

PART 4d
CONTRACT STANDING ORDERS

DRAFT

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CONTRACT STANDING ORDERS

1. Compliance

- 1.1 Every contract entered into by the Authority shall be entered into pursuant to or in connection with the Authority's functions and shall comply with:
- (a) all relevant statutory provisions;
 - (b) the relevant European procurement rules (i.e. the EC Treaty, the general principles of EC law and the EC public procurement directives implemented by the UK Regulations);
 - (c) the Authority's constitution including these contract standing orders (CSOs), the Authority's financial regulations and scheme of delegation; and
 - (d) the Authority's strategic objectives, procurement strategy and policies.
- 1.2 The highest standards of probity are required of all officers and members involved in the procurement, award and management of Authority contracts.
- 1.3 Any failure to comply with any of the provisions of these Contract Standing Orders, Financial Regulations, Scheme of Delegation or UK and European Union legal requirements by the Authorised Officers may result in disciplinary action by the Authority.
- 1.4 As a general rule members and officers must not accept from contractors or potential contractors or from any firm or organisation with whom the Authority has had, is having or may have any dealings of any kind any gift except in accordance with the Authority's Code of Conduct.
- Members and officers should comply with the Authority's Code of Conduct in this respect. Users are directed for further guidance to the Authority's policy on gifts and hospitality.
- 1.5 These Standing Orders may only be varied with the approval of the Authority.
- 1.6 The Authority has power to waive requirements in these Standing Orders. The Clerk and the Treasurer are 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. Delegated Authority

- 2.1 Any procurement 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.
- 2.2 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. Any contracts awards which fall above the EU threshold or which involve any potential TUPE transfer of the Authority's employees to a Supplier shall be referred for a decision from the Authority.
- 2.3 The Clerk, the 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.

- 2.4 Whenever the office of Clerk, the 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.

<u>Clerk or Treasurer</u>	<u>Fund Director</u>	<u>Head of Pensions Administration</u>
Monitoring Officer Deputy Clerk Deputy Monitoring Officer	Head of Investments	Pensions Manager

3. Exempt Contracts

- 3.1 The following contracts are exempt from the requirements of these contract standing orders:

- (a) individual agency contracts for the provision of temporary staff; (for the avoidance of doubt, the appointment of agencies is subject to these CSOs, however agency staff will be employed on the agency's terms and conditions)
- (b) employment contracts; and
- (c) 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. The use of this exemption must be supported by a business case setting out the reason(s);
- (d) for brokerage services associated with the purchase and sale of securities and financial instruments, including the procurement of research, traded upon a public stock exchange;
- (e) for the engagement of legal (including instructions from counsel) and audit services;
- (f) professional services associated with the development or refurbishment of investment properties (such as architectural, building design and feasibility consultancy, quantity surveying);
- (g) for agency services associated with the management, purchase and sale of investment properties;
- (h) 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;
- (i) for works, supplies or services obtained under a framework arrangement approved by the Authority.

4. Estimating the Contract Value

- 4.1 Contract values should be calculated in accordance with the Regulations even when the Regulations are not applicable for consistency. The Authority should make the best use of its purchasing power by aggregating purchases wherever possible. 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.

- 4.2 When aggregating contract values a 3 year estimate or an estimate based upon the actual length of the contract must be used to establish the total contract value.

5. Framework Agreement

5.1 Framework Agreements are used where an Authority wishes to contract for the supply of supplies, services or works without conducting a new procurement exercise. However, the Framework Agreement may include within its terms a requirement for a mini competitive exercise between those Suppliers who are parties to the Framework Agreements. Any Framework Agreement shall be tendered in accordance with these contract standing orders. Where the Authority has entered into a Framework Agreement through procurement or is able to call off from existing Framework Agreements procured by public sector bodies, then the Authority may benefit from using those contracts without entering into a separate procurement.

5.2 The Authorised Officer must ascertain whether there is an approved and relevant Framework Agreement in place that should be used whenever a contract is being procured.

5.3 The Framework Agreement may include within its terms a requirement for a mini competitive exercise between those Contractors who are parties to the Framework Agreement. These shall be tendered in accordance with this Contract Standing Order and/or the Framework Agreement itself.

5.4 Where the Authority is able to call off from existing Framework Agreements procured by Central Government agencies, purchasing consortia or other local authorities or public bodies, then the Authority may benefit from using those contracts without entering into a separate procurement exercise. Where such relevant Framework Agreements contain a number of different Contractors able to provide a particular category of goods or services a mini competitive exercise between those Contractors who are parties to the Framework Agreement may have to be carried out.

5.5 The relevant authorised officer must establish and confirm that the Authority is qualified to use the proposed Framework Agreement.

6. Low Value Procurement

6.1 Written competitive quotations are not required for contracts or orders with an estimated value of below £20,000 but the authorised officer must 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 terms of payments.

7. Intermediate Value Procurement

7.1 For procurements with an estimated value over £20,000 up to £75,000 at least 3 written quotations/RFQs shall be invited before a formal purchase order is issued specifying the supplies, services or works to be provided and in each case the information provided to each party shall be similar to ensure equality of opportunity.

8. High Value Procurements

- 8.1 For procurements valued at above £75,000, a contract award procedure shall be conducted in accordance with these contract standing orders. The outcome of the contract award procedure shall be recorded in the Contracts Register.
- 8.2 One of three contract award procedures shall be used as appropriate for the particular procurement i.e. open, restricted or negotiated.
- 8.3 Any procurement that may involve a transfer of staff shall be treated as a High Value Procurement.

9. Contracts Subject to the Regulations

- 9.1 Where an estimated value of a contract exceeds the current EU threshold then the contract shall be tendered in accordance with the Regulations. Under the Regulations, the contract may be tendered under the open, restricted or, in exceptional circumstances exhaustively set out in the Regulations, the negotiated procedure. A contract notice in the prescribed form shall be published in the OJEU in order to invite tenders for or expressions of interest for Part A Services contracts and supplies and works contracts subject to the rules. Contracts for Part B Services do not need to be advertised in OJEU. However, the rules relating to technical specifications and the publication of contract award notices shall be observed for all contracts as shall the EC Treaty and the general principles of EC law including non-discrimination, equal treatment, proportionality and transparency.
- 9.2 The Regulations set out the minimum timescales for receipt of expressions of interest and tenders (bids for the negotiated procedure). Where the Authority has published a Prior Information Notice announcing its forthcoming contracts for the year ahead, then the Authority may rely on reduced timescales if appropriate.

10. Open Procedure

- 10.1 The Authority publishes a notice. All suppliers expressing an interest are invited to tender. If publication of a notice in OJEU is not required then the notice shall be published on the Authority/Fund website and if required any appropriate national press and/or trade journals in order to target the appropriate market for the particular contract. The advertisement shall contain details of the proposed contract and specify a time limit within which interested parties may express an interest in tendering for the contract. After the expiry of the deadline date for expressions of interest, the Authority shall send any party expressing an interest an ITT. The ITT shall specify the return date for tenders.

11. Restricted Procedure

- 11.1 The Authority publishes a notice. Only those suppliers selected by the Authority are invited to tender. Suppliers shall be selected on the basis of published pre-qualification criteria.
- 11.2 If publication of a notice in OJEU is not required the advertising requirements are the same as in the open procedure except that the notice shall state that a restricted procedure is being used. If the Regulations apply a minimum of five suppliers shall be invited to tender and in all other cases a minimum of three shall be invited to tender.

12. Negotiated Procedure

- 12.1 The Authority publishes a notice. Only those suppliers selected by the Authority are invited to negotiate. Suppliers are selected on the basis of published pre-qualification criteria.

- 12.2 If a publication of a notice in the OJEU is not required, the advertising requirements are the same as in the restricted procedure, except where the procurement falls within one of the exemption provisions of the Regulations. Any notice shall state that a negotiated procedure is being used.
- 12.3 A minimum of three suppliers should be invited to negotiate following publication of a notice.
- 12.4 At least two officers, at least one of whom shall be an officer identified in 2.3 above or their delegate, shall be present at all times during the negotiations.
- 12.5 The Authority shall keep proper records of all negotiations and these shall be signed as such by all participants.
- 12.6 At all times during the negotiations, the Authority shall consider and implement the principles of non-discrimination, equal treatment and transparency.

13. Pre-qualification

- 13.1 The Authority shall only enter into a contract with a Supplier for a High or Intermediate Value procurement, if it is satisfied as to the Suppliers –
- (a) eligibility;
 - (b) financial standing;
 - (c) technical capacity;
 - (d) complies with the Authority's relevant policies;
 - (e) prequalification assessment by an approved partner organisation where appropriate.
- 13.2 Technical capacity includes the Supplier's quality management systems including human resources, health and safety and environmental management systems where relevant to the performance of the contract.
- 13.3 Any procurements subject to the Regulations shall comply with the appropriate Regulations.

14. The Invitation to Tender

- 14.1 The Invitation to Tender (ITT) or Invitation to Negotiate (ITN) shall include details of the Authority's requirements for the particular 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 including any weightings as considered appropriate;
- (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 and whether tenders may be submitted electronically;
- (j) any further information which will inform or assist tenderers in preparing tenders.

15. Submission and Opening of Tenders

- 15.1 Tenders shall be submitted in accordance with requirements set out in the ITT. Any tenders received shall be addressed to the Clerk for the attention of the Treasurer in an electronic vault or sealed envelope endorsed with the word "Tender" followed by the unique tender reference to which it relates. Tenders shall be kept in a safe place by the Authorised Officer and remain unopened until the time and date specified for its opening. No tenders received after the specified date and time for receipt of tenders shall be accepted or considered by the Authority unless the Authorised Officer is satisfied that there is sufficient evidence for the tender having been dispatched in sufficient time for it to have arrived before the closing date and time. No tender will be considered if the envelope bears the name, logo, mark or any other symbol or phrase indicating the identity of the sender.
- 15.2 Postal Tenders shall be opened by the Authorised Officer and at least one other officer. An immediate record should be made of the tenders received including names, addresses and the date and time of opening.
- 15.3 If any tender received does not comply with the provisions of SO 15.1 it must immediately on receipt be placed in a plain envelope recording the tender it concerns and placed in the custody of the Clerk unopened.

16. Electronic Tendering

- 16.1 RFQs and ITTs may be transmitted by electronic means. Quotations and tenders may be submitted by electronic means provided that:
- (a) evidence that the transmission was successfully completed is obtained and recorded;
 - (b) electronic tenders are kept in a separate secure folder under the control of the Authorised Officer or other nominated body or persons which is not opened under the deadline has passed for receipt of tenders.

17. Tender Evaluation

- 17.1 Tenders subject to the Regulations shall be evaluated in accordance with the relevant regulations and the evaluation criteria set out in the ITT. All other tenders shall be evaluated in accordance with the evaluation criteria as notified to tenderers in the ITT. All contracts, except works contracts where lowest price was predetermined to be the appropriate criteria, shall be awarded on the basis of the offer which represents Best Value

to the Authority. The evaluation criteria shall be predetermined and listed in the ITT documentation, in order of importance if applicable. In addition, the criteria shall be strictly observed at all times throughout the contract award procedure by any officer involved in the tender evaluation.

18. Post Tender Negotiation

- 18.1 Post Tender Negotiation occurs after receipt of formal bids or tenders and before the letting of contract(s) with those companies submitting tender(s) offering the best value for money with a view to obtaining an improvement in content in circumstances which do not put the other tenderers at a disadvantage, distort competition or affect adversely trust in the competitive tendering process.
- 18.2 An amended Tender following negotiations under this rule may not be accepted unless it provides Best Value for Money to the Authority.
- 18.3 At all times during the procurement process the Authority shall ensure that all tenderers are treated equally and in a non-discriminatory and transparent manner.

19. Bonds, Guarantees and Insurance

- 19.1 For procurements over £75,000 the Authorised officer shall consider as part of its pre-qualification assessment and evaluation process whether a performance bond and/or a parent company guarantee (if applicable) shall be required from the preferred Supplier dependent upon the supplier's status and the product characteristics and a thorough risk analysis.

20. Awarding Contracts

- 20.1 The Authority shall only award a contract where this represents Value for Money.
- 20.2 A contract may only be awarded by an officer with the requisite delegated authority to award contracts. For all procurements valued at above £250,000 the decision to award a contract shall be made by a 2.3 officer.
- 20.3 The Clerk shall submit a report regarding the award of any procurement valued at above £250,000 to the earliest available meeting of the appropriate Board. 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 £50,000 in value.

21. Letters of Intent

- 21.1 Letters of intent shall only be used in exceptional circumstances as follows:
- (a) Where a Supplier is required to provide services, supplies or works prior to formal written acceptance by the Authority; or
 - (b) Where the Authority's form of tender does not include a statement that until such time as a formal contract is executed, the Authority's written acceptance of a tender shall bind the parties into a contractual relationship.
- 21.2 Letters of Intent shall only be used where a delay would cause a significant interference with the provision of service deliverability.

22. Contract Terms and Conditions

- 22.1 Contracts shall be entered into on the Authority's terms and conditions, reference to which shall be included with each invitation to tender or negotiate. Exceptions to this rule must be approved beforehand at tender preparation stage with the Monitoring Officer on behalf of the Clerk.
- 22.2 Where contracts are subject to the Regulations, the rules relating to technical specifications shall be followed and any reference to a technical standard, make or type shall be prefaced with the words "or equivalent". This requirement applies to both Part A and Part B Services.
- 22.3 The exception to using our Terms and Conditions arises when using a Framework and where the Framework Terms and Conditions would conflict.

23. Execution of Contracts

- 23.1 All contracts valued at £75,000 or above shall be executed under seal unless the Clerk approves other arrangements. No contract shall be executed as a deed except under seal. All other contracts may be signed by an officer with appropriate delegated authority.
- 23.2 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.

24. Records of Tenders and Contracts

- 24.1 The Authorised Officer with delegated authority in respect of a particular procurement shall maintain a list of all tenders received.
- 24.2 A Contracts Register of all contracts awarded above £20,000 shall be maintained by the Fund Director on behalf of the Authority. The Contracts Register may be maintained electronically.
- 24.3 For every individual contract above £75,000 a file shall be maintained for a period of 6 years.

25. Approved Lists

- 25.1 The Authority may maintain approved lists of Suppliers that meet its pre-qualification requirements. Quotations and tenders for contracts that are not subject to the Regulations may be invited from Suppliers included on an approved list. Where the Authority intends to use an approved list for services, supplies or works contracts, the selection of which contractors should be included on such list should itself be advertised.

26. Nominated and Named Sub-contractors

- 26.1 If a sub-contractor, supplier or sub-consultant is to be nominated or named to a main contractor, quotations or tenders must be invited in accordance with these Standing Orders and the terms of the invitation must be compatible with the main contract.

27. Novation

Novation occurs where there is an agreement to change a contract by substituting a third party for the original contractor. Where the Authority is approached regarding novation the

Authorised Officer may seek the advice of either the Treasurer or Monitoring Officer before agreeing novation for procurements valued below £250,000 but for procurements valued over £250,000 advice must be sought.

28. Joint Procurement

- 28.1 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 on behalf of the Clerk prior to the commencement of any procurement on behalf of the Authority. This clause does not apply to framework agreements.
- 28.2 Approval shall only be given where the joint procurement arrangement assures compliance with the Regulations.
- 28.3 The Authorising Officer needs to be satisfied that any joint procurement has been undertaken in accordance with the principles of these CSOs.

29. Procurement by Consultants

- 29.1 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. No consultant shall make any decision 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.

30. Procurement by Corporate or Purchase Cards

- 30.1 The use of Authority Purchase Cards must comply with these standing orders. These standing orders are supplemented by the Financial Regulations governing the use of such cards.

31. Statistical Returns

- 31.1 If required, in any year the Authority shall make a statistical return to Department of Communities and Local Government (DCLG) for onward transmission to the European Commission concerning the contracts awarded during the year under the European rules.
- 31.2 The Clerk is responsible for this statistical return and will make the necessary arrangements for information to be collected annually. Authorised officers shall comply with these arrangements.

32. Contract Extension

- 32.1 Any contract may be extended in accordance with its terms. Where the terms do not expressly provide for extension, contracts subject to the Regulations may be extended by negotiation in accordance with the rules set out in the Regulations.
- 32.2 Other contracts may be extended by negotiation in the same circumstances where there is a compelling business case approved by the Treasurer. The Authorised Officer shall always be satisfied that extension will achieve value for money and is reasonable in all the relevant circumstances and take legal advice.

33. Termination of Contract

33.1 For any contract exceeding £250,000 in value, termination shall be approved by the Authority. Contracts of a lesser value may be terminated early by agreement prior to the expiry date or in accordance with the termination provisions set out in the contract.

34. Waivers of Contract Standing Orders

34.1 The Authority have power to waive any requirements within these contract standing orders for specific projects.

34.2 Where a proposed contract is likely to exceed the EU Threshold, no officer has delegated powers and the matter has to be determined by the Authority. No exemption can be used if the EU Procedure applies.

34.3 Where an exemption is necessary because of an unforeseeable emergency involving immediate risk to persons, property or serious disruption to the Authority or is considered necessary for significant reasons that require expediency, the Authorised Officer may, after consulting with a 2.3 officer as considered appropriate, jointly approve the exemption up to a maximum of £75,000 but they must prepare a report for the next appropriate Board meeting reporting the action taken.

34.4 All exemptions, and the reasons for them, must be recorded in an appropriate log. Exemptions shall be signed by the Officer and countersigned by the Treasurer.

34.5 The Treasurer must monitor the use of all exemptions.

35. Review and Amendment of Contract Standing Orders

35.1 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.

Definitions

“Appropriate Manager”

The Clerk, the Treasurer, the Fund Director, Head of Investments 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.

“Authorised Officer”

A person with appropriate delegated authority to act on the Authority's behalf.

“Authority”

South Yorkshire Pensions Authority; or any designated Board of the Authority that has delegated powers to act on behalf of the Authority.

“Value for Money”

The optimum combination of whole life costs and benefits to meet the customer’s requirement. Such term equates to the EU procurement requirement “most economically advantageous offer”.

“A Contract”

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).

“Contracts Register”

A register held and maintained by an Authority containing details of contracts entered into by the Authority above a threshold value of £20,000.

“Framework Agreement”

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.

“ITN” Invitation to negotiate.

“ITT” Invitation to tender.

“Monitoring Officer”

The Monitoring Officer performing the functions of the “Monitoring Officer” as described under section 5 of the Local Government and Housing Act 1989.

“OJEU” Official Journal of the European Union.

“PIN” Prior Information Notice for publication in OJEU.

“Regulations”

The Public Contracts Regulations 2006 implementing into UK law the European Commission’s Consolidated Directive on public procurement (2004/18/EC) or any subsequent amendment.

“RFQ” Request for quotations.

“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.
- “Supplier”**
Any person or body of persons providing, or seeking to provide, supplies, services or works to an Authority.
- “TUPE”** The Transfer of Undertakings (Protection of Employment) Regulations 2006.

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