

**2021-22**



# **CONTRACT STANDING ORDERS**

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## Article 22 – Contract Standing Orders

### 1. **Introduction**

- 1.1 These Contract Standing Orders aim to explain in simple terms the procedures for obtaining written quotations and competitive tenders from suppliers for the provision of Authority Works, Goods and Services.
- 1.2 The Authority's Constitution incorporates Financial Regulations and Financial Procedure Rules that provide a framework for managing the Authority's financial affairs. They apply to every Member and Officer of the Authority and anyone acting on its behalf.
- 1.3 The Contract Standing Orders should be read in conjunction with both the Financial Regulations and the Scheme of Delegation which is also found in the Constitution.
- 1.4 The Contract Standing Orders are to be applied consistently with the Public Contracts Regulations 2015 (PCR 2015) or any successor legislation and applicable Procurement Policy Notes (PPNs) as published by Cabinet Office. In the event of a conflict the PCR 2015 will take precedence.

### 2. **How the Authority Procures**

- 2.1 The appropriate procedure to be followed is based upon the total estimated value of the contract (please note that the total value of the contract means the value of the contract over the total number of years it will remain in force – not just the initial purchase cost):

#### **For All Goods, Services and Works**

##### **Under £9,999:**

Works, Goods and Services (with the exception of public utility services i.e. gas, electric and periodical payments) maybe procured using an official order. Officers are responsible for ensuring that value for money is achieved.

**Between £10,000 and £49,999: (see PPN 03/15)**

At least two (2) identifiable quotations must be sought and obtained i.e. either written or electronic.

**For Goods and Services**

**Between £50,000 and £189,329:** Procurement involvement is required and a tendering procedure must be followed.

**Over £189,330 (€200,000):** Compliant with Procurement Regulations. (See PPN 06/19).

**For Works**

**Between £50,000 and £4,733,251:** Procurement involvement is required and a Tendering procedure must be followed.

**Over £4,733,252 (€5,000,000):** Compliant with Procurement Regulations. (See PPN 06/19).

2.2 The Tendering procedure will necessitate a notice seeking expressions of interest for organisations to be published on the e-tendering system ([www.supply4nwfire.org.uk](http://www.supply4nwfire.org.uk)) (or any such equivalent portal operated by the Authority) and on Contracts Finder before the submission of competitive bids for Goods, Services and Works.

2.3 No openly advertised Tendering procedure needs to be followed in respect of:

- I. Contracts for purchase of Goods, Services or Works in respect of which tenders have been obtained from a purchasing consortium (e.g., Yorkshire Purchasing Organisation) or other recognised Government agency (e.g., Crown Commercial Services) where the Authority has been identified in any previous procurement exercise undertaken by the consortium or agency.
- II. Contracts for the supply of Goods which Home Office have specified as the type of Goods which should be used for a particular purpose and only one supplier of such Goods exists.
- III. Contracts for the supply of Goods or Services the price of which is fixed by a trade organisation or government department and no reasonably suitable alternative is available.
- IV. There is no genuine competition for the Goods, Works or Services being procured. Examples of this would include a requirement to utilise the Services of suppliers such as Disclosure and Baring Service, OFCOM and EdExcel.
- V. National Resilience sector led training arrangements with other Fire & Rescue Authorities which operate on a cost recovery basis, and are not commercial arrangements.
- VI. A contract for the engagement of counsel.
- VII. Subscriptions or fees to Government Departments, Professional bodies, Officer or Service Authorities.

- VIII. Stated exclusions within PCR 2015 or
- IX. Where the use of the negotiated procedure without prior publication of a notice has been justified.

2.4 Official orders must be in a form approved by the Director of Finance and Procurement. Official orders must be issued for all work, goods or services to be supplied to the Authority, except for supplies of utilities, periodic payments such as rent or rates, petty cash purchases or other exceptions specified by the Director of Finance and Procurement. **Telephone orders are not to be placed in advance of the official order.** All suppliers must be provided with a unique Financial System (FMIS) generated official purchase order number other than the exceptions specified above.

### **Compliance with Contract Standing Orders**

Every contract made by the Authority or on its behalf shall comply with all relevant domestic legislation, these Contract Standing Orders, Financial Regulations and the Scheme of Delegation. In particular the Authority shall comply with the fundamental principle of equality of treatment of contractors.

It shall be a condition of any contract between the Authority and anyone who is not an officer of the Authority, but who is authorised to carry out any of the Authority's contracts functions, that they comply with these Contract Standing Orders and the Financial Regulations of the Authority as if they were an officer of the Authority.

Every contract must be authorised and signed by the Monitoring Officer or their nominated Deputy as outlined in the Scheme of Delegation.

### **3. Exemptions to the Contract Procedures**

The Budget Holder must obtain approval to apply ANY exemption to the contract procedures outlined above by submitting an Exemption form (see Procurement webpage for link) to the Head of Procurement to consider the request and subject to their approval will forward the request to the Monitoring Officer, for further approval and finally to a Principal Officer for final confirmation of approval.

3.1 Exemptions to the contract procedures are permitted where it can be proven that it is inefficient or uneconomic to comply with the above requirements. Examples are detailed below:

- I. The Goods, Works or Services are unique and provided by only one organisation with no reasonably satisfactory alternatives available.
- II. The procurement involves the purchase of proprietary or patented Goods or Services obtainable from one firm; are sold at a fixed price and no reasonably satisfactory alternative is available.
- III. The Goods, Works or Services constitute an extension of an existing contract which is allowed within the contract terms, or the Goods/materials, Works or Services consist of repairs to, or the supply of parts for, existing proprietary plant or equipment and/or where the initial contract value or specification is not fundamentally changed or increased.
- IV. That new Works or Services are required which are a repetition of Works or Services carried out under an original contract. See also PCR 2015.
- V. That Goods are required as a partial replacement for, or addition to, existing Goods or installations and obtaining them from another source would result

in issues with compatibility or disproportionate technical difficulties in operation or maintenance.

- VI. Tenders are invited on behalf of any consortium or collaboration, of which MFRA is an identified member, in accordance with any method adopted by that body. Where however, an MFRA officer invites tenders on behalf of the consortium the receipt, opening and acceptance of tenders must comply with the MFRA Financial Regulations and Financial Procedure Rules or any overriding National legislation.
- VII. The Goods, Works or Services are of a sensitive nature (such as security) where publication of the tender documents would constitute a security breach and undermine the effectiveness of the final product.

No exemptions will be granted which would result in a breach of UK law, and in particular PCR 2015 or any successor legislation.

- 3.2 For procurement projects under £189,330 for Goods and Services and £4,733,251 for Works, the Head of Procurement or their nominated deputy, Monitoring Officer or their nominated deputy, and Principal Officer must approve any Exemption, prior to any commitment being given by the Authority to any Organisation. The Head of Procurement will keep a register of exemptions granted detailing the nature and value of the contract, the circumstances justifying the exemption and the name of the contractor awarded the contract.

#### 4. Advertising of Contracts

- 4.1 The upper thresholds from 01.01.20 are as follows: (See also PPN 06/19).

<b>Supplies</b>	<b>Services</b>	<b>Works</b>
£189,330	£189,330	£4,733,251

Supplies, Services and Works whose total Contract value exceeds these upper thresholds must be advertised in the FTS (Find a Tender Service) in addition to the procurement portal and Contracts Finder. Further information can be obtained from the Head of Procurement as required.

#### 5. Pre-Quotation/Tender Requirements

- 5.1 Contractors maybe contacted informally without obligation to the Authority before tender or quotations are invited in order to:
  - a. Establish whether the Goods, Works or Services that the Authority wish to purchase are available and within what price range.
  - b. Assess market conditions should the procurement progress.

In making enquiries:

- a. No information shall be disclosed to one contractor which is not then disclosed to all those of which enquiries are made, or which are subsequently invited to tender or quote.
- b. No contractor shall be led to believe that the information they offer will necessarily lead them to be invited to tender or quote, or awarded a contract.

- c. A written record, including notes or any meetings held, the responses and the names of all individuals present shall be kept on the contract file.

- 5.2 Before obtaining tenders for a procurement estimated at a value of £50,000 or more, a detailed specification must be prepared by the project manager/budget holder. The specification is a description of the Services, Supplies or Works that the Authority wishes to procure and the Organisation is expected to tender against and provide.

It will incorporate key performance or criteria for acceptance of the Services, Supplies or Works and be included in the invitation to tender documentation. It must be agreed with the Supplier awarded the contract and form the major part of the formal contract agreed between the Authority and the Supplier.

## 6. **Procurement Portal**

- 6.1 If an organisation wishes to be considered as a potential supplier to the Authority it can register on the North West Authorities e-tendering portal ([www.supply4nwfire.org.uk](http://www.supply4nwfire.org.uk) or any such equivalent portal operated by the Authority) at no cost to the organisation.

All procurements where the value exceeds £50,000 are to be advertised on Contracts Finder.

- 6.2 If the organisation is asked to submit a quotation or tender, they may be required to provide sufficient information for MFRA officers to conduct an assessment on their capacity, capability and financial standing to undertake the work on behalf of the Authority.

## 7. Selection Questionnaire

- 7.1 Selection Questionnaires will be issued where the value of the Contract exceeds the upper thresholds. It is mandatory for a potential supplier to complete Part 1 and Part 2 of the standard Selection Questionnaire, for all procurements above the upper thresholds. See also PPN 8/16.
- 7.2 The questions included in Part 3 of the standard Selection Questionnaire should be adopted across all relevant procurement procedures over the threshold. You do not have to use all the questions – only those relevant and proportionate to the contract.
- 7.3 The questions should be used in line with the relevant procurement procedure, and used:
- as part of the tender pack to test that a potential supplier meets minimum levels of suitability when using the open procedure;
  - to pre-qualify suppliers to be invited to tender when using the restricted procedure;
  - to submit an initial tender under the competitive procedure with negotiation;
  - or to participate in a competitive dialogue, innovation partnership procedure or Dynamic Purchasing System (DPS).
- 7.4 The Authority may utilise the Constructionline Approved Contractors database as a pre-qualification criteria for Works projects where appropriate.

## 8. The Tendering Process

- 8.1 All tendering requirements (£50,000 or more) must be advertised to ensure that the process is transparent, competitive and secures good value for money. A Contract Notice must be placed on the supply4NWFire portal ([www.supply4nwfire.org.uk](http://www.supply4nwfire.org.uk)) or any such equivalent portal operated by the Authority) and on Contracts Finder for all procurements above this value. In addition, any procurements which have an estimated value exceeding the upper Procurement thresholds must be advertised in the FTS.

The two primary methods of tendering are:

- I. **Open Procedure** - This is a one-stage process, where all interested providers responding to a Contract Notice may submit a tender. The Notice will state how interested parties may obtain tender documents and the last date that tenders must be received. Whilst this method ensures absolute fairness, because no contractor is excluded from the process, there may be a significant risk that the number of responses received will be either insufficient or excessive. It may also be difficult to accommodate an adequate financial and technical appraisal within the time constraints of the tendering process so contingencies should be considered.
- II. **Restricted Procedure** – This is a two-stage process in which potential contractors expressing an interest in bidding for a specific contract are evaluated first.

8.2 Three (3) responses must be received to ensure that a Best Value evaluation can take place. In the event that three (3) responses are not received, an application for an Exemption of Contract Procedures must be completed and approved before Contract Award.

## 9. **Other Procedures**

The following procedures are also available for above the upper threshold procurements, where applicability criteria is met.

The Authority may utilise a Competitive Dialogue procedure or Competitive Procedure with Negotiation when:

- The needs of the Authority cannot be met without adaptation of readily available solutions.
- The procurement requirement includes design or innovative solutions.
- The contract cannot be awarded without prior negotiation because of specific circumstances related to the nature, complexity of the legal and financial make up or associated risks
- The technical specification cannot be established by the Authority with reference to a standard common technical specification, technical reference or European Technical Assessment.
- The outcome of an Open or Restricted procedure has elicited only irregular or unacceptable tenders

9.1 **Competitive Dialogue Procedure** – Utilising this procedure a selection is made of those who respond to the Contract Notice. The Authority will then enter into a dialogue with potential bidders to develop one or more suitable solutions for its requirements and on which chosen bidders will be invited to tender.

9.2 **Competitive Procedure with Negotiation** – Utilising this procedure a selection is made of those who respond to the Contract Notice, and only they are invited to submit an initial tender for the contract. The Authority may then open negotiations with the tenderers to seek improved offers.

9.3 **Innovation Partnerships Procedure** – Utilising this procedure a selection is made of those who respond to the Contract Notice. The Authority will then use a negotiated approach to invite suppliers to submit ideas to develop innovate Works, Supplies or Services aimed at meeting a need for which there is no suitable existing 'product' on the market. Under this procedure the Authority is allowed to award partnerships to more than one supplier.

9.4 **Negotiated Procedure Without Prior Publication** – This procedure can only be used in very specific circumstances (e.g., where for technical or artistic reasons or because of the protection of exclusive rights, the contract can only be carried out by a particular supplier). In this instance the Authority would approach one or more suppliers to negotiate the terms of the contract.

9.5 Approval must be sought and received from the Head of Procurement and Monitoring Officer, before commencing any procedure outlined in Section 9 of these Contract Standing Orders.

## 10. **Invitation and Submission**

- 10.1 Instructions must be issued to those Organisations invited to submit a tender, asking them to complete and return the required documents by a specified date and time. Tenders will be carried out electronically via the supply4nwfire Procurement Portal.

Invitation to tender documents will usually contain the following information:

- Letter of invitation and instructions about the process.
  - Form of tender
  - Specification and/or schedule of rates.
  - Contract terms and conditions.
  - Any relevant supporting information (drawings, maps etc.).
  - Where bids are to be evaluated on the basis of Quality and Price, the tender documentation must also specify the criteria for evaluation and the evaluation matrix including the Price/Quality ratio.
- 10.2 Completed tenders **MUST** be submitted on the portal by the date and time specified. Late tenders will not be accepted.
- 10.3 It is important that Organisations are given sufficient time to adequately research and compile their bids. This includes enough time to seek accurate estimates from their sub-contractors. The Authority's minimum time for the return of priced tenders for below the upper threshold procurements is fourteen (14) days from date of issue, although best practice suggests that at least twenty-one (21) days should be allowed. All procurement which exceed the upper thresholds must use the timescales outlined in the Regulations.
- 10.4 The specified time to submit tenders/quotations may be extended in exceptional circumstances provided that all Organisations involved in the process are notified of the revised date and time and no potential supplier is disadvantaged by the deadline extension.

## 11. **Opening of Tenders**

- 11.1 Electronic Tenders must be delivered to the designated e-tendering system by bidders prior to the stated closing date and time set out in the Invitation to Tender. All electronic tender submissions are retained in a virtual 'locked box' until the designated opening time. The system will hold each submission unopened and with no reference to the contents of the response until 'box' is opened. An activity log within the system provides a full audit trail logging any activity, recording the name of the person accessing the box, date, time and any activity undertaken.
- 11.2 Unless tenders have been received electronically, a Procurement officer will facilitate the tender opening procedure and a written record indicating the name of the supplier and the value of the tender must be completed and signed by the officers opening the submitted bids.

## 12. **Evaluation of Tenders and Quotations**

- 12.1 Officers will check all tenders for completeness and potential discrepancies. Where errors or discrepancies are found that may affect the tender sum, the tenderer may be notified and afforded an opportunity to confirm the submitted sum without amendment, amend their bid to correct an arithmetical error, or withdraw their bid. A written record of any revisions or withdrawals must be maintained.
- 12.2 The Authority evaluate and award contracts to the Organisation it considers offers the best value for money having regard to both price and quality factors. This is sometimes referred to as the 'most economically advantageous tender' (MEAT) and provides for the contract to be awarded to the company best able to meet the Authority's specification.
- 12.3 To ensure fairness the evaluation criteria and evaluation method must be clearly defined in the tender documentation. Award criteria will vary depending on the type of contract, as opposed to selection criteria which will be similar in nature. See also PPN 8/16.

Where the lowest are for £100,000 or more the Responsible Officer shall obtain the following information in respect of the lowest 2 tenders:

- The Authority's internal financial appraisal of the lowest two (2) tenders.
- An independent financial appraisal supplied by a business information service.

## 13. **Post Tender Clarification**

- 13.1 After the receipt of tenders, officers may need to contact tenderers to clarify technical and contractual information as part of the evaluation process. Any such communication must be confidential and a written record made of the reason for contact and the decision made.

## 14. **Contract Award – Tenders and Quotations**

- 14.1 The award of a contract the value of which exceeds £250,000 must be approved by the Authority (or committee with the relevant powers).
- 14.2 The successful Organisation should be notified promptly following acceptance of the tender, and the contract must be issued for signature by the Organisation. On receipt, the Authority will sign the Contract to form the legally binding agreement. Authorised signatories are the Monitoring Officer, and their nominated deputy.
- 14.3 All unsuccessful tenderers should also be notified promptly in writing. All submissions and supporting documentation are to be retained for as long as is stated in the Records Retention Schedule.

## 15. **Corrupt Practices**

- 15.1 In every written contract a clause must be inserted to ensure that the Authority is entitled to terminate the contract and recover from the contractor the amount of any loss resulting from corrupt practises. If the contractor has offered, given or agreed to give to any person any gift or consideration of any kind as an inducement, or reward for doing or not doing anything related to the contract or another contract with the Authority, or for favouring or not favouring any person in relation to such

contract, or similar acts have been done by any person employed by the contractor or acting on their behalf, or the contractor or any person employed by them or acting on their behalf has committed any offence under the Bribery Act (2010) or any amendment of them or shall have given any fee or reward, the receipt of which is an offence under the Local Government Act 1972.

## 16. **Third Parties**

16.1 In cases where a third party, such as a local authority or private architect or consultant, is employed to act for the Authority in the carrying out of works or purchase of supplies, it shall be a term of their appointment that they shall:

- Observe or otherwise secure the observance of the procedures prescribed within these Standing Orders.
- Produce on demand, all records maintained by them in relation to the contract; and
- On completion of a contract, transmit all such records to the Chief Fire Officer or the Director of Finance and Procurement.

## 17. **Assignment**

17.1 In every written contract for the execution of work or the supply of Goods or Services the Contractor shall be prohibited from transferring or assigning or novating directly or indirectly to any person or persons whatever, any portion of his contract without the written permission of the Authority, Sub-letting, other than that which may be customary in the trade concerned, shall be prohibited.

## 18. **Sealed Contracts**

18.1 All contracts and orders shall be in writing and made in the name of the Authority.

18.2 All Contracts which relate to the purchase of land, or have potential long term liabilities and would benefit from the added legal protection afforded by the process of sealing shall be made by affixing the Common Seal. This shall only be attested by the Monitoring Officer or nominated Deputy.

## 19. **Term of Contract**

19.1 The term of a contract may be extended with the approval of the budget holder if there is provision within the contract terms and conditions to extend and the agreement of the Director of Finance and Procurement has been received with regards to budgetary provision. If the contract has already been extended to the full extent within the provisions of the existing contract, it cannot be extended further.

19.2 If there is no provision within the contract terms and conditions for the contract to be extended by the submission of an Exemption to Contracts Procedures (Section 3) for the approval of the Head of Procurement, Monitoring Officer and a Principal Officer.

- 19.3 The Contract Term cannot be extended where this would result in the value of the contract exceeding the European Procurement threshold, would make a fundamental change to the Contract award previously made or extending the Contract Period not previously identified in the Contract Notice. See also PCR 2015.