

**Standing Orders Relating to Contracts**  
Report by Head of Finance

**Summary:** This report sets out changes to the Authority's Standing Orders Relating to Contracts, which are appended for approval, and in addition outlines for comment the proposed process to be applied in the procurement of a second new wherry.

**Recommendations:**

- (i) That the Standing Orders Relating to Contracts set out in Appendix 1 be approved.
- (ii) That the preferred procurement route for a second new wherry be considered to determine whether a waiver of Standing Orders or a new tender exercise is appropriate.

**1 Introduction**

- 1.1 Following the previous report on Contractual Procedures to this Committee (Item 7, 12 February 2013), which included proposed amendments to the Standing Orders Relating to Contracts, it was agreed that the Standing Orders should be updated and presented for approval. The revised Standing Orders are included as Appendix 1 to this report.
- 1.2 The Authority has previously established the need to procure a second new wherry as part of its long term Asset Management Plan. Section 3 of this report sets out the options for this procurement for the Committee's consideration.

**2 Amendments to Standing Orders Relating to Contracts**

- 2.1 The Standing Orders have been amended in respect of the changes agreed at the February meeting of Financial Scrutiny and Audit Committee as follows:
  - Paragraph added at 6.(i) to allow a specific exemption to Standing Orders where expenditure is to be undertaken which is funded 50% or more by a partner organisation, where that organisation has previously completed a procurement process that is sufficiently robust that the Authority can be confident the expenditure represents good value for money.
  - Paragraph added at 8.(d) to clarify the procedure to be applied where an initial contract estimate was significantly different to the actual quotations

received, to the extent that an alternative procurement process should have been followed.

- 2.2 Further amendments to the Standing Orders are proposed at paragraphs 17.(c) and 19.(f) of Appendix 1 to provide clarity about the procedure for the receipt and handling of electronic tender submissions.
- 2.3 The threshold of £25,000 at which tenders are required to be sought has been reviewed following the Committee's request in February. Consultation about the level of the limit has been undertaken with the Authority's Management Team and the Management Forum, with the outcome that the current limit is felt to be appropriate with no requirement for the threshold to be increased at this time.

## **2 Procurement of a Second New Wherry**

- 2.1 In 2012 the Broads Authority completed a tendering process for the purchase of a new wherry following an open advertisement, for which the deadline was 30 March 2012. As part of the tender, the tenderers were asked to supply an optional price for the supply of a second wherry. The successful tenderer was John Kearney Ltd, of Northern Ireland, who was both the cheapest price and also came out as the favoured supplier taking into account the other tender evaluation criteria. The wherry has now been delivered and launched, and the Authority is pleased with the build quality and performance.
- 2.2 As part of the Authority's Asset Management Plan, the need for a further wherry has been identified. Due to the time lapse between the original tender, and also taking into account some design variations which were agreed as part of the contract, the boatyard have prepared a revised cost for a second wherry of £107,000. This is still lower than the next nearest tendered amount, and officers are minded to award the contract on this basis via a waiver of standing orders. However, given the value of the contract, the views of the Committee are sought as to whether this is acceptable, or if the tender should be re-advertised.
- 2.3 The wherry is to be funded from the Plant, Vessels and Equipment Reserve which has been established as at 1 April 2013 with a balance of £288,696. Including the wherry, the reserve is expected to fund the purchase of the following items in 2013/14:

	<b>£</b>
Fen Harvester (70%)	67,631
Balance of new launch and hull	38,400
Proposed wherry purchase	107,000
<b>Total</b>	<b>213,031</b>

- 2.4 This would result in a closing balance of £129,665 after budgeted contributions to the reserve in the year of £54,000, although it should be noted that a significant element of this contribution is contingent on the sale of two of the Authority's existing launches. Options to increase the level of contribution

to the reserve in 2013/14 are also currently being explored, and it is anticipated that an additional £34,000 can be contributed from the Vessels budget this year due to a reduced need to hire equipment.

### **3 Conclusion**

- 3.1 The proposed amendments to the Standing Orders incorporate the changes agreed at the February meeting and in addition provide some additional clarity around the treatment of electronic tenders. These changes will ensure that the Standing Orders remain robust and fit for purpose.
- 3.2 The procurement of a second new wherry will further strengthen the Authority's asset base by delivering the necessary equipment to undertake effective and efficient works in the future, however the Committee's views are sought on the appropriate procurement route to follow in view of the high value of the contract.

Background papers: None

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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 be reviewed by the Head of Finance, Financial Accountant or appropriate Director prior to being issued. For advice on the legal aspects of tenders, the Authority’s Solicitor 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 for works, supplies and services made by the Authority must be for the purchase of achieving the Authority’s statutory and approved objectives and must be in accordance with the Authority’s duty of Best Value, 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 (EC) Directives

Every contract must comply with the EC Treaty and with any relevant directives of the EC 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 supplier and no acceptable alternative;
- (b) for goods or materials to be purchased at an auction, or through any consortium, association or similar body of which the Authority is a member, or under any framework arrangement negotiated for the benefit of public bodies;
- (c) for works of art, museum specimens or historical documents;
- (d) 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) 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;

- (f) (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) 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) 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) 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 must estimate the value of the contract.

### **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 contract 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) For all supplies, services and works not covered by paragraphs 8.(a) or 8.(b), the estimated value for the purpose of these Standing Orders must be the total estimated value of the supplies, services or works to be supplied over 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 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. 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.

<b>Award Criteria</b>	<b>Weighting</b>
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. Tenders must be drawn up carefully having regard to the needs of the particular project. Where appropriate it is helpful to provide further guidance on how each of the award criteria will be evaluated, 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 contracts 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) 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, 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.
- (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.

#### **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) one or more 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. 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) in at least one 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 permission to tender; 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.

## 15. Selective 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) in at least one local newspaper; and
  - (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.

#### **16. Post-Tender Negotiations**

- (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;
  - (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 of 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**

#### **17. 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 18.
- (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 be accepted only when sent exclusively to [finance@broads-authority.gov.uk](mailto:finance@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.

## 18. 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 sealed in the pre-printed envelope provided by the Authority for this purpose.
- (c) A tender will not be valid if the envelope bears any name or mark indicating the sender.

## 19. Opening of Tenders

- (a) Tenders received under one of Standing Order 13, 14 or 15 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 Director of Planning and Resources, Head of Finance 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 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 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 in the Register of Tenders held by the Head of Finance.

- (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 in the Register of Tenders, setting out the reason for extending the deadline.
- (f) Any tender documents which are received electronically shall be forwarded immediately to the Head of Finance, who will make arrangements for a copy of the tender to be printed by the officer designated to open the tender under Standing Order 19.(a) (either the Director of Planning and Resources, Head of Finance 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.

## 20. Acceptance of Tenders

- (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) The Chief Executive will on request inform the unsuccessful tenders of the name of the successful tenderer and (where practical) the amount of the tender accepted. Late tenderers will not be informed.

## 21. 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**

- 22. 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.
- 23. 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 2014 the relevant thresholds are as follows (net of VAT):

- £4,348,350 for works contracts; and
- £173,934 for services (estimated over 48 months) and supplies contracts.

### **Framework Arrangements**

- 24. 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.
- 25. 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**

- 26. A register of all contracts over £25,000 placed by the Authority must be kept and maintained by the Head of Finance. 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.

## 27. 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.

## 28. Supervision of Contracts by Third Parties

- (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.

## 29. 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 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 17 to 21 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 29.(a) above, be reported to the Authority or appropriate committee; or
  - (ii) in the case of tenders under paragraph 29.(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.

### 30. Contract Conditions

- (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 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.

(b) Where it is considered that the total amounts of insurance, as set out in paragraphs 30.(v) and 30.(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.

### 31. VAT

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

### 32. Review

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

### 33. 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.

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, Director of Planning and Resources and Head of Finance, 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.

July 2013

## **APPENDIX**

### **Post Tender Negotiations**

#### Procedural Rules

1. In Post Tender Negotiations carried out under Standing Order 16:
  - (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 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 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 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 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 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.