

**4.7: CONTRACT PROCEDURE RULES**

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## 1. INTRODUCTION

### Purpose of these Standing Orders

- 1.1 These Standing Orders are made pursuant to s135 of the Local Government Act 1972. These Standing Orders have been prepared in accordance with the Public Contracts Regulations 2015, the Authority's policies and to facilitate small and medium enterprises in the local area the opportunity to enter the Authority's supply chain.
- 1.2 These Standing Orders set out how the Authority will invite tenders, obtain quotations and award contracts for ~~the supply of~~ supplies, services or works. Their role is to ensure that contracts are appropriate for their purpose, provide the right balance between price and quality and are procured in an open way that demonstrates probity and compliance with the Authority's policies and the law. It is important that they are viewed as an aid to good management and compliance and not as a hindrance. ~~They apply equally where payment is expected to be received or where payment is to be made by the Authority.~~

### What Contracts is outside the scope of these Standing Orders

- 1.3 Where the Authority is disposing of goods, officers shall seek advice from the Head of Finance and have regard to the provisions of the Financial Procedure Rules.
- 1.4 These rules do not apply to contracts between other local authorities for the joint delivery of services or discharge of functions, save the obligation to secure value for money for the Authority. These rules do not apply to transactions for the sale, purchase or lease of land or property.

### Probity and Compliance

- 1.35 Responsibility for compliance with these Standing Orders remains at all time with officers. It shall be the responsibility of the ~~Heads of Service~~ Directors to ensure that staff within his or her ~~Service~~ directorate comply with these Standing Orders.
- 1.46 No contract shall be entered into unless adequate budgetary provision has been made for the award of that contract.
- ~~1.5 These Standing Orders have been prepared in accordance with the Authority's policies and to facilitate small and medium enterprises in the local area to enter the Authority's supply chain. This is through a combination of rationalising the previous rules to assist procuring officers and clarifying the Authority's approach to procurement, to direct businesses to the opportunities available.~~

- 1.67** Any officer, whether a direct employee of the Authority or engaged through an external organisation or supplier who is engaged to work on behalf of the Authority shall, if they become aware of any relationship (current or past), whether pecuniary or not, with any supplier or potential supplier, make a Declaration of Interest to the relevant Head of Service at the earliest opportunity.
- 1.78** An officer with an interest in a contract shall take no part in advising on the Authority's dealing with that contract. If the officer is present at a meeting when the contract is discussed, he or she shall forthwith declare that interest and withdraw from the meeting while it is under discussion, unless the chair of the meeting invites him or her to remain.
- 1.89** The Chief Executive shall record in a book, to be kept for the purposes of recording any notice given by an officer of the Authority, under ~~1.6-7~~ above and/or Section 117 of the Local Government Act 1972 and the book shall be open during office hours to the inspection of any member of the Council.
- ~~1.9 — Officers should have regard to the Procurement Toolkit.~~

## 2. VALUE FOR MONEY

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### Value of the Contract Opportunity and Aggregation

- 2.1 The Authority is under a duty to ensure that funds are spent in a way that achieves "value for money" for the Authority. Officers involved in procuring supplies, services or works should be mindful of this duty.
- ~~2.2 When an officer has identified the need to procure supplies, services or works, the relevant Head of Service shall assess the value of the proposed arrangement. The value is the total amount that the Council Authority expects to pay for the contract, either in a single sum or periodically over time.~~
- 2.3 Purchases should be aggregated to make the best use of the Authority's purchasing power. Where a recurring pattern of purchases can be identified for similar supplies, services or works across the Authority, consideration shall be given to whether one contract would represent better value in terms of price, service, invoicing or other administrative costs. It is the Head of Service's' responsibility to have due regard to the aggregation of contract values.
- 2.4 The principles of aggregation in EU procurement law are designed to ensure that authorities do not deliberately split contracts which have similar characteristics into separate contracts so that they fall below the relevant thresholds (unlawful disaggregation).

2.5 Notwithstanding this, Procuring officers shall consider the sub-division of procuring supplies, services or works into lots, facilitating access for small and medium enterprises. Where the decision is taken not to sub-divide a procurement into lots, the reasons shall be recorded.

## Initial ConsiderationsThe Procurement Hierarchy

~~2.1 The Authority is under a duty to ensure that funds are spent in a way that achieves “value for money” for the Authority. Officers involved in procuring supplies, services or works should be mindful of this duty.~~

**2.26** When an officer has identified a need to procure new supplies, services or works, they shall first consider these options in turn (the Procurement Hierarchy):

2.26.1 any current arrangements in existence in-house;

2.26.2 any existing contracts entered into by the Authority; and

~~2.26.3 any provision available through ESPO; and~~

~~2.2.4~~ any provision available through other third party contracts or ~~framework~~ agreements, including those provided by Buying Solutions and other public sector buying consortia, where they can be ~~shown~~ shown to offer value for money for the Authority.

**2.37** Where the officer determines that no provision is available from the ~~above sources~~ resources in the Procurement Hierarchy or that in the circumstances they do not represent value for money, they shall have regard to these Standing Orders in determining which procurement option is the appropriate one to follow.

**2.8** The Head of Finance is responsible for maintaining a schedule of the Authority’s planned procurements. Head of Services shall be responsible for ensuring that all contracts proposed to be entered into by the Authority in the coming financial year are notified to the Procurement Team for inclusion in the procurement plan.

## **3. SPECIAL CIRCUMSTANCES (~~WAIVER EXEMPTION AND WAIVER~~)**

### Exemption

**3.1** Notwithstanding the provisions of these Standing Orders and subject only to the requirements of ~~statute or regulation~~ law:

3.1.1 ~~Exemption~~ exemption from any of the provisions of these Standing Orders may be granted by the Council acting through the Chief

Executive (or where appropriate, Acting or Deputy Chief Executive), in consultation with the Chief Finance Officer and the Monitoring Officer, upon it being shown to their satisfaction that there are **special circumstances** justifying such exemption. Such special circumstances shall fall under at least one of the —following two categories:

- (a) only one supplier is available for technical or artistic reasons and no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing of the parameters of the procurement;
- (b) extreme urgency exists for unforeseen reasons which are not attributable to the Authority and the various time limits cannot be met. Inadequate forward planning would not constitute special circumstances and an exemption shall not be permitted in such circumstances,

3.1.2 Any any request under 3.1.1 above shall be made in writing on the approved form which shall be certified by the officers specified in 3.1.1 above; and-

————— 3.1.3 The the Cabinet shall be informed of the exercise of any authority —pursuant to this Standing Order by the Directors or Chief Executive —and any such report will include confirmation that the officers —  
————— specified in 3.1.1 have been consulted and such exemption granted

## Waiver

3.2 If, in exceptional circumstances, authority is sought from Cabinet to waive these Standing Orders, the report to Cabinet must give adequate reasons and specify precisely the procedures to be waived and must first be approved by the Monitoring Officer.

3.3 Where specific legislation requires the Authority to let a contract differently from as set out in these Standing Orders, a—these Standing Orders shall be deemed waived without recourse to Cabinet, Council or the Statutory Officers.

## **4. FRAMEWORK AGREEMENTS**

4.1 Where it is determined to use a framework agreement to meet the identified need of the Authority, the officer shall seek the advice of the Procurement Team and Legal Services in relation to the use of such framework and the contractual arrangements.

- 4.2 When calling-off supplies, services or works under a framework agreement, the selection procedure, including award criteria, from within the framework agreement shall be used. Officers must comply with all rules and regulations set out within a framework agreement in relation to direct call-off of contracts (direct award) and re-opening of competition between providers appointed on to that framework (mini-competition).

## 5. TYPES OF CONTRACTS/SELECTING A PROCUREMENT ROUTE

### Initial Considerations

- 5.1 In relation to any contract for the supply of supplies, services or works to the Authority the functions described in Section 17(4) of the Local Government Act 1988 shall be exercised without any reference to any of those matters set out in Section 17(5) of that Act. (Section 17.4 describes the functions to which this legislation applies and Section 17.5 details what is regarded as non commercial issues that must be ignored when entering into a contract for the supply of supplies, services or works). This shall at all times be subject to the provisions of 5.2 below.
- 5.2 In relation to any contract for the supply of services not through an existing framework or existing arrangement, the officer shall have regard to the considerations set out in the Public Services (Social Value) Act 2012. Specifically, the officer must consider how the services might (in addition to the service requirement) improve the economic, social and environmental well-being of the district and how the procurement itself might be conducted to secure that improvement.
- 5.3 All procurement documents (including business questionnaires, specifications and contracts) shall be completed prior to advertising the contract opportunity.

### Procedures for Determining Which Procurement Option to Follow

- 5.3 Where an officer has reasonably determined not to use any available options as per in the Procurement Hierarchy, the following provisions shall apply.
- ~~5.3 When an officer has identified the need to procure supplies, services or works, the relevant Head of Service shall assess the value of the proposed arrangement.~~
- ~~5.4 Whenever possible, purchases should be aggregated to make the best use of the Authority's purchasing power. Where a recurring pattern of purchases can be identified for similar supplies, services or works, consideration shall be given to whether one or more framework agreements would represent better value in terms of price, service, invoicing or other administrative costs. It is the Head of Service's responsibility to have due regard to the aggregation of contract values.~~

~~5.5—The principles of aggregation in EU procurement law are designed to ensure that authorities do not deliberately split contracts which have similar characteristics into separate contracts so that they fall below the relevant thresholds.~~

~~5.6—Nothing in this rule shall prohibit, where appropriate, the sub-division of procuring supplies, services or works into lots, facilitating access for small and medium enterprises.~~

**5.74** When the officer has assessed the value of the proposed arrangement (see above), the appropriate procurement route shall be determined in accordance with the Threshold Table (below).

5.5 Notwithstanding the provisions in the Threshold Table, lower value procurements can be conducted using a more ~~se~~ complex/sophisticated process as long as it remains objectively reasonable and proportionate to do so and secures open, transparent and fair competition.

## Threshold Table

Contract Value		Process	Award Procedure based on	Contract Opportunity	Documentation
From	To				
£0	£9,999	Verbal Quotation	<del>Minimum of</del> Seeking a minimum of three verbal quotations	Source from preferred supplier solution in first instance	Employee to record details for Audit purposes
Band A (Minor)					
£10K	£24,999	Written Quotation	Seeking a minimum of three written quotations	Source from preferred supplier solution in first instance  <del>For procurements over £25,000 where the contract opportunity is to be advertised, Contracts Finder</del>	Must be based on a written specification provided to the supplier.
Band B (Small)					
£35K	£74,999	RFQ (Request for quotation) Formal Tender	Three written quotations based on a RFQ template with simplified T&C's Full Tender Process	Source Leics  NWL Web site  Contracts Finder	Must be based on a written specification provided to the supplier; ITT documentation using NWL E-tendering Portal
Band C (Medium/Large)  <small>NOTE: the EU threshold is a figure set out by the EU and varies from time to time. Please seek advice from the Procurement Team.</small>					
£75K	EU	Formal Tender	Full Tender Process	Source Leics NWL Web site Contracts Finder Specialist publication if appropriate	PQQ & ITT documentation using NWL E-tendering portal
Band D (Large)					

# NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL CONSTITUTION

EU	Above	Formal Tender	Full Tender Process	OJEU Source Leics NWL Web site Contracts Finder <del>Specialist publication if appropriate</del>	PQQ & ITT documentation using NWL E-tendering portal
Band <del>E-D</del> (EU)					

## Authority to award contracts

5.6 Officers may only enter into a contract if they have sufficient authority to do so. Legal advice in respect of authority to award contracts can only be given to the extent that such authority is set out in the Constitution. Officers are responsible for knowing the extent of ~~their~~ any delegated authority they may have and ensuring they do not exceed that.

5.7 The Authority's Constitution contains the Scheme of Delegation, which sets out what decisions can be made by which body, individual or group of individuals. For the purposes of awarding contracts, the following Authorisation Table provides an initial indication of where those decisions sit. However, officers should ~~still~~ take advice from Legal Services as to the appropriate source of authority to award where they are unsure.

## Authorisation Table

5.8 It is for individual Officers to ascertain the limits of their authority to sign contracts and orders. Some Officers have unlimited authorisation levels, please see Paragraph 11 – Designated Authorised Officers of Section 7 – Scheme of Delegation to Staff, Council and Executive Functions; ~~[PARAGRAPH/SECTION]~~ of the Financial Procedure Rules. The below table provides a guide for Officers in salary bands A-I, who should check with their line managers as to what they are and are not authorised to commit the Council to.

	<u>Approval</u>	<u>Reference in Constitution</u>
<u>£100,000 and above</u>	<u>Cabinet (Financial Key Decision)</u>	<u>Section 4 (2)(31)</u>
<u>Up to £99,999</u>	<u>Chief Executive or Relevant Director</u>	<u>Scheme of Delegation paragraph 3(iv)</u>
<u>Up to £49,000</u>	<u>Heads of Service</u>	<u>As set by the Statutory Officers</u>
<u>Up to £24,999</u>	<u>Service Team Managers</u>	<u>As set by the Statutory Officers</u>
<u>Up to £9,999</u>	<u>Officers in salary bands G, H and I, at the request of their Director or Head of Service</u>	<u>Dependent on individual post and as set by the Statutory Officers</u>
<u>Up to £4,999</u>	<u>Officers in salary bands D, E and F, at the request of their Director or Head of</u>	<u>Dependent on post and as set by the Statutory Officers</u>



	<u>Service</u>	
<u>Up to £2,000</u>	<u>Officers in salary bands A, B &amp; C, at the request of their Director or Head of Service</u>	<u>Dependent on post and as set by the Statutory Officers</u>

## 6. CONDUCTING A PROCUREMENT EXERCISE

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### **Band A (Minor) Contracts**

**5.86.1** For any single contract, not related to or part of any larger procurement, whose value is less than £10,000, three verbal quotations shall be obtained~~sought~~.

**5.96.2** Officers shall first consult the Authority's preferred supplier ~~solution list~~, however ~~if~~ the officer is unable to ~~obtain source~~ three ~~verbal quotations~~ suitable providers from the Authority's preferred supplier ~~solution list~~, they may then seek quotations from other providers ~~outside the Authority's preferred supplier solution~~.

**5.106.3** Where officers are seeking verbal quotations:

**5.106.3.1** Heads of Service shall ensure that the selection process used is fair and equitable and in accordance with these Standing Orders;

**5.106.3.2** officers must select the quotation which offers value for money for the Authority. In most Band A (Minor) contracts, value for money will normally be shown by choosing the most economically advantageous quotation and in assessing this officers should be mindful of price, quality and the added economic, social and environmental benefits that could be obtained by procuring supplies, services or works in a particular way;

**5.106.3.3** The Head of Service shall be responsible for keeping a record for audit purposes, ~~in a form agreed by the Chief Finance Officer~~ of:

- (a) all those contractors that were requested to provide a quotation;
- (b) the reasons why those particular contractors were selected to provide a quotation;
- (c) if applicable, the reasons why less than three contractors were selected to provide a quotation; and
- (d) the reason for selecting the winning quote;

~~5.106.3.4 in the event that three quotations are not received the Head of Service can still proceed to award the contract provided that they can demonstrate that it is reasonable to do so and has obtained Director approval to do the same;~~

~~5.10.5~~ notwithstanding where the supplies, services or works sought are a repetition of a previous procurement, subject to the rules above in relation to aggregation, new quotations should be obtained each time, to ensure the prices paid represent value for money for the Authority;

~~5.10.6 in the case of any contract to carry out works to be carried out pursuant to Disabled Adaptation Grants, tenants are required to provide to the Authority two quotes and the Authority will establish the best price and this shall be recorded in a file for audit purposes.~~

## ~~Band B (Small) Contracts~~

~~5.116.4~~ For any single contract not related to or part of any larger procurement, whose value is more than £10,000, but less than £~~3525~~,000, the officer shall produce a written specification for the supplies, services or works being sought and three written quotations shall be ~~obtained~~sought.

~~5.126.5~~ Officers shall first consult the Authority's preferred supplier ~~solution list~~; however—if the officer is unable to ~~obtain source~~ three written quotations ~~suitable providers~~ from the Authority's preferred supplier ~~solution list~~, they may then seek quotations from ~~other providers outside the Authority's preferred supplier solution~~.

~~5.136.6~~ Where officers are seeking written quotations:

~~5.136.6.1~~ Heads of Service shall ensure that the selection process used is fair and equitable and in accordance with these Standing Orders;

~~5.136.6.2~~ officers must select the quotation which offers value for money for the Authority. In most, but not all, Band B (Small) contracts, value for money will normally be shown by choosing the most economically advantageous quotation and in assessing this officers should be mindful of price, quality and the added economic, social and environmental benefits that could be obtained by procuring supplies, services or works in a particular way;

~~5.136.6.3 In the event that three quotations are not received the Head of Service can still proceed to award the contract provided that they can demonstrate that it is reasonable to do so and has obtained Director approval to the same;~~

~~5.13.4~~—The Head of Service shall be responsible for keeping a record for audit purposes, ~~in a form agreed by the Chief Finance Officer~~ of:

- (a) all those contractors that were requested to provide a quotation;
- (b) the reasons why those particular contractors were selected to provide a quotation;
- (c) if applicable, the reasons why less than three contractors were selected to provide a quotation; and
- (d) the reason for selecting the winning quote;

~~5.136.6.54~~ Notwithstanding notwithstanding where the supplies, services or works sought are a repetition of a previous procurement, subject to the rules above in relation to aggregation, new quotations should be obtained each time, to ensure the prices paid represent value for money for the Authority.

## Band C (MediumLarge) Contracts

~~5.146.7~~ For any single contract, not related to or part of any larger procurement, whose value is £~~3525~~,000 or more, but less than ~~£75,000~~the relevant EU threshold, the officer shall ~~obtain three written quotations using the Request for Quotation form, available in the Procurement Toolkit. The Request for Quotation shall be accompanied by a written specification and a set of contract terms, prepared with advice from Legal Services~~conduct a formal tender using a template to be provided by the Procurement Team and accompanied by terms and conditions prepared with advice from Legal Services.

~~5.156.8~~ Where officers ~~submit a Request for Quotation~~conduct a formal tender:

~~5.156.8.1~~ the ~~Request for Quotation~~opportunity shall be advertised ~~on~~uploaded to the Source Leicestershire website, Contracts Finder (in the format available from the Procurement Toolkit) and the Council's Authority's website ~~and from 1 April 2015 Contracts Finder,~~ by the Procurement Team ~~and shall be open for a minimum of 5 working days or such shorter time as the relevant Head of Service may determine;~~

~~5.156.8.2~~ Heads of Service shall ensure that the selection process used is fair and equitable and in accordance with these Standing Orders;

~~5.156.8.3~~ officers must select the quote which offers value for money for the authority. In some Band C (MediumLarge) contracts, value for money will normally be shown by choosing the most economically

advantageous quotation and in assessing this officers should be mindful of price, quality and the added economic, social and environmental benefits that could be obtained by procuring supplies, services or works in a particular way;

~~6.85.15.4 in the event that three quotations are not received the Head of Service can still proceed to award the contract provided that he/she can demonstrate that it is reasonable to do so and has obtained Director approval to the same;~~

~~5.15.5 the Head of Service shall keep a record for audit purposes, in a form agreed by the Chief Finance Officer of:~~

~~(a) all those contractors that were requested to provide a quotation;~~

~~(b) the reasons why those particular contractors were selected to provide a quotation;~~

~~(c) if applicable, the reasons why less than three contractors were selected to provide a quotation; and~~

~~(d) the reason for selecting the winning quote;~~

~~5.15.6 Notwithstanding where the supplies, services or works sought are a repetition of a previous procurement, subject to the rules above in relation to aggregation, new quotations-tenders should be obtained each time, to ensure the prices paid represent value for money for the Authority.~~

## ~~Band D (Large) Contracts~~

~~5.16 For any single contract, not related to or part of any larger procurement, whose value is £75,000 or more, but below the thresholds set out in the Public Contracts Regulations 2015 (as amended from time to time), tenders shall be sought in accordance with the procedures under Standing Order 7, below.~~

~~5.17 The contract opportunity shall be advertised on the Source Leicestershire website (in the format available in the Procurement Toolkit) and the Council's website and from 1 April 2015, Contracts Finder. Such adverts shall be uploaded by the Procurement Team. Where it is deemed appropriate and proportionate by the officer, the opportunity should also be advertised in relevant specialist publications.~~

~~5.18 The procuring officer must note that these Standing Orders contain minimum timescales for a procurement exercise and therefore it is imperative that advice is sought from both Legal Services and the Procurement Team well in advance of the commencement of the procurement exercise.~~

~~5.19~~ Head of Services shall be responsible for ensuring that any Band D contracts proposed to be entered into by the Authority in the coming financial year are notified to the Procurement Team by the end of February each year for inclusion in the procurement plan.

~~6.9~~ The EU threshold is an amount set out by the EU and can vary year to year. The Cabinet Office confirms the amounts in Sterling. Please seek advice from the Procurement Team as to the current EU thresholds.

## Preferred Supplier ~~Solution~~List

~~5.206.910~~ The Authority has a preferred supplier ~~solution~~list which is ~~operated and~~ managed by the ~~Authority's service provider~~Procurement Team. The preferred supplier ~~solution~~list is a directory of businesses and shall be used in accordance with these Standing Orders.

~~5.216.101~~ Where an Officer is seeking quotations for Band A and Band B contracts from the preferred supplier ~~solution~~list, they shall in the first instance restrict the selection of businesses to those based locally.

~~5.226.112~~ Details of the ~~Preferred~~preferred Supplier ~~supplier~~ ~~Solution~~list are available from the Procurement ~~Toolkit~~Team.

## ~~67.~~ CONTRACTS TO WHICH THE PUBLIC PROCUREMENT REGULATIONS APPLY (BAND ~~E-D~~ – EU)

~~67.1~~ For any contract whose value is more than the ~~threshold~~ amounts set out in ~~the thresholds in~~ the Public Contracts Regulations 2015 (as amended from time to time), tenders shall be sought in accordance with those regulations.

~~76.2~~ Under the ~~Public Contracts Regulations 2015~~ a contract may be tendered under the open or restricted procedure or, in the case of complex procurements, under the competitive dialogue procedure, competitive procedure with negotiation, the innovation partnership and in limited circumstances the negotiated procedure without prior publication.

~~6.3~~ The procuring officer must note that the Public Contracts Regulations 2015 contain minimum timescales for a procurement exercise and therefore it is imperative that advice is sought from both ~~the~~ Procurement Team Legal ~~Services~~ and Services ~~the Procurement Team~~ well in advance of the commencement of the procurement exercise.

~~67.43~~ The provisions of these Standing Orders shall continue to apply to such a contract only to the extent that they do not conflict with the provisions of the Public Contracts Regulations 2015.

## **78. TYPES OF TENDER FOR BAND DC CONTRACTS**

### **Open Tendering**

**78.51** This is a procedure by which a contract is let following publication of an advertisement inviting all those expressing an interest in the contract to submit a bid at the same time. This is a one stage procedure.

**7.68.2** The advertisement shall:

**7.68.2.1** specify details of the supplies, services or works the Authority is procuring;

**7.68.2.2** specify the contract duration and proposed commencement date;

**7.68.2.3** specify any other requirements for participating in the procurement;

**7.68.2.4** specify a contract reference number;

**7.68.2.5** specify a reasonable (in the circumstances of the contract opportunity) date and time, being not less than 21 days from the date of the advertisement, by which such expressions of interest are to be received by the Authority; and

**7.68.2.6** specify the appropriate electronic tender box code and details of how to access documentation.

### **Restricted Tendering**

**7.8.34** This is a two stage procedure by which a contract is let following publication of an advertisement seeking expressions of interest from tenderers to participate. Following evaluation of the pre-qualifying submissions, no fewer than ~~5~~ three qualified bidders shall be invited to tender for the contract. This route to the market is particularly suitable where a large response is anticipated. In relation to works, This ~~this~~ procedure may only be used for procuring works where the value of the works exceeds the threshold in the Public Contracts Regulations 2015 for services. This procedure may not be used for procuring services or supplies save to the extent that such services fall within the scope of Schedule 3 (Social and Other Specific Services) of the Public Contracts Regulations 2015.

**7.28.4** The advertisement shall:

**8.47.2.1** specify details of the supplies, services or works the Authority is procuring;

~~7.28.4.2~~ specify the contract duration and proposed commencement date;

~~8.47.2.3~~ specify any other requirements for participating in the procurement;

~~8.47.2.4~~ specify a contact reference number;

~~8.47.2.5~~ specify a time limit, being not less than ~~30-21~~ days from the date of the advertisement within which such expressions of interest are to ~~\_~~be received by the Authority;

~~8.4.6~~ Specify a time limit, being not less than 21 days from the date of inviting shortlisted bidders to submit their tender, within which such tenders are to be received by the Authority; and

~~7.2.68.4.7~~ specify the appropriate electronic tender box code and details of how to access documentation.

~~7.38.5~~ In relation to works only:

~~8.57.3.1~~ advertisements need not be placed in accordance with ~~7.28.4~~ (above) where no fewer than ~~5-3three~~ bidders can be selected from the Authority's preferred supplier ~~solution list~~ and invited to tender;

~~7.38.5.2~~ ~~in the event that 5 bidders cannot be selected the Head of Service can still proceed to invite between 3 and 5 bidders provided that they can demonstrate that it is reasonable to do so and has obtained Director approval to do the same;~~

~~7.3.3~~ in the event that less than ~~3-three~~ bidders can be selected, an advertisement shall be placed in accordance with ~~7.28.4~~ (above).

~~7.48.6~~ After the expiry of the period specified in the advertisement and following proper evaluation of the returned Pre-Qualification Questionnaires (PQQ), in accordance with the criteria specified, invitations to tender for the contract shall be sent to:

~~7.48.6.1~~ not less than ~~5-3three~~ of the persons or bodies who returned a satisfactorily completed PQQ and has been shortlisted, selected by the Authority; or

~~7.48.6.2~~ where fewer than ~~5-3three~~ persons or bodies have applied or have satisfactorily completed the PQQ, those persons or bodies which the Authority consider suitable.

## 9. SPECIFICATIONS

### Specifications

7.X9.1 Full tenders shall be accompanied by an appropriate specification, clearly setting out the Authority's requirements for the goods, works or services to be supplied.

7.X9.2 Specifications should incorporate measurable and, so far as is possible, objective quality and performance criteria to enable— the contract to be monitored and managed.

7.X9.3 Where appropriate, officers shall take all necessary professional advice to ensure the specification sufficiently expresses the Authority's requirements and ensure the output of the contract represents value for money. Any third party engaged to support the preparation of the specification shall not be invited to bid for the substantive contract. — **Open Tendering**

~~7.5 This is a procedure by which a contract is let following publication of an advertisement inviting all those expressing an interest in the contract to submit a bid at the same time. This route to the market is not recommended where a large response is anticipated. This is a one stage procedure.~~

~~7.6 The advertisement shall:~~

~~7.6.1 specify details of the supplies, services or works the Authority is procuring;~~

~~7.6.2 specify the contract duration and proposed commencement date;~~

~~7.6.3 specify any other requirements for participating in the procurement;~~

~~7.6.4 specify a contract reference number;~~

~~7.6.5 specify a date and time, being not less than 52 days from the date of the advertisement, by which such expressions of interest are to be received by the Authority; and~~

~~7.6.6 specify the appropriate electronic tender box code and details of how to access documentation.~~

### **Competitive Procedure with Negotiation**

~~7.7 This procedure may be considered where the nature of the service(s) is such that "specifications cannot be drawn up with sufficient precision to permit the award of the contract using the open or restricted procedures". This is especially useful for 'intellectual' services. This procedure can only be used with the written consent of the Head of Legal and Support Services.~~



## ~~Competitive Dialogue~~

~~7.8 This procedure is available for procurements in which the Authority is unable to define the financial, legal or technical elements of the project. This, like the restricted procedure, requires a pre-qualification stage, carried out with a call for competition. This is the most complex route to the market and will only be used in the most exceptional of cases and with the written consent of the Head of Legal and Support Services.~~

## ~~Negotiated Procedure without Prior Publication~~

~~7.9 This procedure is available in limited circumstances, set out in the Public Contracts Regulations 2015. This procedure can only be used with the written consent of the Head of Legal and Support Services.~~

## **810. SUBMISSION OF TENDERS AND EVALUATION CRITERIA**

### **Submission of Tenders for ~~B~~ and ~~D~~ C (Large) Contracts**

**810.1** Where in pursuance of these Standing Orders invitation to tender is made, every invitation shall state the process for registering and submitting tenders and the signed Form of Tender using the NWL E-tendering portal.

**810.2** No tender received after the time and date specified in the invitation shall be considered ~~under any circumstances, unless the relevant Head of Service thinks it is reasonable to do so in the circumstances.~~

**810.3** Every invitation to tender shall state:

**810.3.1** that the Authority is not bound to accept any tender, including the lowest;

**810.3.2** the tender evaluation criteria, with full explanation;

**810.3.3** a statement that the Authority ~~will be~~ is obliged to comply with the Freedom of Information regime;

**810.3.4** closing date and time for receipt of tenders and the web address to which tenders should be sent; and

**810.3.5** a requirement that the tenderers accept full responsibility for ensuring compliance with the terms of these Standing Orders and that any failure to do so may render that tender liable to disqualification.

## Evaluation Criteria

**810.4** Evaluation criteria must be designed to secure an outcome providing value for money for the Authority. ~~The basic criterion shall be one of:~~

~~810.4.1 Lowest price — where payment is to be made by the Authority;~~

~~810.4.2 Highest price — where payment is to be received by the Authority;~~

~~810.4.3 on the basis of the~~ Most Economically Advantageous Tender, expressed as the price/quality balance in percentage terms ~~where considerations other than just purchase price apply. If relying on this criterion, a~~ Appropriate sub-criteria ~~must should~~ also be included referring to relevant considerations and guidance should be given to tenderers on how their responses will be scored. Further advice can be provided by the Procurement Team.

**810.5** Evaluation criteria must not include:

**810.5.1** ~~Non~~non-commercial considerations, save as expressly set out in these Standing Orders;

**810.5.2** ~~Matters~~ matters which discriminate against suppliers from the European Economic Area; and

**810.5.3** ~~A~~ a general provision allowing for the highest mark to be awarded for tenders which exceed the specification.

**8-10.6** Within every invitation to tender there shall be reference made to the requirements on public bodies with regard to the Freedom of Information Act 2000. Such a reference shall include notice to the tenderer that:

**108.6.1** the Authority has a duty of 'openness' under the act;

**810.6.2** it is the Authority and not the tenderer who makes the decision on the release of information within a tender;

**810.6.3** any claim by the tenderer that information within a tender is exempt under the act will be considered by the Authority. However, a simple assertion that any disclosure would prejudice commercial interests is not sufficient. The assertion must be supported by reasoned argument and where practical, by empirical evidence; ~~a~~ a Any decision to treat all or some information within a tender as exempt may be reviewed if any further requests are received over time;

**810.6.4** the Authority will consult with them before making any disclosure; and

**810.6.5** the Authority has a system for dealing with any appeals under the act.

## Submission of Tenders for Band ~~E-D~~ (EU) Contracts

**810.7** Tendering processes shall comply with the Public Contracts Regulations 2015. In the event of a conflict between these Standing Orders and the Public Contracts Regulations 2015, the latter shall take precedence.

~~8.8~~ ~~Head of Services shall be responsible for ensuring that all ny Band E contracts proposed to be entered into by the Authority in the coming financial year are notified to the Procurement Team by the end of February each year for inclusion in the procurement plan.~~

~~8.9~~ ~~The EU procurement regime requires a standstill (or Alcatel) period of a minimum of 10 days from the date on which the outcome of the tender is notified to all the bidders. Should a challenge from an unsuccessful bidder be received during this period, the award of the contract shall be delayed until the challenge is resolved. If no challenge is received within the standstill period, the contract may be awarded in accordance with the Constitution.~~

~~8.10~~ ~~An award notice must be placed in the Official Journal of the European Union within 48 days of contract award. The award notice must be approved by the Procurement Team.~~

## **911. OPENING AND ACCEPTANCE OF TENDERS**

**911.1** This Rule shall apply to Band ~~D-C~~ (Large) and Band D and Band E (EU) contracts

**911.2** Tenders received under these Standing Orders shall be opened at one time and only following the date on which the receipt of tenders closed.

**911.3** Tenderers shall be notified of the acceptance or rejection of their tenders.

~~911.4~~ ~~Face to face feedback on a tenderer's submission shall be offered to those tenderers that are small or medium enterprises (being a business with less than 250 employees)~~ Detailed feedback shall be provided to all unsuccessful bidders.

## **4012. TENDER EVALUATION AND AWARD OF CONTRACTS**

**4012.1** All tenders shall be properly evaluated by the relevant Director or their nominated officer in accordance with the published award criteria and in accordance with any specific requirements of any relevant EU Directive or English legislation. The Procurement Team shall be notified of any evaluations being conducted by procuring officers and a member of the Procurement Team may participate in the ~~A member of the Procurement Team shall be invited to participate in the~~ evaluation process if they consider it appropriate.

~~4012.2~~ Any tenderer whose tender is found to contain a qualification which will give that tenderer an unfair advantage over other tenderers will be asked either to withdraw the qualification or withdraw the tender.

~~10.3~~ A tenderer's error in the computation of the pricing of their tender will be corrected and the tenderer asked by the Director to stand by the corrected tender or to withdraw the tender.

~~4012.43~~ Post tender negotiations shall only be by exception and in accordance with the Public Contracts Regulations 2015. Authority to enter into post tender negotiations may only be granted by the Chief Executive, ~~Director of Housing or Director of Services and relevant Director~~. Officers who are authorised to carry out post-tender negotiations shall ensure that there are recorded minutes of all negotiation meetings and that both parties agree actions in writing.

~~4012.54~~ Where award is based on lowest or highest price, a tender other than the lowest tender if payment is to be made by the Authority or the highest tender if payment is to be received by the Authority shall not be accepted except where there are justifiable reasons for doing so, for instance:

~~4012.54.1~~ the procurement of a named product required to be compatible with an existing product, i.e. computer software;

~~4012.54.2~~ an alternative pre-tender evaluation criteria has been determined;

in such circumstances the Statutory Officers shall be consulted and written confirmation of their agreement retained for audit purposes.

~~4012.65~~ If the relevant Director considers the lowest priced tender, highest priced tender or most economically advantageous tender (as appropriate) to be abnormal given the nature of the contract, the tenderer shall be asked to clarify in writing the reasons for its tender and the Director shall take that explanation into account in deciding ~~which~~ whether the tender will be accepted.

~~10.7~~ Contracts shall be awarded by:

~~10.7.1~~ the cabinet (in accordance with Cabinet Function no. 31 at Part 3, ~~Section 4(2) of the Constitution~~); and

~~10.7.2~~ officers (in accordance with the general delegations to be discharged by the Chief Executive and Directors - no. (iv) at Part 3, Section 7(3) of the Constitution).

**4012.86** All contract awards shall be notified promptly to the Procurement Team in order that the details can be recorded in the Contracts Register and inform the Procurement Plan.

## **4413. CONTRACT CONDITIONS**

**4413.1** Every procurement which exceeds £~~3525~~,000 in value shall be a formal contract in writing. The procuring officer should seek the advice of Legal Services at the earliest opportunity in this regard. ~~No contract shall be entered into without the prior approval of the Head of Legal and Support Services or their nominated officer.~~

**4413.2** Such contract shall, unless the Head of Legal and Support Services deems it disproportionate;

**4413.2.1** specify the supplies, services or works to be supplied or executed; the price to be paid together with a statement as to the amount of any discount(s) or other deduction(s); the period(s) within which the contract is to be performed and such other conditions and terms as may be agreed between the parties or specified in these Standing Orders;

**4413.2.2** where a contract exceeds £200,000 and the Head of Finance deems appropriate, contain a requirement that a contractor give sufficient security for the due performance of the contract provided that this shall not apply where the goods and materials are supplied and payment is not made until completion of works;

**4413.2.3** include provisions for the termination and recovery of any sums paid where there has been evidence of bribery or corruption or any breach of the Bribery Act 2010 or section 117(2) Local Government Act 1972;

**4413.2.4** include provisions entitling the Authority to terminate part or all of the contract or to obtain substituted provision of the supplies, services or works to be supplied under the contract in the event of a breach of contract by or the insolvency of the contractor;

**4413.2.5** include prohibitions on the contractor from sub-contracting, assigning or otherwise transferring the contract without the prior written consent of the Authority and providing that the contractor shall remain liable to the Authority for any part of the contract that may be sub-contracted;

**4413.2.6** include provisions securing the contractor's compliance with relevant legislative requirements, including as a minimum in relation to:

- (a) Health and Safety;
- (b) Human Rights;
- (c) Freedom of Information;
- (d) Data Protection;
- (e) ~~Workforce transfer regulations~~Confidentiality;
- (f) Bribery and corruption; and
- (g) Equalities and discrimination.

~~4413.2.7~~ provide for indemnities in favour of the Authority for any breach of the above and for the acts and omissions of the contractor in carrying out the contract;

~~4413.2.8~~ provide for compliance with those of the Authority's policies relevant to the provision of the supplies, services or works;

~~4413.2.9~~ provide for the protection of the Authority's intellectual property rights, where appropriate;

~~4413.2.10~~ provide for, where the supplies, services or works require it, appropriate restrictions or conditions precedent in relation to the protection of vulnerable persons, including requiring ~~Criminal Records Bureau~~Disclosure and Barring Service checks;

~~4413.2.11~~ provide for the Authority's right to monitor and audit the supplies, services or works under the contract and for the contractor's provision of assistance in such monitoring and in securing improvements in economy, efficiency and effectiveness, as specified in Section 3 of the Local Government Act 1999, where appropriate. Such assistance may include setting performance indicators, benchmarking implementing performance plans and/or periodically reviewing the services;

~~4413.2.12~~ be governed by the laws of England and subject to the exclusive jurisdiction of the Courts of England; ~~provide for adequate confidentiality and data protection provisions~~;

~~4413.2.13~~ \_\_\_\_\_ be governed by the laws of England and subject to the exclusive jurisdiction of the Courts of England;

~~44.2.14~~ comply with the laws of England and any applicable EU legislation or regulation.

~~4413.3~~ Where an appropriate British Standard Specification or British Standard Code of Practice issued by the British Standards Institution is current at the date of the tender, every contract shall require that all goods and materials used or supplied, and all the workmanship shall be at least of the standard required by the appropriate British Standard Specification or Code of Practice.

**4413.4** Every contract which exceeds £250,000 shall be in writing and under the Common Seal of the Authority.

**4413.5** Where a contract exceeds £50,000 in amount or value, provide for the payment of liquidated damages by the contractor where he fails to complete the contract within the time specified, where the appropriate Head of Service considers appropriate.

**4413.6** The provisions of these Standing Orders do not prevent the use of a formal contract for a procurement less than £35,000 where on receipt of advice from Legal Services the ~~appropriate-relevant~~ Head of Service considers it appropriate.

**4413.7** It shall be a condition of any agreement between the Authority and any person (not being an officer of the Authority) who is required to supervise a contract between the Authority and a third party on the Authority's behalf that, in relation to such contract, he/she shall comply with the requirements of these Standing Orders as if he/she were an officer of the Authority.

**4413.8** In all areas of tendering, negotiating, letting or renewing, performing, reviewing, amending, discharging or terminating any contract to which the Authority is either a party or of which it is a beneficiary, regard shall be had to the requirements of economy, efficiency and effectiveness specified in Section 3 of the Local Government Act 1999.

**4413.9** Ensure compliance with Risk Management Guidelines on insurance levels and require such insurances as the relevant Head of Services determines appropriate in consultation with the Section 151 Officer.

**4413.10** Where a main contractor indicates in their tender submission the use of sub- contractors, the officer will ensure that:

**4413.10.1** the main contractor verifies they have vetted the sub-contractor to ensure that they meet the standards in all areas that the main contractor has undertaken to meet in their submission;

**4413.10.2** ~~the insurance levels of the sub-contractor meet the levels required in the tender document;~~

~~11.10.3~~ the supplies, services or works they have been sub-contracted by the main contractor to provide, remains the responsibility of the main contractor.

**4413.11** Where a framework agreement is used to meet the Authority's need for supplies, services or works, this Standing Order shall only apply to the extent that the framework's call-off terms do not include these provisions and the framework agreement provides for a variation to such terms.

## 4214. CONTRACT AND PERFORMANCE MANAGEMENT

4214.1 Contract management arrangements shall be set out in any invitation to tender and incorporated into any subsequent contract.

4214.2 An identified ~~named~~ contract manager shall be appointed for each Band C, and D ~~and E~~ contract.

4214.3 The Head of Legal and Support Services may agree the variation or novation of any contract originally awarded ~~by the Director~~ under delegated authority. The variation or novation of a contract originally awarded by the Cabinet shall only be agreed by the Cabinet, save to the extent that such variation is of a minor nature or accounted for in the contract.

4214.4 No contract entered into by the Authority may be extended by duration or value unless:

4214.4.1 where the contract is a Band ~~E-D~~ (EU) contract, such extension was provided for in the original OJEU notice and contract documentation;

4214.4.2 where the contract is a Band ~~D-C~~ (Large) contract or of lesser value, such extension would not mean that, had it been included in the original contract, the overall value would have exceeded the EU threshold; and

4214.4.3 alternative options have been considered and the relevant Head of Service is satisfied that this option represents value for money and is in the best interests of the Authority in light of the contractor's performance.

4214.5 All extensions to Band ~~D-C~~ (Large) and Band ~~E-D~~ (EU) contracts shall be promptly notified to the Procurement Team.

4214.6 A contract is a live document. Contract managers and officers shall have regard to the provisions of the contract in observing and monitoring performance of the contract, handling disputes and terminating a contract. Where officers are unclear of the provisions or operation of a contract they should promptly seek advice from Legal Services.