

**4.7: CONTRACT PROCEDURE RULES**

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## **1. INTRODUCTION**

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- 1.1** These Standing Orders are made pursuant to s135 of the Local Government Act 1972.
- 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. They apply equally where payment is expected to be received or where payment is to be made by the Authority.
- 1.3** It shall be the responsibility of the Heads of Service to ensure that staff within his or her Service comply with these Standing Orders.
- 1.4** 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.
- 1.6** 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.
- 1.7** 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.
- 1.8** 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 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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### Initial Considerations

- 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 a need to procure new supplies, services or works, they shall first consider these options in turn:
- 2.2.1 any current arrangements in existence in-house;
  - 2.2.2 any existing contracts entered into by the Authority;
  - 2.2.3 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 buying consortia, where they can be shown to offer value for money for the Authority.
- 2.3** Where the officer determines that no provision is available from the above sources, they shall have regard to these Standing Orders in determining which procurement option is the appropriate one to follow.

## 3. SPECIAL CIRCUMSTANCES (WAIVER EXEMPTION)

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- 3.1** Notwithstanding the provisions of these Standing Orders and subject only to the requirements of statute or regulation:
- 3.1.1 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 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 categories:
    - (a) only one supplier is available for technical or artistic reasons;
    - (b) extreme urgency exists for unforeseen reasons which are not attributable to the Authority and the various time limits cannot be met.
  - 3.1.2 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.

- 3.1.3 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
- 3.2 If, in exceptional circumstances, authority is sought 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.

## **4. FRAMEWORK AGREEMENTS**

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- 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 and re-opening of competition between providers appointed on to that framework (mini-competition).

## **5. TYPES OF CONTRACTS**

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### **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.

## Procedures for Determining Which Procurement Option to Follow

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

### Threshold Table

Contract Value		Process	Award Procedure based on	Contract Opportunity	Documentation
From	To				
£0	£9,999	Verbal Quotation	Minimum of three verbal quotations	Source from preferred supplier solution in first instance	Employee to record details for Audit purposes
Band A (Minor)					
£10K	£34,999	Written Quotation	Minimum of three written quotations	Source from preferred supplier solution in first instance	Must be based on a written specification provided to the supplier.
Band B (Small)					
£35K	£74,999	RFQ (Request for quotation)	Three written quotations based on a RFQ template with simplified T&C's	Source Leics  NWL Web site	Must be based on a written specification provided to the supplier.
Band C (Medium)					
£75K	EU	Formal Tender	Full Tender Process	Source Leics NWL Web site	PQQ & ITT documentation with sealed bids. Should wherever possible be

Band D (Large)				Specialist publication if appropriate	submitted using NWL E-tendering portal
EU	Above	Formal Tender	Full Tender Process	OJEU Source Leics NWL Web site Specialist publication if appropriate	PQQ & ITT documentation with sealed bids. Should wherever possible be submitted using NWL E-tendering portal
Band E (EU)					

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

- 5.8** 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.
- 5.9** Officers shall first consult the Authority's preferred supplier solution, however if the officer is unable to obtain three verbal quotations from the Authority's preferred supplier solution, they may then seek quotations from providers outside the Authority's preferred supplier solution.
- 5.10** Where officers are seeking verbal quotations:
- 5.10.1 Heads of Service shall ensure that the selection process used is fair and equitable and in accordance with these Standing Orders;
  - 5.10.2 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;
  - 5.10.3 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;
  - 5.10.4 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**

- 5.11 For any single contract not related to or part of any larger procurement, whose value is more than £10,000, but less than £35,000, the officer shall produce a written specification for the supplies, services or works being sought and three written quotations shall be obtained.
- 5.12 Officers shall first consult the Authority's preferred supplier solution, however if the officer is unable to obtain three written quotations from the Authority's preferred supplier solution, they may then seek quotations from providers outside the Authority's preferred supplier solution.
- 5.13 Where officers are seeking written quotations:
  - 5.13.1 Heads of Service shall ensure that the selection process used is fair and equitable and in accordance with these Standing Orders;
  - 5.13.2 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;
  - 5.13.3 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 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;

5.13.5 Notwithstanding where the supplies, services or works sought are a repetition of a previous procurement, new quotations should be obtained each time, to ensure the prices paid represent value for money for the Authority.

### **Band C (Medium) Contracts**

**5.14** For any single contract, not related to or part of any larger procurement, whose value is £35,000 or more, but less than £75,000, 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.

**5.15** Where officers submit a Request for Quotation:

5.15.1 the Request for Quotation shall be uploaded to the Source Leicestershire website (in the format available from the Procurement Toolkit) and the Council's website 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;

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

5.15.3 officers must select the quote which offers value for money for the authority. In some Band C (Medium) 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;

5.15.4 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, new quotations 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 2006 (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. 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.

## **Preferred Supplier Solution**

- 5.20** The Authority has a preferred supplier solution which is operated and managed by the Authority's service provider. The preferred supplier solution is a directory of businesses and shall be used in accordance with these Standing Orders.
- 5.21** Where an Officer is seeking quotations for Band A and Band B contracts from the preferred supplier solution, they shall in the first instance restrict the selection of businesses to those based locally.
- 5.22** Details of the Preferred Supplier Solution are available from the Procurement Toolkit.

## **6. CONTRACTS TO WHICH THE PUBLIC PROCUREMENT REGULATIONS APPLY (BAND E – EU)**

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- 6.1** For any contract whose value is more than the amounts set out in the thresholds in the Public Contracts Regulations 2006 (as amended from time to time), tenders shall be sought in accordance with those regulations.
- 6.2** Under the Public Contracts Regulations 2006 a contract may be tendered under the open, restricted or negotiated procedure or, in the case of complex procurements, under the competitive dialogue procedure.
- 6.3** The procuring officer must note that the Public Contract Regulations 2006 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.
- 6.4** 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 Procurement Regulations 2006.

## **7. TYPES OF TENDER**

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### **Restricted Tendering**

- 7.1** 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 qualified bidders shall be invited to tender for the contract. This route to the market is particularly suitable where a large response is anticipated.
- 7.2** The advertisement shall:
  - 7.2.1** specify details of the supplies, services or works the Authority is procuring;

- 7.2.2 specify the contract duration and proposed commencement date;
- 7.2.3 invite persons or bodies to contact a specific officer to request a Pre-Qualification Questionnaire;
- 7.2.4 specify a contact reference number;
- 7.2.5 specify a time limit, being not less than 30 days from the date of the advertisement within which such expressions of interest are to be received by the Authority.
- 7.2.6 where officers are using the authority's E-tendering solution, specify the appropriate tender box code and details of how to access documentation.

### **7.3 In relation to construction works or services only:**

- 7.3.1 advertisements need not be placed in accordance with 7.2 (above) where no fewer than 5 bidders can be selected from the Authority's preferred supplier solution and invited to tender;
- 7.3.2 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 bidders can be selected, an advertisement shall be placed in accordance with 7.2 (above).

### **7.4 After the expiry of the period specified in the advertisement and following proper evaluation of the returned Pre-Qualification Questionnaires, in accordance with the criteria specified, invitations to tender for the contract shall be sent to:**

- 7.4.1 not less than 5 of the persons or bodies who returned a satisfactorily completed PQQ and has been shortlisted, selected by the Authority; or
- 7.4.2 where fewer than 5 persons or bodies have applied or have satisfactorily completed the PQQ, those persons or bodies which the Authority consider suitable.

### **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 invite persons or bodies to contact a specific officer to request an Invitation to Tender;

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 where officers are using the Authority's E-tendering solution, specify the appropriate tender box code and details of how to access documentation.

## **Negotiated Procedure**

**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.

## **8. SUBMISSION OF TENDERS**

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### **Submission of Tenders for Brand D (Large) Contracts**

**8.1** Where in pursuance of these Standing Orders invitation to tender is made, every invitation shall state:

- 8.1.1 if the tender process is being conducted electronically via the Authority's e-tendering solution, the process for registering and submitting tenders and the signed Form of Tender; or
  - 8.1.2 if the tender is to be submitted by hard copy, that no tender will be considered unless it is enclosed in a plain sealed envelope which shall bear the word "Tender" - followed by the contract to which it relates but shall bear no other name or mark indicating the sender.
- 8.2 The tenders shall be returned to the relevant Head of Service or such other officer of the Authority as may be nominated by that Head of Service and shall be kept by him or her in a secure place until the time and date specified for their opening.
- 8.3 No tender received after the time and date specified in the invitation shall be considered under any circumstances.
- 8.4 Every invitation to tender shall state:
  - 8.4.1 that the Authority is not bound to accept any tender, including the lowest;
  - 8.4.2 the tender evaluation criteria, with full explanation;
  - 8.4.3 a statement that the Authority will be obliged to comply with the Freedom of Information regime;
  - 8.4.4 closing date and time for receipt of tenders and the name and postal address or the web address to which tenders should be sent; and
  - 8.4.5 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**

- 8.5 Evaluation criteria must be designed to secure an outcome providing value for money for the Authority. The basic criterion shall be one of:
  - 8.5.1 Lowest price – where payment is to be made by the Authority;
  - 8.5.2 Highest price – where payment is to be received by the Authority;
  - 8.5.3 Most Economically Advantageous Tender – where considerations other than just price apply. If relying on this criterion, appropriate sub-criteria must 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.

**8.6** Evaluation criteria must not include:

- 8.6.1 Non-commercial considerations, save as expressly set out in these Standing Orders;
- 8.6.2 Matters which discriminate against suppliers from the European Economic Area;
- 8.6.3 A general provision allowing for the highest mark to be awarded for tenders which exceed the specification.

**8.7** 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:

- 8.7.1 the Authority has a duty of 'openness' under the act;
- 8.7.2 it is the Authority and not the tenderer who makes the decision on the release of information within a tender;
- 8.7.3 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; any decision to treat all or some information within a tender as exempt may be reviewed if any further requests are received over time;
- 8.7.4 the Authority will consult with them before making any disclosure;
- 8.7.5 the Authority has a system for dealing with any appeals under the act.

### **Submission of Tenders for Band E (EU) Contracts**

- 8.8 Tendering processes shall comply with the procedures described above, together with further requirements in compliance with the Public Contracts Regulations 2006. In the event of a conflict between these Standing Orders and the Public Contracts Regulations 2006, the latter shall take precedence.
- 8.9 Head of Services shall be responsible for ensuring that any 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.

- 8.10** 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.
- 8.11** 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.

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

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- 9.1** This Rule shall apply to Band D (Large) and Band E (EU) contracts
- 9.2** Tenders received under these Standing Orders shall be opened at one time and only in the presence of:
- 9.2.1 the Head of Legal and Support Services or duly appointed representative;
  - 9.2.2 the Head of Finance or duly appointed representative; and
  - 9.2.3 the appropriate Head of Service or duly appointed representative.
- 9.3** Provided that no Head of Service or any member of his or her staff shall be present if a tender has been submitted in his name.
- 9.4** All tenders received shall be recorded and all officers present shall sign the tender book.
- 9.5** A register of all tenders accepted shall be kept and maintained by the Head of Legal and Support Services. Such register shall for each contract specify the name of the contractor, the works to be executed, the services to be supplied or the goods to be supplied and the contract value. The register shall be open to inspection by any member of the Council during normal office hours.
- 9.6** Tenderers shall be notified of the acceptance or rejection of their tenders.
- 9.7** 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).

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

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- 10.1** All tenders shall be properly evaluated by the Director or nominated officer in accordance with the published award criteria and in accordance with any specific requirements of any relevant EU Directive or English legislation. A

member of the Procurement Team shall be invited to participate in the evaluation process.

- 10.2** 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.
- 10.4** Post tender negotiations shall only be by exception and in accordance with Public Procurement Regulations. Authority to enter into post tender negotiations may only be granted by the Chief Executive, Director of Housing or Director of Services. 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.
- 10.5** 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:
- 10.5.1 the procurement of a named product required to be compatible with an existing product, i.e. computer software;
  - 10.5.2 an alternative pre-tender evaluation criteria has been determined;
- in such circumstances the Statutory Officer shall be consulted and written confirmation of their agreement retained for audit purposes.
- 10.6** If the 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 tender will be accepted.
- 10.7** Contracts shall be awarded by:
- 10.7.1 the cabinet (in accordance with Cabinet Function no. 30 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).
- 10.8** All contract awards shall be notified promptly to the Procurement Team.

## **11. CONTRACT CONDITIONS**

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- 11.1** Every procurement which exceeds £35,000 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.
- 11.2** Such contract shall, unless the Head of Legal and Support Services deems it disproportionate,
- 11.2.1 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;
  - 11.2.2 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;
  - 11.2.3 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;
  - 11.2.4 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;
  - 11.2.5 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;
  - 11.2.6 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;

- (f) Bribery and corruption; and
- (g) Equalities and discrimination.

- 11.2.7 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;
  - 11.2.8 provide for compliance with those of the Authority's policies relevant to the provision of the supplies, services or works;
  - 11.2.9 provide for the protection of the Authority's intellectual property rights, where appropriate;
  - 11.2.10 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 checks;
  - 11.2.11 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. Such assistance may include setting performance indicators, benchmarking implementing performance plans and/or periodically reviewing the services;
  - 11.2.12 provide for adequate confidentiality and data protection provisions;
  - 11.2.13 be governed by the laws of England and subject to the exclusive jurisdiction of the Courts of England;
  - 11.2.14 comply with the laws of England and any applicable EU legislation or regulation.
- 11.3** 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.
- 11.4** Every contract which exceeds £250,000 shall be in writing and under the Common Seal of the Authority.
- 11.5** 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.

- 11.6** The provisions of these Standing Orders do not prevent the use of a formal contract for a procurement less than £35,000 where the appropriate Head of Service considers it appropriate.
- 11.7** 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.
- 11.8** 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.
- 11.9** 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.
- 11.10** Where a main contractor indicates in their tender submission the use of sub-contractors, the officer will ensure that:
- 11.10.1 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;
  - 11.10.2 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.
- 11.11** 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 does not provide for a variation to such terms.

## **12. CONTRACT AND PERFORMANCE MANAGEMENT**

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- 12.1** Contract management arrangements shall be set out in any invitation to tender and incorporated into any subsequent contract.
- 12.2** A named contract manager shall be appointed for each Band C, D and E contract.

- 12.3** The Head of Legal and Support Services may agree the variation or novation of any contract originally awarded by the Director. The variation or novation of a contract originally awarded by the Cabinet shall only be agreed by the Cabinet.
- 12.4** No contract entered into by the Authority may be extended by duration or value unless:
- 12.4.1 where the contract is a Band E contract, such extension was provided for in the original OJEU notice and contract documentation;
  - 12.4.2 where the contract is a Band D 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
  - 12.4.3 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.
- 12.5** All extensions to Band D and Band E contracts shall be promptly notified to the Procurement Team.
- 12.6** 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.