

**Standing Orders relating to Contracts**  
Report by Chief Financial Officer

**Summary:** This report provides Members with the updated Standing Orders relating to contracts and the annual summary of instances where they have been waived by the Chief Executive during 2017/18.

**Recommendations:**

- (i) That the amendments to the Standing Orders relating to contracts be approved.
- (ii) To note the annual report of instances where Standing Orders have been waived.

**1. Introduction**

- 1.1 The Authority's Standing Orders relating to Contracts provides guidelines to staff and the processes that need to be followed when procuring goods or services. These were last reviewed in 2015 and it is recommended that these are reviewed at periods not exceeding 3 years. The second part of the report provides details where the Chief Executive authorised a waiver of Standing Orders during 2017/18. Waiver can only be approved by certifying that there is an extreme urgency, only one supplier or in certain other circumstances. It also requires that all waivers authorised under delegated powers must be reported to the Authority.
- 1.2 It has previously been agreed that any waivers will be reported on an annual basis, after the end of each financial year.

**2. Amendments to Standing Orders relating to Contracts**

- 2.1 All procurement for public bodies is governed by legislation (The Public Contracts Regulation 2015) which brought into UK law the EU Public Contracts Directive. The Authority's Standing Orders relating to Contracts are designed to translate this legislation into processes for staff to follow.
- 2.2 The review undertaken has considered the above legislation and best practice. The aim has been to make the document easier to follow including the processes that are required to undertake procurement (including publishing opportunities over £25,000 on contract finder), update EU limits and amendments to out of date job titles. Changes are highlighted in the appendix in track changes.

2.3 An area that often causes the most confusion is where a waiver of standing orders is required. The internal form used by staff does not make it clear as to what the Chief Executive can approve before committee consultation is required. As part of the tidying up process it is proposed to include on the form that the Chief Executive can approve waivers where budgetary provision already exists up to a value of £150,000 or 10% extension of an existing contract. Where budgetary provision does not exist or it exceeds these amounts then these will require committee approval. It should be noted that a waiver is an exception not the norm.

### 3. Waivers Authorised During 2017/18

3.1 Three separate waivers to Standing Orders were authorised during the year with two approved by the Authority and only one approved by the Chief Executive. This is summarised in the table below, the cost is exclusive of VAT.

Ref	Details of Contract	Supplier	Amount (£)
A	To repair Ludham Bridge fendering	GT Rochester Plant Ltd	26,400

3.2 Further details of the individual contract and the reason for waiving Standing Orders is set out below:

A **Competitive quotations not sought due to urgency.** Works previously undertaken by County had meant larger vessels could not pass under the bridge. With activities planned for the larger sailing wherries at the end of February work was urgently required. Due to the time limits in County's own contractor approval it was agreed that the Authority would contract the supplier and recharge in full to County. GT Rochester was the only contractor available and had previously undertaken works to the Authority's required standard. The most recent being Turn Tide Jetty.

## 4 Summary

4.1 There were fewer waivers approved by the Chief Executive in 2017/18 compared to the four in 2016/17. The two waivers considered by the Authority (January and March 2018) were the construction of the Chet Boat and the National Park Experience business support. All approved waiver requests were considered to be justified and on the grounds of achieving the best outcome for the Authority at the best possible price.

Background Papers: None

Authors: Emma Krelle

Date of Report: 30 April 2018

Broads Plan Objectives: None

Appendices: Appendix 1 – Standing Orders Relating to Contracts

## Broads Authority

### Standing Orders Relating to Contracts

**NOTE:** These Standing Orders should be read in conjunction with the “Standard Terms for Contracts” which provide standard wording for use in tender documentation. All tenders ~~should~~ **must** be reviewed by the ~~Head of Finance~~ **Chief Financial Officer or**, Financial Accountant ~~or~~ **and the** appropriate Director prior to being issued. For advice on the legal aspects of tenders, the Authority’s Solicitor **and Monitoring Officer** should be consulted.

#### Application and Exceptions

##### 1. Purpose of Standing Orders

The overall purpose of these Standing Orders is as follows:

- (a) to ensure transparency and fairness in the procurement of works, supplies and services;
- (b) to ensure that the Authority gets best value from its procurements; and
- (c) to protect those involved in the procurement process.

##### 2. Duty to Achieve Best Value

Every contract or official order ~~made~~ for works, supply ~~and disposal of goods, materials~~ and services ~~made by the Authority~~ must be for the ~~purchase purpose~~ of achieving the Authority’s statutory and approved objectives and must ~~be in accordance with the Authority’s duty of~~ **ensure Bbest Vvalue**, to secure continuous improvement in the exercise of all its functions, having regard to a combination of economy, efficiency and effectiveness.

##### 3. Application

- (a) These Standing Orders apply to every contract made by or on behalf of the Authority except contracts for:
  - (i) the acquisition or disposal of any interest in land; or
  - (ii) insurance or the lending or borrowing of money; or
  - (iii) the employment of any employee.

- (b) The engagement of consultants and other professional advisers must be in accordance with these Standing Orders unless the Authority or appropriate committee, or the Chief Executive in consultation with the Chairman (or in the Chairman's absence Vice-Chairman) of the appropriate committee, directs otherwise.

#### 4. Compliance with European ~~Commission-Union~~ (EGU) Directives

Every contract must comply with the EGU Treaty and with any relevant directives of the EGU for the time being in force in the United Kingdom. These Standing Orders have effect subject thereto.

#### 5. General Exemptions

- (a) The Authority or the appropriate committee may authorise exemption from any of the following provisions of these Standing Orders where they are satisfied that the exemption is justified in special circumstances.
- (b) The Chief Executive may authorise exemption from any of the following Standing Orders by certifying that there is an extreme emergency.
- (c) Every exemption authorised under these Standing Orders must be reported to the Authority and the report must specify the emergency or other special reason justifying it.

#### 6. Specific Exemptions

Quotations or tenders need not be invited in the case of a contract:

- (a) for the supply of goods or services where there is only one or two suppliers and no acceptable alternative;
- (b) for goods or materials to be purchased at an auction or second hand;-
- ~~(b)~~(c) or for goods or services to be purchased through any consortium, association or similar body (including the other UK National Parks) of which the Authority is a member, or under any other framework arrangement not negotiated by the Crown Commercial Services (CCS) for the benefit of public bodies;
- ~~(e)~~(d) for works of art, museum specimens or historical documents;
- ~~(d)~~(e) which constitutes an extension of an existing contract (such an extension to be approved by the Chief Executive in cases where the variation is up to 10% ~~per cent~~ of the original price; above that figure extensions can only be approved by the appropriate committee);
- ~~(e)~~(f) for the execution of work or for the supply of goods or materials certified by the Chief Executive as being required so urgently as to preclude the invitation of quotations or tenders;

Formatted: List Paragraph, Left, No bullets or numbering

(f)(g) (except where it is readily practicable to invite quotations or tenders) for repairs to, or the supply of, parts of existing proprietary or patented articles, including machinery or plant;

(g)(h) for which it is not considered reasonably practicable in the Authority's interest so to do, subject to a report to the Broads Authority or appropriate committee;

(h)(i) on behalf of another body for which the Authority is acting as agent, provided any rules or standing orders of that body are complied with; or

(i)(j) where the Authority is undertaking work in partnership with another public sector organisation, and the work is being funded either entirely or more than 50% by that organisation, the Authority need not necessarily seek competitive quotations or tenders if that other organisation or another public body has already undertaken such a process, subject to the Authority being satisfied that the process was fair and robust and that the expenditure represents good value in the use of public money.

#### Pre-Estimate

7. Before any procurement is begun the [Chief Executive budget holder \(within their authorised limits\)](#) must estimate the value of the contract [in order to determine which procurement route should be followed](#).

#### 8. Hire of Goods or Services for an Indeterminate Period

(a) In the case of contracts for:

(i) the hire of goods for an indeterminate period; or

(ii) the provision of services for a period in excess of four years or for an indeterminate period;

the estimated value ~~of the for both these type of -contracts for these Standing Orders-~~ must be the estimated monthly costs multiplied by 48 or, ~~where monthly costs are inapplicable,~~ the estimated annual cost multiplied by four.

(b) In the case of contracts for the supply of goods ~~(except for a hire in accordance with paragraph 8.(a)(i)) over a period of time~~ where the Authority enters into a series of contracts or a renewable contract, the estimated value of the contract is either:

(i) the aggregate value of similar contracts over the previous 12 months (adjusted for any known changes in demand);

(ii) the estimated value of similar contracts over the next 12 months; or

(iii) if the contract is for a definite term of more than 12 months, the estimated value for the period of the contract.

- (c) ~~Where a or by do not apply For all supplies, services and works not covered by paragraphs 8.(a) or 8.(b),~~ the estimated value for all supplies, services and works for the purpose of these Standing Orders must be the total estimated value ~~of the supplies, services or works to be supplied over will be~~ the period covered by the contract.
- (d) In the event that the contract estimate is incorrect and quotations are received which would have resulted in a different procurement process being applied, the procurement process should either be re-run following the appropriate process, or a Waiver of Standing Orders be completed, depending upon circumstances.

### Contracts below £5,000

9. Where the estimated value of a contract is below £5,000, it is good practice but not mandatory to obtain more than one quotation.

### Contracts of £5,000 and Above

#### 10. Award and Evaluation Criterion

- (a) Before any quotations or tenders are sought where the estimated value of the contract is £5,000 or above, the Chief Executive budget holder (within their authorised limits) must decide and record the award criterion to be used when the quotations or tenders are received. This must be either:
- (i) the lowest price (where the Authority is to pay the supplier); or
  - (ii) the highest price (where the supplier is to pay the Authority); or
  - (iii) the most economically advantageous quotation or tender.
- (b) If the chosen award criterion is the 'most economically advantageous,' the Chief Executive must then decide and record in a list the evaluation criteria (in descending order of significance) upon which the quotations or tenders will be so evaluated. Normally it is recommended that At least 50% of the award criterion should be based on the price for the product or service. The award criteria should be weighted by percentage, and displayed in a grid, as set out in the following example.

Award Criteria	Weighting
Price	50%
Technical specification/expertise	20%
Trade references	10%
Timescale for completion of work	10%
Maintenance costs	10%
Total	100%

NOTE: The above is an example only for a service contract. Tenders must be drawn up carefully having regard to the needs of the particular project. ~~Where appropriate it is helpful to provide f~~urther guidance

on how each of the award criteria will be evaluated must be provided, to minimise as far as possible the element of subjectivity in the process.

- (c) The Chief Executive must notify all those invited to submit quotations or tenders which award criterion is being used in the case of the contract in question and, where applicable, the evaluation criteria.
- (d) For contacts below £25,000 the quotation which best meets the award criterion must be accepted, except where otherwise agreed in writing by the Chief Executive or a Director, stating why the quotation which best meets the award criterion has not been accepted.
- (e) ~~Where the quotation has been otherwise agreed above, these~~In such cases ~~this~~ will be reported to the Broads Authority or appropriate committee as an exception to Standing Orders.

### **Contracts Between £5,000 and £25,000**

#### 11. Quotations

Where the estimated value of the contract is between £5,000 and £25,000 inclusive the Chief Executive must, unless impracticable, invite at least three written quotations.

### **Contracts Above £25,000**

#### 12. Tenders

- (a) Where the estimated value of a contract exceeds £25,000 but is below the Official Journal of the EU (OJEU) limit, and in any other cases where the Authority or the appropriate committee determines, tenders must be invited in accordance with either one of Standing Order 13, 14, ~~or 15~~ or 16.

~~(b) In cases where the Authority does not intend to comply with one of Standing Order 13, 14 or 15, prior approval must be sought from the Authority or appropriate committee, or the Chief Executive in conjunction with the Chairman (or in the Chairman's absence Vice-Chairman) of the Authority or appropriate committee, setting out the reasons why it is not considered necessary or appropriate to comply with one of these Standing Orders on this occasion.~~

(b) If the estimated value of any contract is above the OJEU limit then legal advice must be sought regarding the procedures which will need to be followed in letting the contract as public notice limits increase in these circumstances. The threshold at January 2018 (net of VAT) for works contracts was £4,551,413 and for services and supply contracts (estimated over 48 months) £181,302.

Formatted: Numbered + Level: 1 +  
Numbering Style: a, b, c, ... + Start at:  
1 + Alignment: Left + Aligned at: 1.9  
cm + Indent at: 2.54 cm

#### 13. Open Tendering

- (a) This Standing Order applies where the tenders for a contract are to be obtained by open competition.

(b) At least 14 days public notice must be given in:

- (i) On contract finder and the Authority's website. Further notices can also be placed in other purchasing platforms such as the Crown Commercial Services and one or more relevant professional or trade list/source, ~~where this is not available in~~including or the local newspapers; and
- (ii) wherever the estimated value of the contract exceeds £100,000, in one or more newspapers or journals circulating among persons or bodies who undertake such contracts.

(c) The notice must state what the contract is for and where further details may be obtained, invite tenders for its execution and state the last date and time when tenders will be received.

#### 14. ~~Restricted~~Selective Tendering - Ad Hoc List

(a) This Standing Order applies where the Authority or appropriate committee has decided that invitations to tender for a contract are to be made to some or all of those persons or bodies who have replied to a public notice.

(b) Public notice must be given:

- (i) On contract finder and the Authority's website. Further notices can also be placed in other purchasing platforms such as the Crown Commercial Services and in at least one or more relevant professional or trade list/source, ~~where this is not available in~~including or the local newspaper; and
- (ii) where the estimated amount or value of the contract exceeds £100,000, in at least one newspaper or journal circulating among such persons or bodies who undertake such contracts; and
- (iii) at the discretion of the Authority or appropriate committee to all or a selected number of persons or bodies named in the list maintained under Standing Order 15.

(c) The public notice must:

- (i) specify what the contract is for;
- (ii) invite interested persons or bodies to ~~apply for permissions~~submit a request to tender~~participate including information to be provided for selection~~; and
- (iii) specify a time limit, of at least 14 days, within which such applications must be submitted to the Authority.

(d) After the expiry of the period specified in the public notice invitations to tender for the contract must be sent to:



(i) at least three of the persons or bodies who applied for permission to tender, selected by the Chief Executive;

(ii) where fewer than three persons or bodies have applied or are considered suitable, those persons or bodies which the Chief Executive considers suitable.

(iii) Specify a time limit, of at least 14 days, within which full tenders must be submitted to the Authority.

Formatted: List Paragraph, Left, No bullets or numbering

#### 15. Selective-Restricted Tendering - Standing List

(a) This Standing Order applies where the Authority or appropriate committee has decided that invitations to tender for a contract are to be limited to those persons or bodies whose names are included in a list compiled and maintained for that purpose.

(b) This list must:

(i) be compiled and maintained by the Chief Executive;

(ii) contain the names of all persons or bodies who wish to be included and who are approved by the Authority or appropriate committee; and

(iii) indicate in respect of a person or body whose name is so included, the categories of contract and the maximum values or amounts in respect of those categories for which approval has been given.

(c) At least four weeks before a list is first compiled, notices inviting applications for inclusion in it must be published:

(i) On contract finder and the Authority's website. Further notices can also be placed in at least one relevant professional or trade list/source, where this is not available in including or the local newspaper; and must state the purpose of the list.

Formatted: Numbered + Level: 1 + Numbering Style: i, ii, iii, ... + Start at: 1 + Alignment: Left + Aligned at: 3.17 cm + Indent at: 3.81 cm

(ii) include information that the persons or bodies must provide to be considered for selection; and

Formatted: Indent: Left: 3.81 cm, No bullets or numbering

(iii) specify a time limit, of at least 14 days, within which such applications must be submitted to the Authority

Formatted: Numbered + Level: 1 + Numbering Style: i, ii, iii, ... + Start at: 1 + Alignment: Left + Aligned at: 3.17 cm + Indent at: 3.81 cm

~~(ii) in at least one newspaper or journal circulating among persons or bodies who undertake such contracts;~~

~~and must state the purpose of the list.~~

(d) The list must be amended as required from time to time and must be reviewed at intervals not exceeding three years. At least four weeks before each review, everyone on the list must be asked whether they wish to remain

there and notices inviting new applications for inclusion in the list must be published in the manner provided by paragraph 15.(c) of this Standing Order.

(e) At each review the list must be reported to the appropriate committee with particulars showing those invited to tender, those responding and those successful, since the last review.

(f) Invitations to tender for a contract must be sent to:

(i) at least three of those persons or bodies selected by the Chief Executive from among those approved for a contract of the relevant category and amount or value; or

(ii) where fewer than three persons or bodies are approved for a contract of the relevant category and amount or value, all those persons or bodies.

(ii) Specify a time limit, of at least 14 days, within which full tenders must be submitted to the Authority.

Formatted: List Paragraph, Left, No bullets or numbering

Formatted: List Paragraph, Left, No bullets or numbering

Formatted: Indent: Left: 3.81 cm, No bullets or numbering

Formatted: Font: 12 pt

Formatted: Normal, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 16 + Alignment: Left + Aligned at: 0.63 cm + Indent at: 1.27 cm

Formatted: Indent: Hanging: 0.65 cm

Formatted: Indent: Left: 1.9 cm, No bullets or numbering

Formatted: Indent: Hanging: 0.65 cm

## 16. Framework Arrangements

a) A Framework Arrangement is a formal tendered arrangement which sets out terms and conditions under which specific purchases can be made throughout the term of the agreement, and supplies, services or works are procured from the successful tenderer in predicted quantities at various times during the period that the agreement is in force.

b) The Crown Commercial Services (CCS) has already put together a number of frameworks that the Authority can access. These frameworks cover a wide variety of areas from postage, to vehicles and Insurance. The CCS have already tendered for these frameworks and the appropriate background checks completed. The individual frameworks provides details of the procedure to be followed.

c) If at any time the Authority proposes to enter into any other type of Framework Arrangement for the provision of goods or services, then legal advice must be sought in respect of the procedures which need to be followed in the awarding and letting of the contract.

Formatted: Indent: Left: 1.25 cm, Hanging: 0.75 cm

## a) 17. Post-Tender Negotiations

Formatted: No bullets or numbering

(a) The Chief Executive may (following the closing date for receipt of tenders but before acceptance of any tender) carry out post-tender negotiations to attempt to secure an improvement in the contract price or other conditions only in one or more of the following circumstances:

(i) where the lowest submitted tender or the most economically advantageous tender (where this is the award criterion) exceeds the estimated value of the contract;

- (ii) where the Chief Executive considers that the price of the lowest tender submitted ~~does not represent the best value for money that can reasonably be obtained abnormally low~~;
- (iii) where tenders have been invited only on the basis of unit prices or a schedule of rates and the lowest in aggregate is not the lowest on all items; or
- (iv) where the lowest submitted tender or the most economically advantageous tender (where this is the award criterion) contains conditions, trading terms, specification, performance, guarantees, or service delivery less favourable than in other tenders, or than stipulated for, and this defect appears capable or being remedied by post-tender negotiations.

(b) In carrying out Post Tender Negotiations, the Authority shall follow the procedures set out in the Appendix to these Standing Orders.

## Tenders

### b) 18. Invitations to Tenders

- (a) Every invitation to tender must specify the latest day and hour and the place appointed by the Chief Executive for the receipt of tenders and must state the effect of Standing Order 187.
- (b) On receipt, envelopes containing tenders must be date and time stamped and kept by the Chief Executive until they are opened.
- (c) The invitation to tender should make clear that:
  - (i) tenders may be submitted electronically, on a CD or other appropriate media posted to the Authority in the supplied tender envelopes; and
  - (ii) tenders submitted by email ~~are not encouraged and will only~~ be accepted ~~only~~ when sent exclusively to [tendersfinance@broads-authority.gov.uk](mailto:tendersfinance@broads-authority.gov.uk) with the subject clearly indicating ~~that they are for the attention of the Head of Finance,~~ the name of the tender, ~~and the closing date and time.~~ Any tenders not conforming to these requirements, or sent to an alternative email address, will be invalidated.

### e) 19. Invalid Tenders

- (a) An invalid tender must not be accepted, unless otherwise agreed by the Authority or appropriate committee, or by the Chief Executive in conjunction with the Chairman (or in the Chairman's absence Vice-Chairman) of the Authority or appropriate committee.
- (b) A tender will only be valid if it has been delivered to the place appointed by the Chief Executive not later than the appointed day and hour either sealed

Formatted: Indent: Left: 0.63 cm, No bullets or numbering

Field Code Changed

Formatted: Indent: Left: 0.63 cm, No bullets or numbering

in the pre-printed envelope provided by the Authority for this purpose or the tender mailbox.

- (c) A tender will not be valid if the envelope bears any name or mark indicating the sender.

#### e) 20. Opening of Tenders

(a) Tenders received under one of Standing Order 13, 14, ~~or 15~~ or 16 must be opened at the same time and only in the presence of at least two officers of the Authority designated for the purpose by the Chief Executive, one of whom must be ~~the a Director of Planning and Resources, Head of Finance~~ Chief Financial Officer or Financial Accountant. The officers present at the opening must sign and date a summary of tenders received.

(b) Any tender received at the appointed place later than the day and hour specified under Standing Order ~~17~~ 8 may be opened and recorded on the summary of tenders stating the circumstances. The tender must be rejected unless it is subsequently approved by the appropriate committee, or the Chief Executive in consultation with the Chairman (or in the Chairman's absence Vice-Chairman) of the Authority or appropriate committee.

(c) The ~~Head of Finance~~ Chief Financial Officer must retain all tenders received, including any invalid tenders, and their envelopes for a period of two years from the return date. The accepted tender must be retained for six years after the final contract payment.

(d) Any tender opened in error before the date and time set for opening tenders shall be immediately resealed and a record made of the event signed by the ~~Director of Planning and Resources and Head of Finance~~ Chief Financial Officer in the Register of Tenders held by the ~~Head of Finance~~ Chief Financial Officer.

(e) If it is necessary to extend the date for receiving tenders, this shall be recorded by the ~~Director of Planning and Resources and Head of Finance~~ Chief Financial Officer in the Register of Tenders, setting out the reason for extending the deadline.

~~(f) — Any tender documents which are received electronically to the tender mailbox shall only be accessible by the Chief Financial Officer and the Financial Accountant. forwarded immediately to the Head of Finance, who They will make arrangements for a copy of the tender to be printed for by the designated officer designated to open the tenders at the same time as those received by post under Standing Order 1920.(a) (either at the Director of Planning and Resources, Head of Finance~~ Chief Financial Officer or Financial Accountant). ~~Tenders received electronically will be printed at the same time as the opening of any tenders received in paper form, signed as received, and the signed copy kept with those received by post.~~

#### e) 21. Acceptance of Tenders

Formatted: Indent: Left: 0.63 cm,  
No bullets or numbering

Formatted: Indent: Left: 2.54 cm,  
No bullets or numbering

Formatted: Indent: First line: 0 cm

Formatted: Indent: Left: 0.63 cm,  
No bullets or numbering

(a) The Chief Executive may only accept the tender which best meets the award criteria except where otherwise agreed by the Authority or appropriate committee, or the Chief Executive in consultation with the Chairman (or in the Chairman's absence Vice-Chairman) of the Authority or appropriate committee.

(b) Acceptance of tenders must be in writing and signed by the Chief Executive or an officer designated by the Chief Executive for that purpose.

~~(c) A contract award notice will be made on Contract Finder no later than 30 days after the award of the successful tenderer including the amount. The Chief Executive will on request inform the unsuccessful tenderers of the name of the successful tenderer and (where practical) the amount of the tender accepted. Unsuccessful tenderers must also be notified via email at the same time as the successful tenderer including the reasons for the decision. Late tenderers will not be informed.~~

(c) It is good practice to include a standstill period of at least 14 days prior to official contracts being signed for contracts below the OJEU thresholds. Contracts above must have the standstill period incorporated.

Formatted: List Paragraph, Left, No bullets or numbering

Formatted: Numbered + Level: 1 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.9 cm + Indent at: 2.54 cm

Formatted: List Paragraph, Left, No bullets or numbering

Formatted: Indent: Left: 2.54 cm, First line: 0 cm

Formatted: Indent: Left: 0.63 cm, No bullets or numbering

## f) 22. Errors or Discrepancies in Tenders

(a) Where examination of tenders reveals errors or discrepancies which would affect the tender figure in an otherwise successful tender, the tenderer must be provided with written details of each error and discrepancy. The tenderer will be afforded the opportunity either:

- to confirm in writing and accept the error if it is in the Authority's favour; or
- to correct the error(s) and to revise the tender downwards. Any revisions must be confirmed in writing; or
- to withdraw the tender. This must be confirmed in writing.

(b) Tenders must not be revised upwards.

(c) Errors and discrepancies in unsuccessful tenders must not be revised even if, after correction, they would make the tender successful.

(d) If the tenderer withdraws, the next tender in competitive order is to be examined and then dealt with in the same way.

(e) Any exception to this procedure may be authorised only by the Authority or appropriate committee, or the Chief Executive in consultation with the Chairman (or in the Chairman's absence Vice-Chairman) of the Authority or appropriate committee.

## ~~Contracts Exceeding the EU Threshold~~

~~g) If the estimated value of any contract is likely to exceed the relevant EU limit, then legal advice must be sought regarding the procedures which need to be followed in the letting of the contract.~~

~~h) A mandatory standstill period of 10 days applies to some procurements which are above the threshold for advertisement in the Official Journal of the EU. This has been introduced to allow unsuccessful bidders the chance to obtain more information on the award of the contract and take appropriate action if they believe they have been prejudiced by a breach of the rules, by applying to the courts to either have the contract set aside, or to be awarded damages.~~

~~NOTE: Until December 2015 the relevant thresholds are as follows (net of VAT):~~

- ~~• £4,322,012 for works contracts; and~~
- ~~• £172,514 for services (estimated over 48 months) and supplies contracts.~~

### **Framework Arrangements**

~~i) A Framework Arrangement is a formal tendered arrangement which sets out terms and conditions under which specific purchases can be made throughout the term of the agreement, and supplies, services or works are procured from the successful tenderer in unpredicted quantities at various times during the period that the agreement is in force.~~

~~j) If at any time the Authority proposes to enter into a Framework Arrangement for the provision of goods or services, then legal advice must be sought in respect of the procedures which need to be followed in the awarding and letting of the contract.~~

### **Miscellaneous Matters**

~~k) 23. A register of all contracts ~~over £25,000~~ placed by the Authority must be kept and maintained by the ~~Head of Finance~~Chief Financial Officer. For each contract the register must specify the name of the contractor, the works to be executed or the goods to be supplied and the contract value. It must be open to inspection by any member of the Authority.~~

Formatted: Indent: Left: 0.63 cm, No bullets or numbering

~~l) 24. Financial Interests of Officers~~

~~The Chief Executive must record in the Register of Officers' Interests details of any notice given to the Authority by an officer under Section 117 of the Local Government Act 1972 of a financial interest in a contract. The Register must be open during office hours for inspection by any member of the Authority.~~

Formatted: Indent: Left: 0.63 cm, No bullets or numbering

~~m) 25. Supervision of Contracts by Third Parties~~

Formatted: Indent: Left: 0.63 cm, No bullets or numbering

~~(a) It must be a condition of any contract between the Authority and any person (not being an officer of the Authority) who is required to supervise a contract on behalf of the Authority that in relation to that contract the requirements of these Standing Orders must be complied with as if that person were the Chief Executive.~~

~~(b) Such person must:~~

- (i) at any time during the carrying out of the contract produce to the Chief Executive on request all records maintained in relation to that contract;
- (ii) on completion of the contract transmit all records to the Chief Executive.

#### ⇒ 26. Nominated Sub-Contractors and Suppliers

Where a sub-contractor or supplier is to be nominated to a main contractor, the following rules apply:

- (a) Where the estimated amount of the sub-contract or the estimated value of the goods to be supplied by the nominated supplier does not exceed £25,000, quotations must be invited for the nomination in accordance with Standing Order 9 or 11 unless the Chief Executive considers in respect of any particular nomination that it is not reasonably practical to obtain competitive quotations.
- (b) Where the estimated amount of the sub-contract or the estimated value of the goods to be supplied by the nominated supplier exceeds £25,000, tenders must be invited in accordance with one of Standing Order 13, 14, ~~or~~ 15 or 16 unless the Authority or appropriate committee decides in respect of any particular nomination that it is not reasonably practicable to obtain competitive tenders.
- (c) Standing Orders ~~178~~ to ~~242~~ apply to tenders received under this Standing Order.
- (d) Sub-contractors or suppliers must send with their tender an undertaking that if they are selected they will
  - (i) be willing to enter into a contract with the main contractor; and
  - (ii) indemnify the main contractor in respect of the sub-contracted works or materials.
- (e) The Chief Executive must nominate to the main contractor the person whose quotation or tender best meets the award criterion. Where it is proposed to award the quotation or tender to a person whose quotation or tender does not best meet the award criterion, the circumstances must:
  - (i) in the case of quotations under paragraph 296.(a) above, be reported to the Authority or appropriate committee; or
  - (ii) in the case of tenders under paragraph 296.(b) above, be agreed, before any nomination is made, by the Authority or appropriate committee or, in cases of emergency, by the Chief Executive in consultation with the Chairman (or in the Chairman's absence Vice-Chairman) of the Authority or appropriate committee.

#### ⇒ 27. Contract Conditions

Formatted: Indent: Left: 0.63 cm,  
No bullets or numbering

Formatted: Indent: Left: 0.63 cm,  
No bullets or numbering

(a) Every contract which exceeds £5,000 in value or amount must:

- (i) be in writing and signed by the Chief Executive or an officer designated by the Chief Executive for the purpose;
- (ii) specify the goods, materials or services to be supplied and the work to be executed, the price to be paid together with a statement as to the amount of any discounts or other deductions, the periods within which the contract is to be performed and such other conditions and terms as may be agreed between the parties; and
- (iii) in appropriate cases, where a contract exceeds £100,000 in amount or value, provide for the payment of liquidated damages by the contractor for failure to complete the contract within the time specified;
- (iv) include a clause prohibiting the contractor from transferring or assigning or sub-letting to any person any portion of the contract without the written permission of the Authority signed by the Chief Executive;
- (v) where applicable, require the contractor to indemnify the Authority against claims in respect of employers' liability and/or public liability. The amount normally required for public liability insurance cover is £5,000,000;
- (vi) where applicable, for example where professional advice is being given, require the contractor to indemnify the Authority against claims in respect of matters relating to the advice or service provided. The amount normally required for professional indemnity insurance is £5,000,000;
- (vii) where appropriate include a clause giving tenderers the opportunity to state how much the required insurance would cost ([for the duration of the contract](#)) if they do not have it already in place. This must then be added to the cost of the tender;
- (viii) state that all goods, materials and work must comply with any relevant British Standards Specification or Code of Practice in force at the date of the quotation or tender;
- (ix) state that the Authority can cancel the contract and recover any resulting losses if the contractor or the contractor's employees or agents, with or without the contractor's knowledge:
  - does any thing improper to influence the Authority to give the contractor the contract; or
  - commits an offence under the Prevention of Corruptions Acts 1889 to 1916 or Section 117(2) of the Local Government Act 1972.

Formatted: List Paragraph, Left, No bullets or numbering



• (x) where the contract relates to the processing of personal data, state they must comply with GDPR legislation.

Formatted: Indent: Left: 1.27 cm,  
No bullets or numbering

(b) Where it is considered that the total amounts of insurance, as set out in paragraphs 3027.(v) and 3027.(vi), are not considered to be appropriate or necessary, the Chief Executive may approve deviations to this figure.

(c) It is good practice to ask tenderers for a certified copy of the public liability and / or professional indemnity insurance, especially from new or unknown contractors.

(d) Every contract over £100,000 must be under seal.

(e) The Authority may also require a contractor to give sufficient security for completing the contract.

#### ⇒ 28. VAT

All the financial limits contained within these Standing Orders exclude VAT where it is payable.

Formatted: Indent: Left: 0.63 cm,  
No bullets or numbering

#### ⇒ 29. Review

The Authority will review these Standing Orders at intervals not exceeding three years.

Formatted: Indent: Left: 0.63 cm,  
No bullets or numbering

#### ⇒ 30. Interpretation

In these Standing Orders, unless the context otherwise requires:

(a) "appropriate committee" means the committee or sub-committee to which the power to make the contract has been delegated;

(b) "most economically advantageous" normally means the lowest if payment is to be made by the Authority and the highest if payment is to be made to the Authority, but should also take into account quality and other measures, which will be set out in the evaluation criteria and which should be specified in advance of the contract evaluation. In such cases the method of scoring such measures and the weighting of evaluation will be clearly set out in the contract specification.

(c) "Person" includes a partnership, body corporate or unincorporated association.

Formatted: Indent: Left: 0.63 cm,  
No bullets or numbering

NOTE: All references to the Chief Executive in this document apply to that person and his / her nominated representative, who are ~~the Treasurer and Financial Adviser, a Director of Planning and Resources and Head of Finance~~ ~~Chief Financial Officer~~, and any other officers who are authorised to act in particular circumstances in accordance with the Powers Delegated to the Chief Executive – Arrangements for the Exercise of Powers by Other Officers.

April 2018~~5~~

## APPENDIX

### Post Tender Negotiations

#### Procedural Rules

1. In Post Tender Negotiations carried out under Standing Order 176:
  - (a) Where price is the award criterion the tenderers submitting the lowest tender and all those the value of which is within 5% of the lowest tender or, if there is no such tender, the tenderer submitting the second lowest, may be invited to participate in Post Tender Negotiations.
  - (b) Where the most economically advantageous tender is the award criterion the tenderers submitting the most economically advantageous tender and the second most economically advantageous tender may be invited to participate in Post Tender Negotiations.
2. Post Tender Negotiations may only be authorised by the Chief Executive. In the case of contracts with an estimated value exceeding £25,000 the Chief Executive must also consult the Solicitor and Monitoring Officer who must thereafter be notified of the time and venue of all negotiations carried out and who will be entitled to be represented at any such negotiations.
3. In the case of all Post Tender Negotiations the senior officer carrying out the negotiations must record in writing the objective to be secured by such negotiations and forward a copy of this record to the ~~Head of Finance~~Chief Financial Officer and, for contracts with an estimated value exceeding £25,000, the Solicitor.
4. Unless other arrangements are specifically agreed by the Chief Executive, all negotiations must take place at the Authority's premises with both the tenderer and the relevant officers of the Authority present.
5. During negotiations with the tenderer there must always be present at least two officers of the Authority.
6. A note of the negotiations will be made by one of the officers present recording those present, the time and location of the negotiations, details of the discussion and any agreement reached. The note shall be signed by all officers present and will be kept on file with a copy sent to the ~~Head of Finance~~Chief Financial Officer and, for all contracts with an estimated value exceeding £25,000, the Solicitor.
7. At no time must a tenderer be informed of the detail of any other tender submitted or as to whether or not the tender submitted was the lowest or the most economically advantageous tender (where this is the award criterion).
8. Acceptance of tenders following Post Tender Negotiations must be in accordance with Standing Orders except that the Chief Executive must also inform the Solicitor and Monitoring Officer of the name of the successful tenderer and of the tender price regardless of the estimated value of the contract.

9. The ~~Head of Finance~~Chief Financial Officer will maintain a record of all post tender negotiations relating to contracts with an estimated value in excess of £25,000. This record must show the date of the tender, the date of any Post Tender Negotiations, the names of tenderers involved in negotiations, the original price, the revised price, the revised specification, the names of the officers involved and details of the contract awarded.
10. Legal advice should be sought where the officer dealing with this matter is under any uncertainty regarding the procedure to be followed.