

**South Yorkshire Pensions Authority Constitution**

**PART 4d  
CONTRACT STANDING ORDERS**

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## 1. Introduction

- 1.1. These Contract Standing Orders (CSOs) are made by the Authority in accordance with Section 135 of the Local Government Act 1972. The CSOs set out the responsibilities of Officers and the procedures to be followed when conducting the procurement of goods, works or services on behalf of South Yorkshire Pensions Authority (SYPA).
- 1.2. Any Officer conducting a procurement exercise on behalf of SYPA Must familiarise themselves with these CSOs, which Must be read and acted upon in conjunction with the Authority's constitution and in particular the financial regulations and scheme of delegation.
- 1.3. By following the requirements of these CSOs Officers will be supported to conduct procurement exercises that:
  - comply with the Authority's strategic objectives, procurement strategies, policies and statutory legal obligations
  - promote the fundamental principles of public sector procurement, i.e. being open, fair and transparent
  - are capable of withstanding challenge by being effective, efficient and robust.

## 2. Scope and Compliance

- 2.1. All of the Authority's contracts Must be entered into in accordance with these CSOs.
- 2.2. In the event that there is any doubt regarding the scope or application of these CSOs this should be referred to an authorised Officer listed at 4.4 for further guidance and instruction.
- 2.3. Where the estimated value of a contract exceeds the relevant current procurement threshold, the contract Must be tendered in accordance with the Public Contracts Regulations 2015 and where possible these CSOs.
- 2.4. In the event that these CSOs are not compatible with the requirements of the Public Contract Regulations then the requirements of the Regulations shall take precedence and apply.
- 2.5. Officers and Members Must exercise the highest standards of conduct, integrity and impartiality when involved in the procurement, award and management of contracts and have particular regard to the requirements of the code of conduct regarding relationships with suppliers.

## 3. Exemption to Competition Requirements.

- 3.1. The following contracts are exempt from the requirement for competitive tendering except where the Public Contract Regulations 2015 apply in which case the Regulations Must be complied with.

- 3.2. Services that are provided 'in-house' or by another Authority (where the conditions of the Public Contract Regulations are met).
- 3.3. Contracts of employment that make the individual a direct employee of the Authority. For the avoidance of doubt these CSOs do apply to the procurement of agency/recruitment services, the appointment of interim Consultants/Contractors and the provision of short term agency workers.
- 3.4. Additional works, supplies or services that are required due to unforeseen circumstances, which are either strictly necessary for the completion of the contract, or for technical or economic reasons cannot be carried out separately without great detriment to the Authority. Where a contract variation is required this Must be executed in accordance with CSO 22.1. Approval to use this exemption Must be supported by the submission of a business case (Appendix 3) to the Authorised Officer listed at 4.4.
- 3.5. Financial services associated with the purchase and sale of securities and financial instruments, including the procurement of research, traded upon a public stock exchange.
- 3.6. Legal services contracts and arbitration services that fall within the exemptions set out in Regulation 10 of the Public Contracts Regulations 2015.
- 3.7. For agency services associated with the management, purchase and sale of investment properties.
- 3.8. For works, supplies or services obtained from or under contracts which have been negotiated by a central or local government purchasing organisation or by or on behalf of any consortium, association or similar body of which the Authority is a member.

#### **4. Delegated Authority**

- 4.1. Procurement exercises carried out on behalf of the Authority may only be undertaken by officers with the appropriate delegated authority to carry out such tasks as set out in the Authority's scheme of delegation. Officers with delegated authority may only delegate to other officers who have the appropriate skills and knowledge appropriate to the task.
- 4.2. Within approved budgets and in accordance with the Annual Procurement Plan where applicable, Authorised Officers may enable members of their staff to place orders against Framework Agreements.
- 4.3. The decision to award any contract which falls above the EU threshold or which involves any potential TUPE transfer of the Authority's employees to a Supplier shall be made by the Authority.

- 4.4. The Fund Director, the Head of Finance, the Head of Investment Strategy and the Head of Pensions Administration are empowered to seek offers for and award contracts for works, supplies or services on behalf of the Authority in accordance with these Standing Orders. These officers are empowered to authorise any other suitable officer to lead a procurement process on their behalf, such authorisation must be in writing and refer to one or more specific procurement process(es)
- 4.5. Whenever one of the offices specified above is vacant, or he/she is for any reason unable to act, the person(s) specified below shall be authorised to act on his/her behalf for the purposes of these Standing Orders.

| <b><u>Fund Director</u></b> | <b><u>Head of Finance</u></b>        | <b><u>Head of Investment Strategy</u></b> | <b><u>Head of Pensions Administration</u></b> |
|-----------------------------|--------------------------------------|---|---|
| Any Head of Service         | Fund Director or Any Head of Service | Fund Director or Any Head of Service      | Fund Director or Any Head of Service          |

## 5. Pre-Procurement Requirements

Prior to undertaking a procurement exercise, Officers Must ensure that:

- 5.1. They have ruled out the possibility of the service being provided in-house.
- 5.2. All appropriate advice has been obtained including legal, financial, insurance and other professional advice such as procurement, health and safety and risk management.
- 5.3. Key stakeholders including Elected Members and Trade Unions if TUPE might apply have been identified and consulted.
- 5.4. The contract value is calculated in accordance with Public Contract Regulations 2015 (irrespective of whether the Regulations apply) including whole life costs for the duration of the contract and any period of extension and/or continuing costs.
- 5.5. The proposed expenditure is contained within an approved budget in accordance with the Authority's Financial Regulations.
- 5.6. Contracts are not disaggregated into 2 or more separate contracts in an attempt to avoid the Public Contract Regulations or avoid competition.
- 5.7. Where the procurement is subject to Public Contract Regulations consideration is always given to dividing the contract into smaller lots. Where this is not possible the main reasons for the decision not to subdivide into lots shall be included in the procurement documents or post evaluation report.
- 5.8. Any risks associated with the procurement are identified, assessed and recorded together with the actions required to manage them.

- 5.9. An initial equality impact assessment is carried out to ascertain whether a more detailed Equality Impact Assessment (EIA) is required to inform the procurement process and subsequent contract management.
- 5.10 Taking advice where necessary, the procurement is properly categorised for the purpose of the Public Contract Regulations as being works, supplies or services, and that any Light Touch Services are correctly identified.

## 6. Existing Arrangements & Frameworks

- 6.1. Where an existing corporate contract is in place with a Supplier for specific goods or services, then these should be used unless there are exceptional reasons why this would not be the best course of action.
- 6.2. In all cases, where no existing corporate contract is in place, consideration should be given to whether existing external arrangements would be appropriate such as the use of public service purchasing consortia (e.g. YPO, ESPO, NEPO, national LGPS frameworks) or existing frameworks in order to benefit from the advantages listed below.
- 6.3. The use of frameworks can save significant time and money, whilst still meeting the Authorities specific requirements. The benefits for the Authority include:
- Fast, efficient, easy to use OJEU compliant frameworks that can reduce the cost and time associated with procurement processes
  - Significant reduction in procurement timescales
  - Reduced procurement costs
  - Pre-agreed terms and conditions
  - Ceiling prices that can be further reduced by competition at call off.
- 6.4. The framework may include a requirement for a mini competition exercise and this shall be tendered in accordance with the framework agreement and where possible these CSOs.
- 6.5. Due diligence Must be carried out to ensure it is legally viable for the Authority to make use of any such consortia arrangement or framework.

## 7. Nominated Sub Contractors

- 7.1. If a sub-Contractor or sub-Consultant is to be nominated or named to a main Contractor, they must be procured in accordance with these Contracts Standing Orders and under terms that are compatible with the main contract. The procurement documents should require that the nominated Contractor or Consultant must also be willing to enter into:
- a contract with the main contractor on terms which indemnify the main contractor against the main contractor's own obligations under the main



contract in relation to the work or goods or materials included in the sub-contract;

Or

- an agreement to indemnify the Authority in such terms as may be prescribed.

## 8. Managing Supplier Risk

8.1. Officers Must consider any steps necessary to protect the Authority's interests in the event of contractor default. Officers should assess whether additional security is required in the form of a bond, guarantee and retention or, where performance is required by a particular date and where delay would have financial consequences for the Authority, provision for liquidated damages. This consideration should be based on risk to the Authority taking account of the circumstances, including:

- (a) value of the Contract
- (b) impact on the tenant's business operations
- (b) type of Goods, Services or Works being procured
- (c) payment profile of the Contract
- (d) financial strength of the Suppliers in the market
- (e) affordability and proportionality.

## 9. Contract Values

All values stated in these CSOs are exclusive of VAT.

### 9.1. Purchasing up to £5,000.

9.1.1. Where no existing contract provider or framework is available, variations in quality are minimal or there is no requirement to evaluate the quality of the goods, services or works, formal issue of a tender/quotation document is not required. Officers should satisfy themselves that they have obtained, and kept a record of, an adequate amount of comparative pricing information to ensure that the best value in terms of economy, efficiency and effectiveness is obtained. The purchase order form shall specify the services, supplies or works to be provided and set out the price and payment terms.

### 9.2. Low Value Procurement £5,000 - £25,000.

9.2.1. In all cases the procurement exercise and subsequent contract award **Must** be published on Yortender in order to comply with data transparency legislation.

9.2.2. Where no existing contract provider or framework is available, formal competition is required. Where there are a sufficient number of providers in the market the contract opportunity should be openly advertised or at least three written quotes invited via YORtender.

9.2.3. In exceptional circumstances and considering all the information available an Officer may decide that it is justified to invite less than 3 quotations. In this

situation a waiver form (Appendix 1) Must be completed and approved before proceeding.

9.2.4. The quotation template document shall be used by the Officer which describes as a minimum the services/goods/works to be provided and/or an explanation of the outcomes to be met. The methodology that the Authority will use to evaluate the quotes Must be clearly explained and the quotation document Must be made available electronically via YORtender. This is to ensure that all bidders shall be provided with exactly the same information and to ensure equal treatment.

9.2.5. The Officer should consider whether the procurement would be of interest to local Suppliers with their headquarters and, if it would, at least 2 quotations should be invited from these organisations.

9.2.6. The use of a pre-qualification stage in procurements below the EU thresholds for supplies and services is not permitted. The use of the Crown Commercial Service (CCS) Standard Selection Questionnaire is not permitted however the exclusion questions and standard selection questions may be used as a guide in developing appropriate and proportionate questions to be used in a one-stage procurement process. Those questions may be used to assess the suitability, capability, legal status, and financial standing of a potential Supplier, provided that the questions are relevant and proportionate to the contract.

9.2.7. All bids received shall be treated as confidential and will not be used for any other purposes other than that for which they were sought.

9.2.8. Negotiation should only take place if the quotation documents state that it may take place. Negotiations Must be conducted by at least two appropriately authorised Officers and full written records of negotiations Must be kept.

9.2.9. The awarded contract shall be recorded on the Contract Register on Yortender.

### **9.3. Intermediate Value Procurement £25,000 - £75,000**

9.3.1. In addition to the requirements of 9.2 Officers conducting procurements valued at £25,000 or more Must ensure that the opportunity is published on YORtender and, if not invitation only, also on Contracts Finder.

9.3.2. Contract award details Must be published on YORtender and Contracts Finder.

### **9.4. High Value Procurement £75,000 to EU Procurement Threshold.**

9.4.1. In addition to the requirements of CSO 9.2 and 9.3 the Officer conducting the procurement should comply with the following.

- 9.4.2. Where no existing contract provider or framework is available, formal competition is required. Where there are a sufficient number of providers in the market the contract opportunity should be openly advertised or at least four written tenders invited via YORtender.
- 9.4.3. For works contracts valued between the threshold for goods and services and the threshold for works a two stage process is permitted and Officers may make use of the PAS 91 PQQ.

## 9.5. Use of Selection Questions

- 9.5.1. In sub threshold procurements for goods and services Officers need to decide whether it is necessary to assess a Supplier's eligibility, financial standing and technical capacity. If the Authorised Officer decides that this assessment is necessary it Must be carried out in compliance with the Public Contract Regulations, within a one stage procurement exercise and the CCS standard Supplier questionnaire may not be used.
- 9.5.2. In sub threshold procurements for works a two stage restricted procurement may be carried out in accordance with 9.4.3.
- 9.5.3. In procurements that exceed the procurement threshold under the Public Contracts Regulations 2015 for goods, services or works the Authority shall only enter into a contract if it is satisfied as to the Supplier's eligibility, financial standing and technical capacity.
- 9.5.4. Potential Suppliers should be permitted to self-declare that they meet the relevant criteria in the Supplier selection stage. Only the winning Supplier (and any organisations relied upon to meet the winning Supplier's selection criteria) should submit evidence. This reduces the need for potential Suppliers to submit supporting documents every time they wish to bid for a public contract.
- 9.5.5. If the winning Supplier fails to provide the required evidence within set timeframes, or the evidence proves unsatisfactory, the award of the contract should not proceed. Officers may then choose to amend the contract award decision and award to the second-placed Supplier, provided that they have submitted a satisfactory bid. Alternatively, the procurement process may be terminated.

## 9.6. EU Procurement Thresholds

- 9.6.1. Where the estimated value of a contract exceeds the current procurement threshold the contract will be tendered in accordance with the Public Contracts Regulations 2015 and these CSOs.
- 9.6.2. In addition to CSO 9.2, CSO9.3 and CSO 9.4 the Officer conducting the procurement Must comply with the following.

9.6.3. Contract notices and award details Must be published in the Official Journal of the European Union (OJEU) as well as on Contracts Finder and YORtender.

9.6.4. The current thresholds are:

- Services £181,302.00
- Goods £181,302.00
- Works £4,551,413.00
- Social and other specific services (as defined by the regulations) £615,278.00

9.6.5. The thresholds are updated every two years with the next update due on the 1st January 2020.

9.6.6. Officers conducting above threshold procurements Must consider dividing the contract into lots and justify any decision not to do so in either the procurement documents or the post evaluation report.

9.6.7. Post tender negotiation is not permitted except where the Authority is utilising the Competitive Procedure with Negotiation.

## **10. Above EU Threshold Procurement Procedures**

Where the value of the contract exceeds the relevant procurement threshold the Officer Must use procurement procedures as permitted by Public Contract Regulations 2015.

### **10.1. Open Procedure**

10.1.1. In the open procedure, any interested Supplier may submit a tender in response to a contract notice. An open procedure may be used for contracts below and above the procurement threshold

10.1.2. Where the procurement regulations apply the minimum time limit for the receipt of tenders is 35 days from the date on which the contract notice is sent. This can be shortened to 30 days where tenders may be submitted by electronic means i.e. via YORtender.

10.1.3. The invitation to tender shall be accompanied by information regarding the evaluation criteria to be used by the Authority.

10.1.4. Where the Authority has published a prior information notice (PIN) which was not itself used as a means of calling for competition, the minimum time limit for the receipt of tenders, subject to specific conditions being met, may be shortened further. Advice should be sought from a suitably qualified person to ensure that conditions of the Public Contract Regulations are fulfilled.

## **10.2. Restricted Procedure**

- 10.2.1. The restricted procedure is a two stage process where any Supplier may apply to participate in the tender competition by providing the selection information that is requested by the Authority. Following assessment of the information provided, only those Suppliers invited to do so may submit a tender.
- 10.2.2. The time limit for receipt of selection information is 30 days from publication of the contract notice.
- 10.2.3. Where the Authority has published a prior information notice (PIN) which was not itself used as a means of calling for competition, the minimum time limit for the receipt of tenders, subject to specific conditions being met, may be shortened further. Advice should be sought from a suitably qualified person to ensure that conditions of the Public Contract Regulations are fulfilled.
- 10.2.4. The time limit for receipt of invited tenders is 30 days from the date of the invitation to tender and this can be shortened to 25 days where tenders may be submitted by electronic means i.e. via YORtender.

## **10.3. Other Procurement Procedures**

- 10.3.1. In the majority of cases the Open or Restricted Procedures will be the preferred option for the Authority. In exceptional circumstances where they are not thought to be suitable then the Authority may opt to utilise another procurement procedure i.e. the Competitive Procedure with Negotiation, Competitive Dialogue, Innovative Partnerships and the use of the negotiated procedure without prior publication.
- 10.3.2. Before commencing any of these procurement procedures the Officer Must obtain the approval of the Fund Director and the Monitoring Officer, or where the Fund Director is the applicant the Monitoring Officer and the Treasurer.
- 10.3.3. The Officer shall prepare a report in the format set out in Appendix 2 explaining the reasons why use of a another procurement procedure is the recommended course of action. The report Must be submitted to the Fund Director and the Monitoring Officer, or where the Fund Director is the applicant the Monitoring Officer and the Treasurer for consideration and approval or rejection.
- 10.3.4. Where approval is granted it will in all cases be on the condition that the process is supported by suitably qualified procurement professionals.

## **11. Publicity and Advertising**

The Authority has legal obligations to ensure that contract opportunities and details of subsequent contract awards are suitably advertised and that procurement activity is conducted in an open, fair and transparent manner

- 11.1. In all cases and regardless of value, Officers Must consider if the procurement might be of cross border interest to economic operators in other member states of the EU. A written record Must be kept of this consideration and the conclusion reached. If it is considered that there may be cross border interest a suitably accessible advert Must be published which for the purposes of these CSOs shall be an OJEU advert, in addition to the requirements of 11.2 and 11.3 below.
- 11.2. Details of all contract opportunities valued at £5,000 or more Must be published on YORtender. Award details Must also be published on YORtender contracts register.
- 11.3. All contracts valued at £25,000 or more Must be advertised on YORtender and, if not invitation only, on Contracts Finder. Award details Must be published on YORtender and Contracts Finder
- 11.4. All contracts valued above the Public Contract Procurement Thresholds Must be advertised in the OJEU, on Contracts Finder and on YORtender. Award details Must also be published on OJEU, Contracts Finder and YORtender
- 11.5. Procurements through framework agreements need not be advertised unless a mini-competition is required in which case advertising will be in accordance with the requirements of the framework agreement. Where the mini-competition is managed outside of YORtender the subsequent contract award Must be added to the contract register on YORtender and, dependent on the value of the contract, the award details Must be published in accordance with 11.3 and 11.4.

## 12. Invitation to Tender

- 12.1. The invitation to tender shall include details of the Authority's requirements for the contract including:
  - (a) a description of the services, supplies or works being procured;
  - (b) the procurement timetable including the tender return date and time, which shall allow a reasonable period for the applicants to prepare their tenders;
  - (c) a specification and instructions on whether any variants are permissible;
  - (d) the Authority's terms and conditions of contract, form of contract and bond;
  - (e) the evaluation criteria and sub-criteria including any weightings;
  - (f) pricing mechanism and instructions for completion;
  - (g) whether the Authority is of the view that TUPE may apply;
  - (h) form and content of method statements to be provided;
  - (i) rules for submitting of tenders;
  - (j) any further information which will inform or assist tenderers in preparing tenders.

### **13. Pre Tender Submission Clarification**

- 13.1. Where either the Authority or a tenderer seeks to clarify any aspects of the tender documentation adequate time must be allowed for both the clarification question and the response.
- 13.2. Clarification questions and responses Must be in writing and recorded in a log.
- 13.3. In above EU threshold tenders a minimum of 6 days Must be allowed between the last clarification response and the tender submission deadline, if this is not possible the tender return deadline should be extended. To avoid malicious clarifications being raised with the intention of extending the tender period the Officer should state in the tender documents the latest date that tenderers may raise clarification questions.
- 13.4. Unless the clarification is of a confidential nature both the question (anonymised) and the response Must be issued to all tenderers.

### **14. Tender invitation and submission**

- 14.1. Tender documents for procurements that have a contract value of £5k or more including mini competitions under external frameworks, Must be made available electronically and where possible by using YORtender.
- 14.2. Where the contract value is £5k or more the Officer Must ensure that tenders/quotes may be submitted by electronic means, via YORtender.

#### **14.3. Hard Copy Tenders**

- 14.3.1. The Authority's standard method of receiving tender submissions is by electronic means.

### **15. Tender Opening**

- 15.1. Electronic tenders shall be opened by the Authorised Officer and in all cases one other officer.
- 15.2. An immediate record shall be made including date and time of opening and name and address of tenderer(s).

#### **15.3. Managing Late submissions**

- 15.3.1. YORtender does not allow tenders to be submitted after the deadline.
- 15.3.2. late bids may only be accepted with the approval of the Monitoring Officer where the bidder has gained no advantage as a result of the late submission and for reasons where the late submission is through no fault of the bidder , for example where there is evidence that YORtender was unavailable.
  - 15.3.2.1.

## 16. Managing Errors and Ambiguities

- 16.1. Tender Documents Must state how errors in tenders will be dealt with. Whichever process is followed it Must be transparent and fair to all tenderers.
- 16.2. Where a tenderer has made a material and genuine error they may be given an opportunity to correct that error prior to tender evaluation. If correction is permitted the tenderer must submit the required information within a strict time limit. Failure to meet the time limit will result in the tenderer being given the choice to stand by the bid as submitted or withdraw their tender.
- 16.3. Where information or documentation submitted appears to be incomplete or erroneous, or where specific documents are missing, the Authority may request the tenderer concerned to submit, supplement, clarify or complete the relevant information or documentation within a strict time limit provided that such requests are made in full compliance with the principles of equal treatment and transparency. Failure to meet the time limit will result in the tenderer being given the choice to stand by the bid as submitted or withdraw their tender.
- 16.4. Other errors in tender submissions should be dealt with either by asking the tenderer to confirm that they will honour their tender submission despite their error or if not withdraw the tender from the procurement process.
- 16.5. If a Contractor agrees to stand by an error which jeopardises its ability to perform the contract to the standard required, or may result in legal dispute, then the Authority should consider whether this renders the bid to be unacceptable.

### 16.6. Abnormally Low Tenders

- 16.6.1. Where a tender appears to be abnormally low the Officer should request that the tenderer explains the tendered price in writing and considers the evidence provided. Should a satisfactory explanation not be provided the bid should be rejected.

## 17. Post Tender Clarification and Negotiation

- 17.1. Where an aspect of a submitted tender is genuinely unclear the Officer may request that the tenderer provides clarification of that matter. The response Must only clarify the relevant part of the original tender and not contain any new information. Anything that is submitted and goes above and beyond clarification Must be disregarded in the evaluation.
- 17.2. All clarifications and responses Must be in writing and recorded in a log. It is important that clarifications are not used as a means to negotiate and advice should be sought if there is any doubt whether something is clarification or negotiation.
- 17.3. Where the Public Contract Regulations apply post tender negotiation is only permitted whilst using the competitive procedure with negotiation. Post tender negotiations are not permitted in open and restricted procedures.



- 17.4. In sub-threshold procurements where the Public Contract Regulations do not apply and it is considered that post tender negotiations are in the Authority's interests and may achieve added value then post tender negotiations may, subject to 17.5 exceptionally be appropriate where authorised by the Fund Director and the Monitoring Officer except. where the Fund Director is seeking the authority in which case it will be authorised by the Monitoring Officer and the Treasurer.
- 17.5. Post tender negotiations Must only take place where they do not distort competition or disadvantage any bidder. The process should be transparent and non-discriminatory and ensure bidders are treated equally. Post tender negotiations with any tenderers Must be in accordance with the following conditions:
- Post tender negotiation should only take place if the tender documents state that it may take place.
  - Conducted by a team of suitably experienced Officers.
  - Written records of the negotiations are kept and a clear written record of the added value obtained is incorporated into the contract.

## 18. Evaluating Tenders

- 18.1. The tender evaluation criteria including sub-criteria and all weightings shall have been predetermined and published in the invitation to tender (ITT). The criteria shall be strictly observed at all times throughout the evaluation process by any Officer involved in the tender evaluation. The tenders Must be evaluated in accordance with the relevant Public Contract Regulations and the evaluation criteria as set out in the ITT. Except where lowest price was predetermined to be the appropriate criteria, the contract shall be awarded to the offer that represents best value for money to the Authority.
- 18.2. Detailed records Must be kept of the evaluation process and the individual or consensus scores allocated, including the reasons why each score was given. Records should be saved electronically (PDF format) and stored in accordance with the Authority's Records Retention Policy.

## 19. Awarding Contracts

- 19.1. The Authority shall only award a contract where this represents best value for money. A contract may only be awarded by an officer with the requisite delegated authority to award contracts. No contract shall be executed as a deed except under seal.
- 19.2. Contracts below £75,000 may be signed by an officer with appropriate delegated authority i.e the Fund Director, Head of Finance, Head of Investment Strategy, Head of Pensions Administration, Clerk, Treasurer and Monitoring Officer.

- 19.3. All contracts valued at £75,000 or above shall be executed under seal unless the Clerk approves other arrangements.
- 19.4. For all procurements valued at £250,000 or more the decision to award a contract shall be made by an Officer listed at 4.4.
- 19.5. Electronic signatures may be used in accordance with the Electronic Signature Regulations 2002 provided the sufficiency of security arrangements has been approved by the Clerk.
- 19.6. Every contract Must be in writing and must be concluded (executed by all parties) prior to the commencement of any works, services or any supply. Exceptionally, and only for certain categories of procurement such as construction, a letter of intent may be utilised to enable forward planning and mobilisation activities. Proceeding under a letter of intent can give rise to risks and suitable legal advice should always be sought before utilising a letter of intent.
- 19.7. When a contract is awarded the Officer Must ensure that the award is published on YORtender, if over £25K on Contracts Finder and if over the procurement threshold on OJEU.
- 19.8. In exceptional cases where YORtender has not been utilised the Officer Must ensure that the contract is added to the contract register.
- 19.9. The Clerk shall submit a report regarding the award of any procurement valued at £250,000 or more to the earliest available meeting of the appropriate Board.
- 19.10. The Clerk shall submit an annual report to the Corporate Governance and Planning Board listing all contracts, including those awarded under framework agreements or through joint procurement, awarded in the given year that exceed £5,000 in value.

## **20. Records and Retention**

- 20.1. The Authorised Officer with delegated authority in respect of a particular procurement shall maintain a list of all tenders received.
- 20.2. A Contracts Register of all contracts awarded above £5,000 shall be maintained and made publically available by the Fund Director on behalf of the Authority. The Contracts Register may be maintained electronically on YORtender.
- 20.3. For every individual contract a file shall be maintained for a period of 6 years.

## **21. Debriefing and Feedback**

- 21.1. Feedback is not required for quotations of £5k - £25k

- 21.2. Once a decision to award a contract at £25k and above is made all tenderers Must be notified at the same time, as soon as possible, in writing, of the intention to award the contract to the successful bidder, giving reasons for the decision.
- 21.3. The Authorised Officer will provide the evaluation results (tenderers score and winning tenderers score) to unsuccessful tenderers and will offer to provide further written feedback.
- 21.4. Where unsuccessful tenderers request a further debrief this should be provided to them in writing.
- 21.5. A contract subject to the Public Contracts Regulations can only be awarded following a communication to all unsuccessful tenderers and a mandatory 10 day standstill period. Failure to comply can result in a challenge and the contract being set aside.
- 21.6. If an unsuccessful bidder challenges the decision to award the contract and the contract has not already been awarded then the award process should be postponed and suitable legal advice is obtained.

## **22. Contract Management**

The Officer is responsible for ensuring that an appropriate and proportionate level of contract management procedures and practices are put in place.

### **22.1. Contract Variation**

- 22.1.1. A variation must not materially affect or change the scope of the original contract. Such a variation could constitute a new award/contract. Where a proposed variation exceeds 10% or £100,000, whichever is the lower the Regulations Must be followed where applicable and suitable legal advice obtained. Approval to implement a contract variation Must be requested by completion of a business case (Appendix 3).
- 22.1.2. All Contract variations Must be in writing, signed by both parties and the contract register should be updated accordingly.

### **22.2. Contract Novation**

- 22.2.1. Novation involves an agreement to change a contract by substituting the original contractor with another. Where the Authority is approached regarding novation the Authorised Officer should seek advice as follows:
- 22.2.2. For services or supplies contracts under the procurement threshold or works contracts under £250,000 either the Treasurer or Monitoring Officer should be consulted for advice.
- 22.2.3. For services or supplies contracts valued above the procurement threshold or works contract valued above £250,000 suitable legal advice must be sought.

22.2.4. Approval to implement a contract novation Must be requested by completion of a business case (Appendix 3).

### **22.3. Contract Extension**

22.3.1. The Authorised Officer shall always be satisfied that a contract extension will achieve value for money, is reasonable in all the relevant circumstances and should take legal advice regarding its execution.

22.3.2. Where the contact value exceeds the EU procurement threshold contract extensions are only permitted if there is provision in the contract to do so and the contract has not already expired. Once a Contract has expired it cannot then be extended.

22.3.3. Below EU threshold contracts may be extended by negotiation.

22.3.4. Where a contract is extended the contracts register should be updated accordingly.

22.3.5. Approval to implement a contract extension Must be requested by completion of a business case (Appendix 3).

### **22.4. Contract Termination**

22.4.1. Either party to the contract may terminate a contract early, by agreement, in accordance with the termination provisions set out in the contract. For any contract exceeding £250,000 in value, the agreement to terminate the contract shall be approved by the Authority.

22.4.2. Where termination is initiated by the contactor, or is planned to be initiated by the Authority, under circumstances that are not by mutual agreement, legal advice must be obtained.

22.4.3. Approval to implement a contract termination Must be requested by completion of a business case (Appendix 3).

### **22.5. Contract Review and Exit**

22.5.1. At least twelve months prior to the expiry of the contract the Officer should have in place an exit plan. The exit plan should contain, as a minimum, provision for the handover of any assets or data, a strategy for post exit arrangements and if necessary plans for re-procurement, including allowance of time for any required approval processes.

## **23. Joint Procurement**

23.1. Any joint procurement arrangements with other local authorities or public bodies including membership or use of purchasing consortia for procurements above £250,000 shall be approved by the Monitoring Officer. Approval shall only be

given where the joint procurement arrangement assures compliance with the Public Contract Regulations. This clause does not apply to framework agreements.

23.2. The Authorising Officer Must be satisfied that any joint procurement shall be undertaken in accordance with the principles of these CSOs.

23.2.1. Approval to embark on a joint procurement exercise Must be requested by completion of a business case (Appendix 3).

## **24. Procurement by Consultants**

24.1 Any Consultants used by the Authority shall be appointed in accordance with these contract standing orders. Where the Authority uses Consultants to act on its behalf in relation to any procurement, then the Authorised Officer shall ensure that the Consultants carry out any procurement in accordance with these contract standing orders, or using an equivalent market appropriate, open and transparent process that is compliant, where applicable with the Public Contract Regulations 2015. Consultants shall only be permitted to make recommendations on whether to award a contract or who a contract should be awarded to. The Authorised Officer shall ensure that the Consultant's performance is monitored.

## **25. Purchasing cards**

25.1. Purchasing cards shall be used in accordance with these standing orders.

## **26. Review and Amendment of Contract Standing Orders**

26.1. These contract standing orders shall be reviewed and updated on a regular basis as determined by the Authority and changes to titles, statutory thresholds and minor amendments will be undertaken in consultation with the Monitoring Officer from time to time. Amended contract standing orders shall be agreed periodically as determined by the Monitoring Officer and adopted by the Authority.

## **27. Waivers of Contract Standing Orders**

27.1. While the Authority may choose to waive certain requirements within these Contract Standing Orders it is important to note that the requirements of Public Contract Regulations 2015 cannot be waived under any circumstances.

27.1.1. Circumstances where a Waiver to the requirement for competition may be justified include for example, the procurement of goods, materials, works or services which are obtainable only from one supplier, where no equivalent or reasonably satisfactory alternative is available and no genuine competition can be obtained;

27.2. In order to waive a Contract Standing Order the Officer Must complete the waiver form attached to these CSOs at Appendix 1. The waiver form may be authorised by one of the following :

- the Clerk,
- the Treasurer, and the
- the Fund Director

- 27.3. Where it is necessary to waive CSOs because of an unforeseeable emergency involving immediate risk to persons or property, serious disruption to the Authority, or other significant situation that requires urgent action, the Authorised Officer may, after consulting with an officer listed at CSO 4.4 and 27.3 above jointly approve the waiver without completion of a waiver form up to a maximum of £75,000. The Officer Must prepare a report describing the situation and actions taken for submission to the next appropriate Board meeting.
- 27.4. All applications to waive Contract Standing Orders and a record of the decision to approve or reject the application Must be recorded on the Authorities CSO Waiver Log.
- 27.5. Where any contract standing order indicates that an Officer “Must” follow a certain course of action that contract standing order cannot be waived under any circumstances. All other contract standing orders Must be complied with unless otherwise authorised via the waiver process.

## Definitions

|                               |  |
|-------------------------------|--|
| <b>“Authorised Officer”</b>   | A person with appropriate delegated authority to act on the Authority’s behalf.  |
| <b>“Authority”</b>            | South Yorkshire Pensions Authority; or any designated Board of the Authority that has delegated powers to act on behalf of the Authority.  |
| <b>“Consultant”</b>           | Provider of professional services or expertise engaged to:<br><br>(a) provide expert analysis and advice which facilitates decision making<br><br>(b) provide a specific, one-off task or set of tasks; and<br><br>(c) perform a task involving skills or perspectives which would not normally be expected to reside within the Authority.  |
| <b>“Contract”</b>             | Means an agreement between the Authority and any Contractor or Supplier made by formal agreement or by issue of a letter of acceptance or official order for goods, works or services.   |
| <b>“Contractor”</b>           | Any person or body of persons providing, or seeking to provide, supplies, services or works to the Authority. May be used interchangeably with Supplier.   |
| <b>“Contracts Finder”</b>     | The web-based procurement portal provided by or on behalf of the UK Government Cabinet Office.   |
| <b>“Contracts Register”</b>   | A public register held and maintained by the Authority containing details of contracts valued at £5,000 or more.   |
| <b>“Framework Agreement”</b>  | An agreement which allows an Authority to call off from a Supplier to provide supplies, services or works in accordance with the terms of the agreement. The Framework Agreement itself usually constitutes a nonbinding offer with no obligations on the Authority to call off from the Supplier. If the Authority calls off from the Supplier a binding contract comes into being. |
| <b>“Light Touch Services”</b> | Public contracts for social and other specific services as set out in Chapter 3, Section 7 of the Public Contract Regulations 2015.  |
| <b>“Monitoring Officer”</b>   | The Monitoring Officer performing the functions of the “Monitoring Officer” as described under section 5 of the Local Government and Housing Act 1989.   |
| <b>“Must”</b>                 | An instruction to follow a certain course of action that cannot be waived under any circumstances.   |
| <b>“OJEU”</b>                 | Official Journal of the European Union.  |

|                                  |  |
|----------------------------------|--|
| <b>“PAS 91”</b>                  | PAS 91 is a standardised pre-qualification questionnaire which has been developed to reduce the need for suppliers to complete a variety of different pre-qualification questionnaires for different, and in some cases, the same clients. Developed by the British Standards Institute (BSI), the question set has been commissioned by Government and is a recommended common minimum standard for construction procurement. |
| <b>“Procurement Regulations”</b> | Public Contract Regulations 2015.  |
| <b>“Procurement Threshold”</b>   | The financial threshold above which contracts are required by the Public Contract Regulations 2015 to be advertised in the OJEU.   |
| <b>“Regulations”</b>             | Public Contract Regulations 2015.  |
| <b>“Supplier”</b>                | Any person or body of persons providing, or seeking to provide, supplies, services or works to an Authority. May be used interchangeably with Contractor.  |
| <b>“TUPE”</b>                    | The Transfer of Undertakings (Protection of Employment) Regulations 2006.  |
| <b>“Value for Money”</b>         | The optimum combination of a minimum purchase price, combined with maximum efficiency and effectiveness of the purchase, combined with maximum benefits for the customer receiving the goods, services or works..  |
| <b>“YORtender”</b>               | The Authorities electronic procurement system.   |



## Appendix 1 Waiver Form

|                   |  |
|-------------------|--|
| <b>Report by:</b> | <i>[insert name of Officer making the request]</i> |
| <b>Telephone:</b> |  |
| <b>Email:</b>     |  |
| <b>Date</b>       |  |

**Subject: Request to waive contract standing order(s) in respect of** *[insert name of project/procurement]*

### 1. Background

Request to waive Contract Standing Order Number: *[insert CSO number]*

Name of Supplier(s): *[insert]*

Contract Value(s): *[insert]*

Contract Dates: *[insert]*

### 2. Reason for request and recommended course of action

*[The report must give the reasons why the request is being made and explain the recommended course of action. Sufficient information must be included to enable the authorised Officer to make a decision. For example; Justification for using the Supplier including details of previous contracts (dates, value and scope) Information demonstrating that value for money is being achieved including any savings being secured by this approach. Identification of any social, economic or environmental advantages from this course of action]*

### 3. Consequences of proposed waiver not being approved

*[A statement should be included explaining the consequences of the proposed action not being approved.]*

### 4. Legal implications

*[Insert details of any legal advice that has been obtained and/or any legal risks that have been identified]*

### 5. Recommendations

It is recommended that approval is given to waive Contract Standing Order *[insert]* and to proceed as proposed in this report.

### 6. Decision

Based on the information / reasons detailed above, the request to waive the Contract Procedure Rule(s) as proposed in this report is **approved/rejected** (delete as appropriate).

Signed.....

Date.....

Comments.....

Designation (*delete*): Clerk / Treasurer / Fund Director

## Appendix 2 Request to use a Procurement Procedure (not open or restricted).

|                   |  |
|-------------------|--|
| <b>Report by:</b> | <i>[insert name of Officer making the request]</i> |
| <b>Telephone:</b> |  |
| <b>Email:</b>     |  |
| <b>Date</b>       |  |

**SUBJECT: Request to use the following procurement procedure in the procurement of**  
*[insert name of project/procurement]:*

| <b>1. PROCEDURE</b>                                       | <b>Please tick <input checked="" type="checkbox"/></b> |
|---|--|
| Competitive procedure with negotiation                    | <input checked="" type="checkbox"/>                    |
| Competitive dialogue                                      | <input checked="" type="checkbox"/>                    |
| Innovation partnership                                    | <input checked="" type="checkbox"/>                    |
| Use of the negotiated procedure without prior publication | <input checked="" type="checkbox"/>                    |

### 2. Background

Name of Supplier(s): *[insert]*

Contract Value(s): *[insert]*

Contract Dates: *[insert]*

### 3. Reason for request and recommended course of action

*[The report must give the reasons why the request is being made and explain the recommended course of action. Sufficient information must be included to enable the authorised Officer to make a decision. For example; provide the reasons why the open or restricted procedures are not suitable. How have you arrived at your decision to use a particular procurement procedure? Information demonstrating that value for money is being achieved including any savings being secured by this approach. Identification of any social, economic or environmental advantages from this course of action]*

### 4. Consequences of proposal not being approved

*[A statement should be included explaining the consequences of the proposed action not being approved.]*

### 5. Legal implications

*[Insert details of any legal advice that has been obtained and/or any legal risks that have been identified]*

### 6. Recommendations

It is recommended that approval is given to the use of the procurement procedure indicated at 1. above and to proceed as proposed in this report.

### 6. Decision

Based on the information / reasons detailed above, the request to use the procurement procedure as proposed in this report is **approved/rejected** (delete as appropriate).

Signed.....

Date.....

Comments.....

Designation (*delete*): Clerk / Treasurer / Fund Director

## Appendix 3 Business Case

|                   |  |
|-------------------|--|
| <b>Report by:</b> | <i>[insert name of Officer making the request]</i> |
| <b>Telephone:</b> |  |
| <b>Email:</b>     |  |
| <b>Date</b>       |  |

**SUBJECT: Proposal to implement one of the following procedures in the case of**  
*[insert name of procurement/contract].*

| <b>1. Procedure</b>  | <b>Please tick <input checked="" type="checkbox"/></b> |
|--|--|
| CSO 3.4 - Procurement without competitive tendering due to unforeseen circumstances. | <input checked="" type="checkbox"/>                    |
| CSO 22.1 - Contract Variation  | <input checked="" type="checkbox"/>                    |
| CSO 22.2 - Contract Novation   | <input checked="" type="checkbox"/>                    |
| CSO 22.3 - Contract Extension  | <input checked="" type="checkbox"/>                    |
| CSO 22.4 - Contract Termination  | <input checked="" type="checkbox"/>                    |
| CSO 23 - Joint Procurement Exercise  | <input checked="" type="checkbox"/>                    |

### 1. Background

This business case constitutes a formal request to proceed with a *[insert relevant information from table above]* with *[insert name of relevant third party i.e. Supplier or other Authority]*.

Contract Value(s): *[insert]*

Contract Dates: *[insert]*

### 2. Reason for request and recommended course of action

*[The business case must explain the reasons behind the request, the recommended course of action, how value for money is being achieved, any savings being secured, any social, economic or environmental advantages from this course of action. Sufficient information must be included to enable the authorised Officer to make a decision.]*

### 3. Consequences of business case not being approved

*[Explain the consequences of the proposed action not being approved.]*

### 4. Legal implications

*[Insert details of any legal advice that has been obtained and/or any legal risks that have been identified]*

### 5. Recommendations

It is recommended that the business case is approved and to proceed as proposed.

### 6. Decision

Based on the information / reasons detailed above, the business case is **approved/rejected** (delete as appropriate).

Signed.....

Date.....

Comments.....

Designation (delete): *Fund Director, Head of Finance, Head of Investment Strategy, Head of Pensions Administration*