforeseen circumstances, were not included in the original contract and which either are strictly necessary for the completion of the contract or, for technical or economic reasons, cannot be carried out separately without great inconvenience (Regulation, 14(1)(d));
 - (d) That new works or services are required which are a repetition of works or services carried out under the original contract (provided in the case of EU contracts they are required within 3 years of the original contract and the contract notice stated that a new contract might be awarded by negotiation) (Regulation, 14(1)(d)(ii));
 - (e) That goods are required as a partial replacement for or addition to existing goods or installations and obtaining them from another contractor would result in incompatibility or disproportionate technical difficulties in operation or maintenance (Regulation, 14(1)(b)(ii));
 - (f) That the rules of a design contest require the contract to be awarded to one of the successful candidates, provided all successful candidates are invited to negotiate (Regulation, 14(1)(c));
 - (g) That (in cases other than EU Contracts) procurement through collaboration direct with other fire or other local authorities will provide a value for money solution in line with the principles of best value.

- 3.3. Exemptions may be granted by the Chief Officer the Deputy Chief Fire Officer, the Assistant Chief Fire Officer, the Clerk, the Director of Finance, Deputy Clerk and Deputy Director of Finance in accordance with powers delegated to them except where the Authority or a Committee of the Authority has reserved such decisions to itself; and subject to CSO 3.4.
- 3.4. No exemptions may be granted:
- (a) Which would result in a breach of European or domestic law;
 - (b) From CSO 5 (ROs duties) or CSO 6 (Declaration of interests);
 - (c) From CSO 19 which requires a decision of the Authority to accept certain tenders;
 - (d) From CSO 26 which requires a decision of the Authority to approve certain contract variations.
- 3.5. The Chief Officer shall 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 (Regulation, 14(2)).
- 3.6. The Chief Officer shall report to the Management Board at least once every six months summarising the Register of Exemptions.

4. Delegation of Powers to Contract

The Chief Officer and other officers deemed appropriate by the Authority shall receive from the Authority delegated powers to enter into contracts and grant exemptions on behalf of the Authority to specified financial limits.

5. Responsible Officers' Duties

ROs shall always:

- (a) seek value for money (LGA 1972, S.135; LGFA 1982, S.15)
- (b) show no undue favour to any contractor, nor discriminate against contractors from other EU states (EC Treaty and Procurement Regulations);
- (c) conduct tendering and price-testing in accordance with the highest standards of propriety and proper practice (including respecting the confidentiality of commercial information);
- (d) do nothing that contravenes EU or domestic law;
- (e) ensure that adequate Contract Files are kept for all contracts for which they are responsible

- (f) ensure that a statistical report is sent to the Office of Government Commerce by 31st July in each year in respect of E.U. contracts awarded in the proceeding calendar year containing the information required by the Regulations (including the procurement procedure used, the nature of the contract and the nationality of the contractor)
- (g) ensure that a prior information notice is published in the OJEU as soon as possible after the commencement of each of the Authority's financial years in respect of the following contracts in respect of which it expects to seek offers leading to an award during that financial year:-
- Service Contracts and framework agreements where the services fall within part A of Schedule 3 to the Regulations and where the same product area (or category) equals or exceeds £156,442.
 - Supply Contracts and framework agreements where the goods fall within Schedule 5 to the Regulations and where the value of the goods equals or exceeds £156,442.
 - Works Contracts where the contract value exceeds £3,927,260.
- (h) follow the contract award procedures set out in CSO 21.1
- (i) within 15 days of the date on which a written request is received inform any eliminated candidate or tenderer of the reasons for the rejection of his application or his tender and any tenderer who has made an admissible tender of the characteristics and relative advantages of the tender selected as well as the name of the selected tenderer provided that certain of the above information may be withheld where release of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of the Authority or might prejudice fair competition between service providers.
- (j) the RO shall promptly inform candidates and tenderers of the decisions taken on contract awards including the reasons why the Authority has decided not to award to a contract of which there has been an invitation to tender or to start the procedure again, and shall do so in writing if required. The RO shall also inform the OJEU of such decisions.

6. Declaration of Interests by Officers etc

6.1 The following shall declare any interests which may affect the contract process (LGA 1972, S. 117):

- (a) all permanent or temporary staff graded at Principal Officer, or above; and
- (b) all other permanent or temporary staff whom the Chief Officer considers play an influential role in any aspect of the contracts process.

- 6.2 The Chief Officer shall require staff and consultants to make declarations on their appointment; on any change in circumstance and shall either clarify them as acceptable or take any necessary action in respect of potential conflicts of interest
- 6.3 The Clerk shall keep completed staff declarations on a register of staff declarations indicating the names of those declaring and the nature of their declaration.

APPROVED LISTS

7. Authority Approved Lists

- 7.1 The Chief Fire Officer shall compile and maintain Authority Approved Lists for construction – related contractors and consultants by compiling and maintaining its own lists.
- 7.2 Such approved list shall:-
- (i) relate to the construction and service categories where the annual estimated value of Authority Contracts exceed £100,000;
 - (ii) contain the names and addresses of all contractors who meet the Authority Approved List criteria;
 - (iii) indicate the nature and value of contracts for which the contractors listed may be used; and
- 7.3 The criteria for admission to and the suspension and exclusion from such Authority Approved Lists shall be specified in writing by the Chief Fire Officer, and as agreed with the Director of Finance and the Clerk to the Authority, and shall relate to economic and financial standing, health and safety record and compliance with Race Relations and other relevant legislation, (LGA 1988, S. 17).

8. Departmental Lists

- 8.1 Where there is no Authority Approved List, ROs shall compile and maintain Departmental lists. Where the work or service concerned may be covered by an Authority Approved List category, the RO shall obtain the agreement of the Chief Fire Officer before a Departmental List can be used
- 8.2 Departmental lists may be compiled without public advertisement, except where required by law or by these CSOs. They may be drawn from the RO's experience of contractors previously used by the Authority, from their general knowledge of the trade in question and from contractors that may approach the Authority directly.
- 8.3 The suitability of contractors for inclusion on a Departmental list shall be judged as far as practicable by the Authority Approved List criteria.

Preliminary

9. Contract Value and Aggregation

In order to assess the value of a contract for the purpose of ascertaining whether its value will fall within the Relevant Threshold and thereby become an EU contract the RO shall comply with the following:-

- 9.1. The RO shall estimate and record the total value of a proposed contract, net of VAT. Such value must in the case of an EU contract be calculated at the time the relevant contract notice is sent to O.J.E.U. for publication (Regulation, 8)
- 9.2. Where a requirement is subdivided into several contracts, the estimated value of each shall be aggregated to estimate the total contract value. However:
 - (a) any works contract that has an estimated value of less than 1 million Euro ; or
 - (b) any service or supply contract that has an estimated value of less than 80,000 Euro need not be aggregated, provided the aggregate value of all those contracts is less than 20% of the total contract value (Regulation, 8(12));
- 9.3. Where a supply contract does not stipulate a total price the value shall be estimated as follows:
 - (a) fixed-term supply contracts of up to 12 months; total consideration payable over the term (Regulation, 8(9)(a));
 - (b) fixed-term supply contracts of more than 12 months; total consideration over the term (Regulation, 8(9)(b));
 - (c) supply contracts for an indefinite (or certain) period for a term of more than 48 months; consideration payable in respect of each month multiplied by 48 (Regulations, Reg. 8(9)(c)).
- 9.4. Where a service contract does not stipulate a total price, the value shall be estimated as follows:
 - (a) fixed-term service contracts of up to 48 months; total consideration payable over the term (Regulation, 8(10)(a));
 - (b) service contracts, or contracts for the hire of goods, for an indefinite (or uncertain) period or for a term of more than 48 months; consideration payable in respect of each month multiplied by 48 (Regulation, 8(10)(b)).

- 9.5. The value of regular or renewable services or supply contracts shall be estimated either:
- (a) by aggregating the value of similar contracts for the same categories of services or supplies awarded by the Authority over the previous financial year or 12 months, adjusted where possible for anticipated changes in quantity or value over the next 12 months (Regulation, 8(14)(a));
 - (b) by taking the estimated aggregate value during the twelve months following the first supply or service performed, or during the term of the contract where this is greater than 12 months (Regulations 8(14)(b))
- 9.6. Where a service or supply contract includes one or more options the value shall be estimated by calculating the highest possible amount that could be payable under the contract
- 9.7. A contract may not be artificially divided into two or more separate contracts, nor a valuation method selected, with the intention of avoiding the application of these CSOs. Contracts shall be packaged to best ensure service delivery, competition and value for money (Regulation, 8(19)). If in doubt about the application of this CSO, officers must consult with the Director of Finance and/or the Clerk to the Authority.

10. Pre-Tender or Pre-Quotation Enquiries

- 10.1. Enquiries of contractors may be made before tender or quotations are invited in order to:
- (a) establish whether goods, works or services the Authority wishes to purchase are available, and within what price range;
 - (b) prepare tender documents, price estimates and contracts;
 - (c) establish whether particular contractors wish to be invited to tender or quote
- 10.2. 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 to them being invited to tender or quote, or awarded the contract;
 - (c) a written record, including notes of any meeting held, the responses and the names of all individuals present shall be kept by the RO on the contract file

REQUIREMENT TO OBTAIN QUOTATIONS OR TENDERS

11. Contracts Valued at Less Than the current EU Threshold for tendering in respect of goods and/or services (£156,442)

11.1. Where the estimated value of a proposed contract is less than £156,442; a contract other than:

- (a) a contract for the engagement of counsel; or
- (b) a contract which constitutes a call off under a frame work agreement (but not the framework agreement itself);

shall be made with the contractor on an Authority Approved List or if there is no Authority Approved List, with a contractor on a Departmental list or if there is no Departmental list with any contractor.

11.2. A contract made under C.S.O. 11.1 where the estimated value is:-

- (a) less than £4,000 may be made without seeking competitive quotations;
- (b) £4,000 or more but less than £10,000 may be made only after seeking at least 2 oral or written quotations and obtaining at least one written quotation;
- (c) £10,000 or more but less than £156,442 may be made only after seeking at least 3 written quotations and obtaining at least 2.

11.3. In all cases, a written quotation shall be obtained before an order is placed.

11.4. The RO shall record contractors approached their responses (including willingness to quote), details of any quotations provided, the subject matter of the quotation, the name of the contractor quoting, the date and time of the quote, the price offered and other relevant trading terms, the name of the RO processing the quotation, the name of the contractor offering the most favourable quotation and the reasons why that quotation was accepted

Negotiation of Quotes

11.5. In addition to the requirements set out in clause 11.4, where discussions or negotiations are proposed with any contractor as to the quote submitted or to be submitted by that contractor then the R.O. shall ensure that:-

- (a) all discussions and negotiations are undertaken only by the Director of Procurement or their Deputy in the presence of at least one officer from a department other than the department for which the procurement is being undertaken ('the independent observer')

- (b) all negotiation 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
- (c) a written record of all discussions and negotiation is maintained by the Director of Procurement, and verified by the Independent Observer
- (d) at the conclusion of negotiations each contractor who has provided a quote must be invited to submit a best and final written quote

12. Contracts which are Valued at £156,442 or More

12.1. Where the value of the contract as aggregated in accordance with CSO 9 is above £156,442, the Authority shall invite tenders following public advertisement as set out in CSO 14 except in the case of:-

- (a) contracts for which an exemption from tendering has been lawfully granted under CSO 3
- (b) contracts for the engagement of counsel
- (c) contracts which constitute a call off under a framework agreement (but not the framework agreement itself)

The remaining provisions of these CSO's , with the exception of CSO 14, shall apply to the procurement process under CSO 12.1

12.2. The RO shall, in conjunction with the Director of Procurement, select one of the tender procedures specified in CSO 12.3 except in the case of:

- (a) contracts for which an exemption from tendering has been lawfully granted under CSO3;
- (b) contracts which constitute a call off under a framework agreement (but not the framework agreement itself).

12.3. The tender procedures referred to in CSO 12.2 are:-

Open Procedure

- (a) Open tendering where anyone can submit a tender using the following procedures.

The RO will publicise the Authority's intention to seek offers in relation to the contract by sending to the OJEU a notice inviting tenders.

The notice will specify a time limit (see CSO 14.5(a), (c) and (f)) within which interested parties must submit tenders.

Restricted Procedure

- (b) Restricted tendering where tenders are selected from a restricted group. The RO will publicise the Authority's intention to seek offers in relation to the contract by sending to the OJEU a notice inviting requests to be selected to tender.

The notice will specify a time limit (see CSO 14.5(b) (c) and (f)) within which interested parties must submit requests to be selected to tender.

The RO must send invitations in writing to all contractors selected to tender. The invitation will include the contract documentation.

The Competitive Dialogue Procedure

- (c) 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 (particularly complex contract means a contract where the RO is not objectively able to define the technical means capable of satisfying the Authority's needs or objectives or is unable to objectively specify the legal or financial makeup of a project or both).

The RO will publicise the Authority's intention to seek offers in relation to the contract by sending a notice to the OJEU inviting requests to participate. If the competitive dialogue procedure is to take place in stages this must be specified in the notice

The notice will specify a time limit (see CSO 14.5(d) and (f)) in which the contractor must reply to a request to participate.

The RO will send invitations in writing simultaneously to each economic operator selected to participate in the dialogue. The invitation should include the contract documentation.

The RO may provide for the competitive dialogue procedure to take place in successive stages by applying the award criteria in the contract notice. The RO will ensure that the number of contractors invited to participate in the final stage is sufficient to ensure genuine competition.

The RO may continue the competitive dialogue procedure until it can identify one or more solutions capable of meeting its needs.

When the RO declares that the dialogue is concluded he must inform each participant, and request that each participant submit a final tender containing all elements required and necessary for the performance of the project.

Negotiated Procedure

- (d) The Negotiated Procedure may be used in limited circumstances and only where the competitive dialogue procedure is not appropriate.

The RO will publicise the Authority's intention to seek offers in relation to the contract by sending a notice to OJEU inviting requests to be selected to negotiate.

The notice will specify a time limit in which the Contractor must return a request to be selected to negotiate (see CSO 14.5(b), (c) and (f)).

The RO must send invitations in writing to all contractors selected to tender the invitation should the contract documentation.

In certain limited circumstances (see CSO 3.2) the negotiated procedure may be used without prior publication of a contract notice. In those circumstances an exemption will be required in accordance with CSO 3.1.

12.4. Framework Agreements

Framework agreements are used in the case of repetitive purchases to choose suppliers who will be able to meet the Authority's needs. Framework agreements may be used in conjunction with any of the procedures set out at CSO 12.3.

A Framework Agreement must, except for exceptional circumstances, (Public Contracts Regulations Reg. 18 (16)) be limited to four years and the contract notice must state the duration of the framework.

The RO may appoint a single provider under the framework or where more than one provider is preferred a minimum of three (or the number of providers passing the selection criteria). Where there is more than one provider under a Framework Agreement the original terms and conditions made be used to award work unless there is a need to refine or supplement the terms and conditions in which case a further mini-competition will be necessary involving all providers party to the framework who are capable of providing the goods or services.

12.5. Central Purchasing Bodies

12.5.1. The Authority may purchase goods, services or works from or through a Central Purchasing Body. When making such purchases the Authority will be deemed to have complied with the Public Contracts Regulations to the extent that the Central Purchasing Body has complied with them.

12.5.2. Examples of Central Purchasing Bodies are OGC Buying Solutions and Firebuy.

TENDERING

13. Tendering From Authority Approved Lists

- 13.1. Contractors shall be selected for invitation of tenders from within the appropriate work category or, where the contract involves several categories, from all or most of the categories needed for the work. If this does not produce the minimum number of tenders required, contractors shall be selected for invitation of tenders from any work category under the appropriate main heading
- 13.2. Contractors shall be invited to tender in strict rotation, save that up to 50% of the tender list may be nominated where a contractor to be nominated is the existing contractor, or has worked on an earlier stage of the project in the last two years or has carried out similar work for the Authority in the last two years.
- 13.3. Subject to CSO 13.2 Contractors shall be invited to tender in rotation by using a manual or computer system which gives contractors an equal chance of selection regardless of where their names appear on any alphabetical list.
- 13.4. In all cases, the RO shall record on the contract file how they compiled the tender invitation list and subject to CSO 13.2. shall ensure that contractors invited to tender by rotation in that category are not to be invited in the next rotation exercise.

14. Tendering Following Public Advertisement

- 14.1. In the case of contracts for which no Authority Approved List or Departmental List exists for the type of work services or supplies the subject of the contract, notice shall be placed in at least one newspaper circulating in the locality and one appropriate trade journal or (at the discretion of the Procurement Manager) on the internet at website www.Tenders or www.mytender.com or any other equivalent website The Notice shall specify the details of the contract and how tender documents may be obtained or inspected.
- 14.2. In the case of EU Contracts for Works where the estimated value is at the Relevant Threshold or more a prior information notice shall be published in the OJEU as soon as possible after the decision approving the planning of the work (Regulation, 11(1)(b));
- 14.3. In the case of EU Contracts for Works Supplies and/or Services notice of intention to seek offers and inviting requests to be selected for tender shall be published in OJEU as soon as possible after forming the intention to seek such offers (Regulations, 15(2); 16(2); 17(3));

- 14.4. The Authority (or the RO where he has delegated powers) shall decide whether all interested contractors may tender, or whether only selected contractors may tender, provided that for EU Contracts the open procedure is not being followed. The minimum number of contractors may not be less than five where the restricted procedure is used (Regulation, 16(9)(b)) and three where the Negotiated and Competitive Dialogue procedures are used (Regulation, 17(11)(b) and Regulation, 18(12)(b)). The number of contractors invited to tender must be sufficient to ensure genuine competition (Regulation 16(10) Regulation 17(12)(a) Regulation 18(13)(a)) and the evaluation of those requested to tender is carried out in accordance with CSO 15.3.
- 14.5. In the case of EU contracts or requests to be selected for tender or requests to participate or requests to negotiate, the notice shall invite tenders within the following periods which shall be extended where necessary to allow contractors to inspect sites, premises or contract documents:
- (a) no less than 52 days from the date of dispatch of the contract notice in the case of EU contracts where the Open procedure is used and where no prior information notice has been published (Regulation, 15(3));
 - (b) no less than 37 days from the dispatch of the contract notice in the case of EU contracts where the Restricted or Negotiated procedure is used (Regulation, 16(3), Regulation, 17(5)). Unless 37 days is rendered impractical for reasons of urgency in accordance with CSO 3.2(b) in which case the time limit is a minimum of 15 days from the dispatch of the contract notice Regulation, 16(6)(a) and Regulation 17(8)(a);
 - (c) In the case of the Open and Restricted Procedure a period sufficiently long to permit responsive tendering (which as a general rule will be at least 36 days but in any case cannot be less than 22 days) where a prior Information Notice was published within a minimum of 52 days and a maximum of 12 months before the date on which the relevant contract notice was dispatched to the OJEU.
 - (d) no less than 37 days from the dispatch of the contract notice in the case of EU contracts where the Competitive Dialogue Procedure is used.
 - (e) No less than 22 days from the date of publication in any other case.
 - (f) Where the contract notice has been transmitted by electronic means the time limit referred to in CSO 14.5 (a), (b) and (c) may be reduced by 7 days subject to the time limit in CSO (c) may be no less than 22 days.

- 14.6. The RO shall send all contractors requesting tender documents a form similar to the Authority Approved List application form to establish the standing of tenderers. The RO shall record on the Contract File where and on what dates notices were published and justification where short notice was given.
- 14.7. In the case of EU contracts the contract notice must state the relative weighing to each award criterion in the contract documents or in the case of a competitive dialogue procedure, in the descriptive document (Regulation 30(3)).

15. Selection of Tenderers

- 15.1.1. A Contractor shall not be invited to tender if the Authority has knowledge that the contractor, its directors or any other person with power of representation, decision or control over the operator has been convicted of any of the offences listed below save for where the Authority is satisfied that there are overriding requirements in the general interest which justify inviting the contract to tender. The offences are as follows:-
- (a) conspiracy within the meaning of section 1 of the Criminal Law Act 1977 where that conspiracy relates to participation in a criminal organisation;
 - (b) Corruption within the meaning of section 1 of the Public Bodies Corrupt Practices Act 1889 or section 1 of the Prevention of Corruption Act 1906;
 - (c) The offence of bribery;
 - (d) Fraud, where the offence relates to fraud affecting the financial interests of the European Communities as defined by Article 1 of the Convention relating to the protection of the financial interests of the European Union, within the meaning of –
 - (i) the offence of cheating the Revenue;
 - (ii) the offence of conspiracy to defraud;
 - (iii) fraud or theft within the meaning of the Theft Act 1968 and the Theft Act 1978;
 - (iv) fraudulent trading within the meaning of section 458 of the Companies Act 1985;
 - (v) defrauding of the Customs within the meaning of the Customs and Excise Management Act 1979 and the Value Added Tax Act 1994;

- (vi) an offence in connection with taxation in the European Community within the meaning of section 71 of the Criminal Justice Act 1993; or
- (vii) destroying, defacing or concealing of documents or procuring the extension of a valuable security within the meaning of section 20 of the Theft Act 1968;
- (e) money laundering within the meaning of the Money Laundering Regulations 2003; or

15.1.2. A contractor shall not be invited to tender if :

- (a) it is bankrupt, or is being wound up, or is having its affairs administered by a court, or has entered into an arrangement with creditors, or has suspended its business activities, or is subject to court proceedings regarding any of these matters;
- (b) it or any of its current directors have been convicted of an offence concerning professional conduct or have been guilty of grave professional misconduct;
- (c) it has not fulfilled obligations relating to the payment of taxes or social security contributions;
- (d) it has seriously misrepresented information supplied to the Authority; or
- (e) it is not registered in the professional or trade register of the state in which it is established

15.2.1. Subject to CSO 15.2.2 the selection of contractors to be invited to tender (LGA 1988, s17(4)) shall not be based on the following non commercial considerations:-

- (a) the terms and conditions of employment and the composition of a contractor's workforce, or the arrangements for the promotion, transfer or training of, or other opportunities given to, a contractor's workforce (LGA 1988, s17(5)(a));
- (b) whether contractors sub contract with self employed labour (LGA 1988, s17(5)(b));
- (c) any involvement of the business activities or interests of contractors with irrelevant fields of government policy (LGA1988, s17(5)(d));
- (d) the conduct of contractors or workers in industrial disputes between them (LGA 1988,s17(5)(d));
- (e) any involvement of the business activities of contractors in other industrial disputes (LGA1988, s17(5)(d));

- (f) a contractor's nationality or where its business activities or interests are located or its supplies originate from (LGA1988, s17(5)(e));
 - (g) any political, industrial or sectarian affiliation or interests of contractors or of their directors, partners or employers (LGA1988, s17(5)(f));
 - (h) whether or not contractors financially support an institution which the Authority frequently supports or from which the Authority withholds financial support (LGA1988, s17(5)(g));
 - (i) any other criteria which has any direct or indirectly discriminatory effect as between tenders from different member states
- 15.2.2. The selection of contractors to be invited to tender may be based on one or more of the criteria set out in CSO 15.2.1. where the Secretary of State has by order provided for such matters to cease to be non commercial matters ((LGA1999, 5(19)(1));
- 15.3. Contractors shall be invited to tender by applying criteria of financial and economic standing and of technical ability (Regulations, 15(11), 16(7), 17(14), 18(15)).
- 15.4. Financial and economic standing shall be assessed on the basis of audited accounts, statements by bankers, evidence of relevant insurance cover, statements of overall turnover and of turnover in respect of the work or service to be carried out for the previous three financial years and any other appropriate information specified in the contract notice (Regulation 24).
- 15.5. Technical ability shall be evaluated on the ability of the contractor to perform the contract to the standards set out in the specification (Regulation 25). Skill, efficiency, experience and reliability shall be assessed on the basis of:
- (a) the educational and professional qualifications of the contractor's managerial staff and of those who will be responsible for carrying out the work or service;
 - (b) the contractor's technical knowledge and ability;
 - (c) the principal services or goods sold the contractor has provided in the past three years in respect of goods and services and in the last five years in respect of works;
 - (d) the staff who will be available to carry out the work or service, especially those responsible for quality control;
 - (e) the contractor's average annual workforce and number of managerial staff for the past three years;
 - (f) the contractor's plant and technical equipment which will be available to carry out the work or service;

- (g) the contractor's quality assurance systems;
 - (h) the contractor's proposals (if any) for sub contracting any part of the work or service; and
 - (i) the contractor's Health and Safety record.
- 15.6. The RO may determine a range of the number of tenderers who will be invited to tender in accordance with CSO 14.4. If such a range is so determined it must be specified in the relevant contract notice. In any event the number of invitations issued must be sufficient to ensure genuine competition.
- 15.7. The Authority shall not discriminate on grounds of nationality in the selection of those contractors to be invited to tender. In this respect the Authority shall ensure that it selects the same proportion between domestic candidates and those from other member states as that observed in candidates with the requisite qualifications.
- 15.8. The RO shall record on the Contract File which contractors were invited to tender, the reasons they were invited and the reasons unsuccessful contractors were not invited.
- 15.9. Where a contractor is not invited to tender:
- a) For any reason set out at CSO 15.1.1 or 15.1.2; or
 - b) The contractor has failed to meet minimum standards of economic and financial standing as set out in the contract notice; or
 - c) The contractor has failed to meet minimum standards of technical or professional ability as set out in the contract notice;
- then the contractor must notify the contractor of that exclusion (Regulation 29A)
16. Tender Invitation Procedure
- 16.1. Where tenders are invited under CSO 14.5, contract documents shall be sent to contractors within 6 days of request, provided they are requested in good time and any fee specified has been paid (Regulation, 15(9)).
- 16.2. Where tenders are invited under CSO 14.6., contractors shall be given at least 40 days to return tenders unless
- (a) the contract is an EU contract and a Prior Information Notice was published within a minimum of 52 days and a maximum of 12 months before the relevant contract notice where only 22 days need be given (Regulation, 15(7), and Regulation, 16(18)); or

- (b) by reasons of urgency the time limit cannot be complied with, when at least 10 days notice shall be given (Regulation, 16(17));
- 16.3. the periods set out in CSO 16.2. shall be extended if necessary to allow for extra time to be given to contractors to inspect the premises on which the works or services are to be carried out or to inspect documents relating to the contract documents. (Regulation, 16(21) and Regulation 15(9)).
- 16.4. Reasonable requests for further information relating to the contract documents shall be granted, provided the request enables the Authority to supply the information not less than 6 days (or 4 days in case of urgency) before the date specified for receipt of tenders (Regulation, 16(20)).
- 16.5. 16.5.1 Every invitation to tender shall state that a tender will only be considered if it is received at a specified place and by a specified time and date in a sealed, plain envelope with the word "Tender" and the name of the contract written on it, and that the appearance of the sender's name or any other identifying mark on the envelope will invalidate the tender. All invitations to tender shall include such other information or instructions as the Clerk or the Chief Fire Officer may require.
- 16.5.2. In the case of an EU Contract where only selected contractors may tender, the invitation to tender shall include:-
- (a) the address for requesting contract documents (and the deadline for such requests) and details of any fee payable for such documents
 - (b) the closing date for tenders, the address at which they are to be delivered and the language to be used
 - (c) reference to the contract notice published in the OJEU
 - (d) details of any further information required concerning financial standing or technical capacity
 - (e) the contract award criteria including the weighing given to each criteria (Regulation 30(3)).
- 16.6. On receipt, all tender envelopes shall be endorsed with the time and date of receipt and kept secure until the time specified for tender opening. Any tender received after the specified time shall not be considered for evaluation and shall be returned promptly to the tenderer unless no eligible tenders have been opened and the Clerk or RO is satisfied in writing that there is evidence of posting or hand delivery in time for receipt by the specified time in the normal course of events. A late tender may be opened to ascertain the name of the tenderer but no details of the tender shall be disclosed.

16.7. Except as provided in CSO 11.2 (c) and 12.3 (c) and (d) no RO, or member shall communicate with any contractor proposing to tender once the invitation to tender has been posted to, or collected by the tenderer. No information relating to that tender process shall be disclosed to anyone not involved directly in arranging the contract, except where it is necessary;

- (a) for an officer and/or tenderer to carry out an inspection of works, in which case all tenderers shall be offered an equal opportunity to carry out an inspection; or
- (b) to inform tenderers of a change in the tendering arrangements, including the supply of additional or changed information, in which case all tenderers shall be sent the same information at the same time.

17. Tender Opening Procedure

17.1. All tenders shall be opened at the same time and place after the closing date and time for receipt stated in the tender documents.

17.2. Tenders shall be opened in the presence of one officer nominated by the Director of Procurement, one officer nominated by the RO of the Authority, and in the case of contracts with an estimated value of £100,000 or more, one officer nominated by the Director of Finance. The Tender opening will be arranged by the Director of Procurement.

17.3. The RO shall record the following details of each tender:

- (a) the last date and time for the receipt of tenders;
- (b) the date and time each tender was received;
- (c) the name of each tenderer and the amount of each tender;
- (d) the date the tenders were opened;

which record shall be signed by all persons present at the tender opening. The RO shall sign after the last tenderer's name so as to prevent any addition to the record.

17.4. All persons present at the tender opening shall initial each tender, indicating the number of tenders opened and the sequence in which the tenders were opened, and each page of a Bill of quantities or Schedule of Rates.

18. Tender Evaluation

18.1. No contract shall be awarded to a contractor where any of the criteria set out in CSO15.1 (a) to (e) are satisfied in relation to the contractor.

- 18.2. Where a contract is to be awarded to the most economically advantageous tender, the criteria shall be stated in the tender documents, where possible in descending order of importance, and tenders shall be evaluated in accordance with them. They shall include price, period for completion or delivery, cost effectiveness, quality, aesthetic and functional characteristics, after sales services, running costs, profitability, technical assistance and technical merit (which for works contracts shall be based on an assessment of itemised and separately costed health and safety method statements and plans in accordance with the CDM 1994 Regulations) or such other criteria relevant to the contract as determined by the RO. (Regulation, 30).
- 18.3. Where the lowest tenders are for £250,000 or more, (and the open procedure set out in CSO 14 has been used) the RO shall obtain the following information in respect of the lowest two tenders:
- (a) the Authority's internal financial appraisal of the two lowest tenders
 - (b) an independent financial appraisal supplied from a business information service on external contractors if the relevant Chief Officer , in consultation with the Director of Finance, considers appropriate; and
 - (c) any internal references provided by the Authority's quality control systems and any current external references available, and such information shall be considered by those involved in evaluating the tenders or awarding the contract, and kept by the RO on the Contract File.
- 18.4. Where examination of tenders reveals errors which would affect the tender figure in an otherwise successful tender, the tenderer shall be given details of such errors and an opportunity of confirming, rejecting or withdrawing its tender.
- 18.5. A minimum of three employees of the Authority shall conduct the evaluation of tenders.
19. Contract Negotiation
- 19.1. The Procurement Director may negotiate the contract in the manner set in CSO 19.2.1 and 19.2.2 (Regulation, 13(a)); provided the terms of the contract remain substantially unaltered:
- (a) Where tendering produced no tenders or inappropriate tenders, for example where the tender figure in an otherwise successful tender exceeds approved or budgeted expenditure, or where the sum has changed since tenders were invited (Regulation, 13(a)(ii)).

- (b) Where tendering was discontinued because of irregular tenders, for example because tenders fail to meet the requirements specified in the contract documents or offer variations on them or the works, supplies or goods fail to meet the technical specification (Regulation, 13(a)(i)).
 - 19.2.1 The Procurement Director shall invite all tenderers (who submitted a tender which met the Authority's minimum Technical and Financial Standards) to amend their tenders in writing, in such matters (e.g. unit price, delivery, discounts or by removing elements of the bill of quantities) as the RO specifies. All negotiations shall be conducted by at least two officers of different disciplines, one of whom is not involved in the contract award. The RO shall keep a written record of all negotiations, including notes of all meetings and the names of all individuals present.
 - 19.2.2. During the competitive dialogue procedure the RO may discuss all aspects of the contract with the participants and will ensure equality of treatment among all participants and in particular will not provide information in a discriminatory manner which may give some contractors an advantage over others. The RO will not reveal to other contractors solutions proposed or any confidential information communicated by a contractor by a contractor without that contractor's agreement.
20. Contract Award
- 20.1 Contracts must be awarded in line with the following contract award procedure.
 - (a) When the successful tenderer has been identified in line with CSO 19 all tenderers will be notified of the decision in writing by the most rapid means of communication practicable (Regulation 32 (1)).
 - (b) The notice referred to at CSO 20.1 (a) will include
 - (i) The criteria for the award of contract.
 - (ii) The reasons for the decision including the characteristics and relative advantages of the successful tender and the scores obtained by the recipient of the notice and the successful tenderer.
 - (iii) Reasons (if any) for the Authority's decision that the contractor did not meet the technical specifications
 - (iv) The name of the successful tenderer.
 - (v) When the standstill period (mentioned at CSO 20.1 (d)) is expected to end and, if relevant, how the timing of its ending might be affected by any, and if so what, contingencies; or the date before which the Authority will not enter into the contract (Regulation 32 (1))

- (c) Where a notice is sent, a contractor who has applied to be included amongst the contractors to be selected to tender any notice referred to at CSO 20.1 (a) should include all of the information set out at CSO 20.1 (b) but the relative advantages of the successful contractor are not required in such a notice (Regulations 32 (2A))
 - (d) Successful tenderers will be advised that the Authority will accept the tender in principle subject to a standstill period of:
 - (i) 10 days after the relevant sending date where the notice is sent by facsimile or electronic means.
 - (ii) 15 days after the relevant sending date or 10 days after the date the contractor receives it whichever occurs first
 - (e) The successful tenderer will be contacted at the end of the standstill period to arrange the entering into of a contract unless court action has been commenced during the standstill period for an order that the provisional award should be set aside or its implementation suspended pending a full hearing by the court. In the event that the court makes an interim order the entering into the contract will be deferred to a mutually agreed date following the conclusion of any court action (including any appeal) unless the court makes a final order against the Authority in which case no contract shall be entered into.
 - (f) Unsuccessful tenderers will be given the opportunity to request additional debrief information within 15 days from receipt of a written request so far as such information has not already been given in the notice referred to at CSO 20.1 (a). Regulation 32 (9)
- 20.2. No contract may be awarded unless the expenditure involved has been included in the approved budget or capital programme, or can be contained within such budget or programme as the case may be, or has been otherwise approved by, or on behalf, of the Authority. The RO shall ensure that evidence of authority to spend, and the budget code to be used, is recorded on the contract file.
- 20.3. Contracts may be awarded:
- (a) by R.O.'s to the tender which offers the lowest price, in cases where the Authority is providing the finance or the tender which is the highest if the Authority is the recipient;
 - (b) by R.O.'s to the tender which is the most economically advantageous as assessed under C.S.O. 18; provided that this sub clause shall not apply to disposals of land or any interest in land;
 - (c) by the Authority or the Policy and Finance Committees in any other case.

- 20.4. The Chief Fire Officer shall record all contracts awarded by the service areas for which he is responsible, including the nature of the goods, works, services or concession for which the contract has been awarded the value of the contract, the difference in the tenders and the name of the contractor and shall supply a summary of the contract the value of the contract and the name of the contractor to the Management Board at least once every six months.
- 20.5. The RO shall send a Contract Award Notice to the OJEU within 48 day of the award of and E.C. contract (Regulation, 31) and shall send a copy of the Contract Award Note to the Clerk (Public Contracts Regulations, Reg. 32(14)).
- 20.6. The results of tender may not be disclosed, except as provided in C.S.O.5.

FORM OF CONTRACT

21. Contracts in Writing

- 21.1. Every contract estimated at 200,000 Euro or more shall be in writing and either under seal or signed by the Clerk, the Deputy Clerk, the Chief Fire Officer, the Director of Finance or the Director of Procurement.
- 21.2. Every other contract shall be in writing and be signed by the relevant RO except that emergency contracts awarded under C.S.O. 3:2(b) need not be in writing before commencement but must be confirmed in writing as soon as possible.

22. Contract Conditions

- 22.1. Every contract shall state:
- (a) the works or services (including concessions) to be performed and /or the goods supplied;
 - (b) the parties to the contract, including any guarantor;
 - (c) the price and any discounts, or the method by which prices and discounts are to be calculated, and the method and timing of payments;
 - (d) the time within which the contract is to be carried out;
 - (e) that the contractor will not assign the contract without written consent of the supervising officer/contract administrator;
 - (f) that the contractor will pay liquidated damages (where these can be assessed and ascertained) or other damages to the Authority should the terms of the contract not be properly carried out, including the method by which such damages will be calculated and the circumstances in which they will be payable;

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- (g) any performance bond or parent company guarantee required, and the RO shall consult the Director of Finance before including or excluding such a requirement in the tender documents (see DOE Circular 5/96);
- (h) that the contractor shall promote race equality and not unlawfully discriminate within the meaning of the Race Relations Act 1976 or any comparable statutory provision relating to discrimination in employment, shall comply with all regulations in respect of discrimination and shall ensure that all employees, agents and sub contractors do not unlawfully discriminate, and shall comply with all relevant codes of practice issued by the Commission for Racial Equality or any comparable body and, so far as practicable, operate an equal opportunities policy which complies with the practical guidance and recommendations contained in such codes of practice (Race Relations Act 1976 s71);

In particular, the contractor shall not unlawfully treat an individual or one group of people less favourably than others because of their colour, race, nationality, ethnic origin, disabled status, gender, sexual orientation, religion or belief.

- (i) that the contractor shall adopt safe methods of work and comply with all other requirements of the Health & Safety at Work etc. Act 1974 in order to protect the health & safety of its personnel and to the extent applicable the personnel of the Authority and all other persons;
- (j) that the contractor shall comply with the Data Protection Act 1998 and indemnify the Authority in respect of the use, disclosure or transfer of personal data by the contractor, its employees, agents and sub contractors; In particular any data processor under the contract shall act only on the instructions of the Authority's data controller, and the data processor shall comply with obligations equivalent to those imposed on a data controller by the seventh principle of the 1998 Act.
- (k) that the Authority may cancel the contract and recover any loss if the contractor, its employees, agents and sub contractors offer any reward relating to the contract or commit any offence under the Prevention from Corruption Acts 1889 to 1916;
- (l) that the contractor will achieve a continuous improvement in economy, efficiency and effectiveness in carrying out its obligations throughout the term of the contract.
- (m) any other terms and conditions specified by the Clerk from time to time.

23. Contract Specification

- 23.1. The RO shall ensure the contract specifies the quality, performance, safety and other characteristics required of the works, services or supplies (Regulation, 9(2)). Specifications may include requirements relating to methods of construction, design and costing, tests, testing methods, inspection and acceptance, quality assurance, packaging, marking and labeling.
- 23.2. Technical specifications shall be defined by reference to technical specification in the following order of preference:
- (a) British Standards transposing European Standards;
 - (b) European technical approvals;
 - (c) common technical specifications;
 - (d) international standards;
 - (e) other technical reference systems established by the European standardised bodies; or
 - (f) in the absence of the technical specifications set out at a-e above British Standards will apply.
- 23.2.1. Each reference to a technical specification must be accompanied by the words "or equivalent" (Public Contracts Regulations, Reg. 9(6))
- 23.3. Specifications shall not refer to supplies of a particular make or source unless (Regulation, 16):
- (a) the subject of the contract makes the use of such references indispensable (Regulation, 9(17)).
 - (b) the subject of the contract cannot otherwise be described precisely and intelligibly (Regulation, 9(17)).
- 23.3.1. In either case all references described in CSO(a) and (b) must be accompanied by the words "or equivalent". (Regulation, 9(6)).
- 23.4. When laying down technical specifications the RO will, wherever possible, take into account accessibility criteria for disabled people or the suitability of the design for all users.

OPERATION OF CONTRACT

24. Contract Performance

- 24.1. In the case of contractors on the Authority Approved List, ROs shall send Quality Control reports quarterly to the Chief Fire Officer. Incidents of poor performance shall first be raised with the contractor in writing, or at a meeting where notes are made and sent to the contractor, before the quarterly report is dispatched. In cases of particularly poor performance, or persistent poor performance, the RO shall consider whether to recommend suspension or exclusion from the Authority Approved List.
- 24.2. In the case of contractors on a Departmental List, ROs shall place on the contract file at least quarterly an assessment of the performance of any contractor engaged by them. Incidents of poor performance shall be raised with the contractor in writing, or at a meeting where notes are made and sent to the contractor. In cases of persistent poor performance, or particularly poor performance, the RO shall consider whether to suspend or exclude that contractor from the Departmental List.

25. Contract Variation

- 25.1. No variation may be made until approved by the Authority if that variation would (CSO 3.2 and Regulation 10):
- (a) extend the contract period by 50% or more than three calendar months, whichever is the greater; or
 - (b) add more than 20% to the estimated value of the contract or increase it from below £75,000 to £75,000 or more; or
 - (c) mean the works, services or goods to be added to or deleted from the contract are substantially different in scope.
- 25.2. The value of a variation shall be calculated by taking the aggregate value of all variations made to the contract.
- 25.3. No variation shall be made until funding has been identified in accordance with the Authority's financial Regulations or any other similar requirement.
- 25.4. CSO 25.1. shall not apply in cases of urgency, where a variation may be approved by the Chief Officer.

26. Sales and Lettings of Property

- 26.1. All sales purchases lettings licences or other disposal of any interest in land vested in the Authority shall be by way of public auction or public tender unless otherwise determined by the Authority.

- 26.2. Except where the disposal is a letting of land at a term of 7 years or less or the Secretary of State has given his consent, a disposal shall not be made unless it is for the best consideration that can reasonably be obtained.
- 26.3 Any transfer of land by or to the Authority must be made by seal. The fixing of the seal must normally be witnessed by one member of the Authority and either the Clerk to the Authority or the Chief Officer.