

## **PART 4d - CONTRACT STANDING ORDERS**

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- 1.1 These Standing Orders shall apply to the seeking of offers and the award of contracts for works, supplies or services.
- 1.2 Every contract made by the Authority for works, supplies or services and the procedures relating to them shall comply with:
  - (a) these Standing Orders
  - (b) Financial Regulations made by the Authority
  - (c) any legal requirements applying to such contracts.
- 1.3 Wherever legal requirements conflict with or provide additional requirements to these Standing Orders those requirements shall prevail.
- 1.4 These Standing Orders may only be varied with the approval of the Authority.
- 1.5 The Authority has power to waive requirements in these Standing Orders. The Clerk and Treasurer is authorised to exercise this power on behalf of the Authority. No exemption can be used if EU Procurement Procedures apply. All exemptions, and the reasons for them, must be recorded in an appropriate log.

## **2. Definitions**

- 2.1 In these Contract Standing Orders, except where the context otherwise requires, the following expressions shall have the meanings hereby described to them:

“Appropriate Manager”	shall mean the Clerk and Treasurer, the Fund Director or the Head of Pensions Administration (or an authorised officer to act in their absence) and shall be interpreted according to their respective management responsibilities
“A Contract”	means any contract in writing or otherwise for works, supplies or services but shall exclude contracts of employment or for the acquisition of land, including buildings and other structures, land covered with water, and any estate, interest, easement, servitude or right in or over land or for financial services in connection with the issue, purchase, sale or transfer of securities or other financial instruments (this exclusion includes securities broking services).
“Monitoring Officer”	shall mean the Deputy Clerk and Monitoring Officer performing the functions of the “Monitoring Officer” as described under section 5 of the Local Government and Housing Act 1989
“Quotation”	means a written estimate to execute works, or supplies or services.
“Services”	is to be construed in accordance with the Public Contracts Regulations 2006.

“Supplies”	is to be construed in accordance with the Public Contracts Regulations 2006.
“A tender”	means a written offer to execute works or provide supplies or services.
“Works”	is to be construed in accordance with the Public Contracts Regulations 2006.

2.2 A reference to any enactment shall be deemed to include a reference to any amendment or re-enactment of the same.

### **3. Discharge of Functions by Officers**

3.1 The Clerk and Treasurer, the Fund Director and the Head of Pensions Administration shall be empowered to seek offers for and award contracts for works, supplies or services on behalf of the Authority in accordance with these Standing Orders.

3.2 Whenever the office of Clerk and Treasurer, Fund Director or the Head of Pensions Administration 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.

#### Clerk and Treasurer

#### Fund Director

#### Head of Pensions Administration

Deputy Clerk and Monitoring  
Officer  
Deputy Treasurer  
Deputy Clerk /Policy  
Deputy Monitoring Officer

Head of Investments

Principal Pensions Manager

3.3 Officers undertaking contract functions on behalf of the Authority shall always:

- (a) Seek value for money;
- (b) show no undue favour to any contractor, nor discriminate against contractors from other EU States;
- (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 the Authority’s Standing Orders, Financial Regulations, EU or domestic law; and
- (e) ensure that adequate Contract Files are kept for all contracts upon which they are engaged.

### **4. Declaration of Interests**

- 4.1 Any officer undertaking any contract function(s) (e.g. supplier selection, tender award or day to day order placing) shall declare in writing to the Clerk and Treasurer any relationship of a business or private nature with an external contractor or potential contractor. The Clerk and Treasurer shall decide whether or not the officer concerned should continue to discharge the particular contract function(s).
- 4.2 In accordance with the provisions of Section 117 of the Local Government Act 1972 where it comes to the knowledge of an officer that a contract in which the officer has a pecuniary interest whether direct or indirect (not being a contract to which the officer is a party) is before the Authority, the officer must give notice in writing of his/her interest to the Clerk and Treasurer.
- 4.3 The Clerk and Treasurer shall keep completed declarations given under this SO 4 on the individual's personal file and a register of officers' declarations indicating the names of the officers concerned and the nature of their declaration.

## **5. Procedures for Letting Contracts**

- 5.1.1 Where the estimated value of a proposed contract for works, supplies or services is equivalent to or above the thresholds specified in the table below offers shall be invited by the appropriate Manager in accordance with the Public Contracts Regulations 2006 SI 2006/5.

<b>Contract</b>	<b>Threshold</b>
Works	£4,348,350
Supplies	£173,934
Services	£173,934

(Thresholds are based upon EU Procurement thresholds as specified from January 2012. Thresholds will change thereafter in line with appropriate statutory procurement thresholds operative at the time).

- 5.1.2 Where public notice of a proposed contract is required in the Official Journal of the European Communities public notice shall also be given in one or more journals or newspapers circulating in the United Kingdom.
- 5.2.1 Where the estimated value of a proposed contract is below the appropriate threshold specified in SO 5.1 then unless an exception applies the appropriate Manager shall comply with the following:

### Contracts up to £20,000

The appropriate Manager shall ensure that the best value in terms of economy, efficiency and effectiveness is obtained:

### Contracts above £20,000 to £50,000

The appropriate Manager shall obtain three or more written quotations in accordance with SO 5.4.

### Contracts above £50,000

Full tender procedure required.

5.2.2 A contract shall not be artificially divided into two or more separate contracts with the intention of avoiding the requirements to invite quotations or tenders. Contracts shall be packaged to best ensure service delivery, competition and value for money.

### 5.3 **Exceptions from quotation or tender**

5.3.1 Only one tender or quotation need be obtained in the following circumstances:

- (a) where only one contractor is able to carry out the work or service or to supply the goods for technical reasons or because of exclusive rights;
- (b) where additional works supplies or services are required which, through unforeseen circumstances, were not included in the original contract and which are either strictly necessary for the completion of the contract or, for technical or economic reasons cannot be carried out separately without great inconvenience;
- (c) 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;
- (d) for works, supplies or services obtained under a framework arrangement approved by the Authority;
- (e) for items up to value of £20,000 where, in the opinion of the appropriate Manager competitive quotations are not necessary or reasonably practicable.

5.3.2 No tender is required for individual contracts :-

- (a) for brokerage services associated with the purchase and sale of securities and financial instruments traded upon a public stock exchange;
- (b) for the engagement of legal and auditing services;
- (c) for professional services associated with the development or refurbishment of investment properties (such as architectural, building design and feasibility consultancy, quantity surveying);
- (d) for agency services associated with the purchase and sale of investment properties;

but more than one quotation ought to be obtained wherever possible and best practice for procurement in that industry should be followed.

5.3.3 Where an exception specified in SO 5.3.1 or 5.3.2 applies the appropriate Manager may proceed with the contract provided that the expenditure is within the framework of the Authority's policy and for contracts other than those specified in 5.3.2 included in the approved budget.

5.3.4 The Clerk and Treasurer shall submit an annual report to the Corporate Governance and Planning Board listing all contracts above £20,000 which are awarded under SO 5.3.1 and 5.3.2.

5.3.5 If SO 5.1.1 applies then the exemptions outlined under 5.3 above do not.

### 5.4 **Written Quotations - Contracts above £20,000 to £50,000**

- 5.4.1 Where the total estimated value of the proposed contract is above £20,000 but does not exceed £50,000 the appropriate Manager shall request a written quotation from not fewer than 3 persons believed to be suitably experienced in the supply of the required works, supplies or services.
- 5.4.2 A quotation shall be required to be addressed to the appropriate Manager in a plain envelope marked only to identify the subject of the quotation.
- 5.4.3 Any quotation received shall only be considered if given in response to a request in writing given by the appropriate Manager, stating the nature and purpose of the contract, and the last date for receipt of the quotation. The timescales used shall be such that persons invited have an equal opportunity to respond.
- 5.4.4 A record shall be maintained of the contractors approached and their responses.
- 5.4.5 The appropriate Manager may accept a quotation other than the lowest provided he/she is satisfied that it is in the best interests of the Authority to do so, in which case a record shall be made setting out the reasons for rejecting the lower quotations.

## 5.5 **Tenders - Contracts above £50,000**

- 5.5.1 Where the total estimated value of a proposed contract is above £50,000, tenders shall be invited in accordance with the provisions of SO's 5.6, 5.7 or 5.8 as appropriate.

## 5.6 Approved Lists

- 5.6.1 This SO 5.6 shall have effect where the Authority has determined that a list shall be kept of persons to be invited to tender for contracts for works, supplies or services of specified categories, values or amounts.
- 5.6.2 The Authority shall ensure that an up to date list is compiled and maintained. The list will contain:
- (a) the names of persons who wish to be included in it and are approved by the Authority, who shall have power to exclude persons from the list either temporarily or permanently;
  - (b) an indication of whether a person whose name is included in it is approved for contracts for all or only some of the specified values, or amounts or categories.
- 5.6.3 At least 4 weeks before the list is first compiled, notices inviting applications for inclusion in it shall be published in one or more newspapers or journals circulating among persons as undertake such contracts of the specified categories, amounts or values within the United Kingdom.
- 5.6.4 The list shall be amended as required from time to time and shall be reviewed at intervals not exceeding 3 years. At least 4 weeks before each review each person whose name appears on the list shall be asked whether he/she wishes his/her name to remain and notices inviting applications for inclusion on the list shall be published as set out in CSO 5.6.3.
- 5.6.5 Where the invitation to tender for a contract is to be limited to persons whose name appears on the list maintained under this CSO 5.6, an invitation to tender for that contract shall be sent to at least 4 of those persons who are approved for a contract of that category, value or amount, or if there are fewer than 4 such persons, to all of them.

5.6.6 If under SO 5.6.5 above there are more than 4 approved persons on the list, the persons to whom invitations are sent shall be selected by the appropriate Manager.

#### 5.7 Restricted Tender Procedure

5.7.1 This SO 5.7 shall have effect where invitation to tender for a contract is to be limited to persons who reply to a public notice.

5.7.2 Public notice shall be given in one or more newspapers or journals circulating in the United Kingdom among persons as undertake such contracts.

5.7.3 The public notice shall set out particulars of the proposed contract and invite persons interested to apply for inclusion on the select list.

5.7.4 After the expiration of the period specified in the public notice (which shall be not less than 10 days) invitations to tender shall be sent to those persons who applied to tender and who have been selected.

5.7.5 A record shall be kept of the selection criteria used for the shortlisting exercise and which suppliers failed (if any) and why.

#### 5.8 Open Tender Procedure

5.8.1 This SO 5.8 shall have effect where a proposed contract is to be let by open tender.

5.8.2 Public notice shall be given in one or more newspapers or journals circulating in the United Kingdom among persons as undertake such contracts or on the Authority's website.

5.8.3 The public notice shall set out the nature and purpose of the proposed contract, invite tenders and state the last date and time when tenders will be received. The period specified for the return of tender shall be not less than 10 days.

#### 5.9 Selection of Procedure

5.9.1 Unless either the law requires a particular procedure to be used, or the Authority requires a particular procedure to be used the following shall apply:-

- (a) where there is an approved list an invitation to tender for the contract shall be sent to at least 4 of those persons who are approved for a contract of that category, value or amount, or if there are fewer than 4 such persons, to all of them. Where there are more than 4 persons approved on the list, the persons to whom invitations are sent shall be selected by the appropriate Manager.
- (b) where there is no approved list and it is considered that reasonable competition will be provided by selective tender, the procedure under SO 5.7 shall be used;
- (c) where there is no approved list and it is considered inappropriate to use the selective tender procedure, the procedure under SO 5.8 shall apply.

#### 5.10 Specifications

Before undertaking a procurement activity the Appropriate Manager shall ensure that a written specification which will form the basis of the contract/arrangement has been prepared. The Specification shall include, where appropriate, defined performance criteria and the associated reporting mechanisms.



## **6. Submission and Receipt of Tenders**

6.1 No tender will be considered unless:

- i) it is received within the time stated and;
- ii) it is received in a plain sealed envelope which shall bear the word "Tender" followed by the subject to which it relates, but no name or mark indicating the identity of the sender;

6.2 Every notice of invitation to tender shall inform prospective tenders of the provisions of SO 6.1.

6.3 The instructions to tender issued to tenderers shall state that tenders are to be delivered to the Clerk and Treasurer.

6.4 If the tender envelope states the name, mark, slogan or logo of the firm, it must immediately on receipt be placed in a plain envelope recording the tender it concerns.

6.5 Tenders shall remain in the custody of the Clerk and Treasurer until the time appointed for their opening. The Clerk and Treasurer shall make arrangements to ensure that the date and time of receipt is marked on each tender envelope. Details of the tender instructions issued shall be provided to the officer responsible for arranging the tender opening ceremony.

6.6 Each person submitting a tender shall be required to certify that he/she has not, before submission;

- (a) communicated to any person other than his/her legal or other professional advisors the amount of any proposed tender;
- (b) adjusted the amount of any proposed tender for the work in accordance with any agreement or arrangement with any other person.

## **7. Opening and Registration of Tenders**

7.1 Tenders delivered to the Clerk and Treasurer in accordance with the provisions of SO 7.3 shall be opened and recorded at one time and in the presence of 2 officers designated for that purpose by the Clerk and Treasurer.

7.2 Where there is only one tender for consideration the Clerk and Treasurer will decide whether or not to open the tender or undertake a re-tendering exercise and his/her decision will be recorded in the tender register.

7.3 The Clerk and Treasurer shall maintain a register of tenders.

7.4 At each tender opening ceremony the following details shall be recorded in the tender register:

- (a) the last date and time for receipt of tenders;
- (b) the tender reference number;
- (c) the estimated value of the contract;
- (d) a brief description of the works, supplies or services;
- (e) the date and time each tender was received as recorded on the tender envelope;
- (f) the name of each tenderer;

- (g) the amount of each tender specified on the Form of Tender (where tenderers are requested to submit Schedules of Prices it shall be sufficient to indicate this fact in the tender register);

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

7.5 A register shall also be maintained of the name and address of any tenderer whose tender was not considered due to non-compliance with the requirements of SO 6.1. The reasons for the disqualification shall be notified in writing to the tenderer. The tender envelope may be opened to ascertain the name and address of the tenderer, but no details of the tender shall be disclosed.

7.6 Arrangements shall be made for all tender envelopes to be kept for two years.

## **8. Evaluation of Tenders**

8.1 The appropriate Manager shall ensure a full evaluation of tenders is undertaken. Differences between tenders should be documented including reference to any technical, operational and financial consequences that may arise.

8.2 A report must be written and must recommend the acceptance of one or none of the tenderers and give appropriate reasons.

## **9. Negotiations**

9.1 Negotiations may take place with the tenderer whose tender is under consideration for a reduction to the price where:

- (a) modifications are to be made to the specification, quantity or conditions, or
- (b) the tender under consideration exceeds the estimated amount or value by 10% or more.

9.2 All such negotiations must be undertaken by 2 or more officers authorised for these purposes by the appropriate Manager.

9.3 A full written record of the negotiations and any agreement made, shall be maintained and made available on request to the Clerk and Treasurer.

9.4 Only where any such negotiations are unsuccessful shall negotiations proceed with the next lowest or most economically advantageous tenderer.

## **10. Errors and Discrepancies**

10.1 Without prejudice to the right of the Authority to refuse any tender, where the examination of a tender reveals any arithmetical omission, error or discrepancy in the figures the appropriate Manager may give to the tenderer whose tender is under consideration the opportunity to confirm his/her offer or to amend it to correct genuine errors.

10.2 Where the tenderer elects to amend his/her offer and the revised offer is no longer the lowest or most economically advantageous, the next tender should be considered.

## **11. Acceptance of Tenders**

- 11.1 Where the Clerk and Treasurer, Fund Director or Head of Pensions Administration (“Appropriate Manager”) has invited tenders he/she is authorised to accept the Most Economically Advantageous Tender received.
- 11.2 The Clerk and Treasurer shall submit an annual report to the Corporate Governance and Planning Board listing all contracts awarded in the given year that exceed £50,000 in value.
- 11.3 Where payment is to be received by the Authority the Appropriate Manager shall have power to accept the Most Economically Advantageous Tender received.
- 11.4 The Authority reserves the right not to accept any tender.

## **12. Nominated Sub-Contractors and Nominated Suppliers**

- 12.1 Where within a contract already approved a sub-contractor or supplier is to be nominated to a main contractor the following provisions shall apply.
- 12.2 Where the estimated cost of a nomination does not exceed £20,000 quotations shall be obtained in accordance with SO 5.4.
- 12.3 Where the estimated cost of a nomination exceeds £20,000 then unless the Authority determines that it is not reasonably practicable for competitive tenders to be obtained tenders for the work shall be invited in accordance with SO 5.6, 5.7 or 5.8 as appropriate.
- 12.4 The terms of the invitation shall require an undertaking by the tenderer that if he/she is selected he/she will be willing to enter into a contract with the main contractor on terms which indemnify the main contractor against his/her own obligations under the main contract in relation to the works, supplies or services included in the sub-contract.
- 12.5 SO's 6, 7, 8, 9, 10 and 11 inclusive shall apply to the submission, receipt, custody, opening, acceptance of tenders invited under this contract standing order as if the tender was a contract with the Authority.

## **13. Supervision of Contract**

- 13.1 It shall be a condition of the engagement of the services of any person (not being an officer of the Authority) to supervise a contract or matters relating to a contract, that in relation to that contract he/she shall:
- (a) comply with these Contract Standing Orders as though he/she were an officer of the Authority;
  - (b) at any time during the carrying out of the Contract provide, on request to the Clerk and Treasurer, all the records maintained by him/her in relation to the Contract; and
  - (c) on completion of the Contract transmit all such records as the Clerk and Treasurer requires.

## **14. Form of Contract**

- 14.1 All contracts shall be evidenced in writing and every Contract which exceeds £20,000 in value shall be in writing, in a form approved by the Clerk and Treasurer, except:
- (a) where the Clerk and Treasurer is satisfied that works must be executed, or supplies or services obtained as a matter of urgency a written Contract must, (if otherwise required) be executed as soon as practicable thereafter; or

(b) in the case of the purchase or sale of goods by auction.

(Note:- Certified contracts must be approved by the Clerk and Treasurer and the Monitoring Officer - SO 16).

14.2 Every Contract which exceeds £50,000 in value, and in any other case where the Clerk and Treasurer so decides, shall be under seal, unless the Clerk and Treasurer approves other arrangements.

14.3 Every Contract in writing or under seal shall specify:

- (a) the work, supplies or services to be done or supplied;
- (b) the parties to the contract, including any guarantor;
- (c) the price to be paid with a statement of discounts or other deductions;
- (d) the time or times within which the Contract is to be performed and, where appropriate, the amount of liquidated damages which may otherwise become due;
- (e) any other terms and conditions as specified by the Deputy Clerk to meet the requirements of these Contract Standing Orders and to protect the Authority's interests.

14.4 Every Contract in writing not made under seal shall be signed by the Clerk and Treasurer or a duly authorised officer.

14.5 For the purposes of SO 14.4 the following officers are authorised to sign contracts:

(a) All Contracts

the Deputy Clerk and Monitoring Officer;  
the Deputy Treasurer;  
the Deputy Clerk/Policy  
the Deputy Monitoring Officer

(b) Contracts not Exceeding £20,000

the Fund Director  
the Head of Pensions Administration

14.6 The authorisation provisions applying to the signature of contracts specified in 14.4 and 14.5 shall apply to the signature of official orders for works, supplies or services.

14.7 Every contract made under seal shall be dealt with as set out in Procedural Standing Order Number 31.

14.8 Every Contract which is estimated to exceed £50,000 and is for the execution of works, the provision of services, or supplies by a particular date or series of dates, shall provide for liquidated damages, unless the Clerk and Treasurer, decides that such provision is not required. Where provision is made for liquidated damages, the amount shall be determined by the Clerk and Treasurer.

14.9 Every written Contract shall include a clause to prevent the Contractor from transferring or assigning directly or indirectly, the contract without the written consent of the Authority and

to prevent the sub-letting of the Contract except to the extent permitted in writing by the Supervising Officer or, if none, the Clerk and Treasurer.

- 14.10 Every written Contract shall include a clause to secure that the Authority shall be entitled to cancel the Contract and to recover from the Contractor the amount of any loss resulting from such cancellation if, in connection with the Contract, the contractor commits an offence under Bribery Act 2010 or gives any fee or reward the receipt of which is an offence under s.117(2) of the Local Government Act 1972, or has directly or indirectly canvassed any member or officer, or has obtained or attempted to obtain information concerning any other tender or otherwise acts in a similar unlawful manner.
- 14.11 The Clerk and Treasurer shall have general powers to set standard and particular contract conditions.
- 14.12 The Clerk and Treasurer is empowered to approve the assignment and novation of contracts entered into by the Authority for supplies, works or services where the estimated value of the contract does not exceed £50,000. The Clerk and Treasurer may also give consent on behalf of the Authority to the sub-letting of such a contract.

## **15. Contract Specification**

- 15.1 Technical specifications shall be defined by reference to relevant European Specifications, or where they do not exist, in the following order: To British technical specifications, British standards implementing international standards, other British standards and technical approvals or any other standards. Where an appropriate standard is current at the date of tender, all works, services and supplies shall be at least of equal quality.
- 15.2 Specifications shall not refer to supplies of a particular make or source unless:
- (a) it is justified by the contract requirement, or
  - (b) the contract requirement cannot otherwise be described precisely and intelligibly, provided references are accompanied by the words "or equivalent".

## **16. Certified Contracts**

- 16.1 Whenever in relation to a contract it is proposed to issue a certificate as to the Authority's power to enter into the contract under Section 3 of the Local Government (Contracts) Act 1997, then the following shall apply:-
- (a) the terms of the contract, any agreed discharge terms and the contents of the Section 3 certificate shall be approved both by the Clerk and Treasurer and the Monitoring Officer;
  - (b) the Clerk and Treasurer shall ensure that the written consent to the issue of the Section 3 Certificate is obtained from each of the persons with whom the Authority has entered into or is to enter into contract;
  - (c) the Section 3 Certificate shall be signed by the Clerk and Treasurer or the Deputy Treasurer in his/her absence (this responsibility cannot be further delegated);
  - (d) the Clerk and Treasurer shall ensure that copies of the Section 3 Certificate are provided to all parties to the contract, the Monitoring Officer and, upon request, to the Authority's Auditor;

- (e) the Clerk and Treasurer shall ensure that throughout the period which the contract operates:
  - (i) a copy of the Section 3 Certificate is open to inspection by members of the public at all reasonable times without payment; and
  - (ii) that members of the public are afforded facilities for obtaining copies of the Section 3 Certificate on payment of an appropriate fee.

## **17. Contract Records**

17.1 The appropriate Manager shall ensure that a contract record is maintained for each contract which is let with an estimated value of above £50,000. The contract record shall record:

- (a) the estimated value of the contract (to be ascertained before offers are invited);
- (b) the contract award procedure adopted, (e.g. open, restricted, or negotiated) together with supporting reasons for the method chosen;
- (c) the basis upon which the contract was awarded e.g. lowest tender or most economically advantageous (where the latter applies the criteria used shall be specified);
- (d) where the contract is let without inviting tenders any exceptions relied upon must be specified (which shall include details of any consortium, or framework arrangements);
- (e) the names of persons invited to tender;
- (f) the name of the successful contractor;
- (g) details of adverts placed, and the dates thereof together with the date of any contract award notice published in the Official Journal of the European Communities

17.2 The appropriate Manager shall provide the Monitoring Officer with a list of all the contracts let in each calendar year which are equal to or above the EU Contract thresholds for works, supplies and services. (This information is required for the purposes of E U Statistical Returns).