

Report of Head of Legal Services

Contract Standing Orders

Purpose of report

1. To review the Authority's contract standing orders, ensure that procurement thresholds are appropriate and make other minor amendments.
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Recommendation

It is recommended that the Fire Authority be recommended to approve the amended Contract Standing Orders set out in Appendix A.

Introduction and Background

2. Contract standing orders are an important element within the Authority's overall constitution and governance arrangements. The Authority spends in the region of £8.1m pa on procurement overall. Contract standing orders are intended to ensure that:
 - the Authority achieves best value for money;
 - procurement practices are consistent with the highest standards of integrity;
 - processes are fair and transparent;
 - we comply with our legal obligations in respect of procurement; and
 - procurement supports the Authority's corporate aims and policies
3. The terms of reference for this committee include considering and making recommendations to the Authority on contract standing orders.

Review

4. Contract standing orders were last reviewed in 2018. Generally, they have worked well and no major changes are considered necessary except to update some of the tendering thresholds in relation to low value contracts, to ensure the requirements are proportionate to the risks involved.
5. Procurement thresholds have been reviewed and simplified in conjunction with the Director of Finance. The key change is to increase the limit above which competitive quotations are required from £5,000 to £15,000, as follows:

Requirements	Contract value	
	Existing	Proposed
Full Public Contracts Regs. compliant tender or Framework agreement	Above public Contract Regulations 2015 threshold (£177,897)	No change
Open tenders or Minimum 3 select tenders provided CFO satisfied that restricting tenderers will not disadvantage the Authority	£100,000 – [£177,897]	£50,000 – [£177,897]
Minimum 3 select tenders	£50,000 - £99,999	Included above
Minimum 3 written competitive quotations	£5,000 - £49,999	£15,000 - £49,999
One written quotation	Below £5,000	Below £15,000

6. Other changes within the body of Contract Standing Orders have been to:
- delete references to the former EU procurement rules and refer instead to the Public Contracts Regulations 2015
 - require that Officer Delegated decision forms need to be completed for all contracts where:
 - there is reliance on one of the exemptions to standing orders; and
 - for all contracts over £25,000 (previously £100,000) – this will improve transparency of the procurement process
 - reflect the changes in relation to property services, with the PCC having replaced Place Partnership

Summary

7. Having reviewed Contract Standing Orders it is considered appropriate to increase the threshold at which the Authority requires three competitive quotations to be obtained from £5,000 to £15,000. This will ensure that the requirements in relation to low value contracts are proportionate the risks involved.
8. The revised contract standing orders, as proposed, are set out in the appendix for recommendation to the full Authority.

Corporate Considerations

<p>Resource Implications (identify any financial, legal, property or human resources issues)</p>	<p>Updating contract standing orders will avoid disproportionate officer time dealing with low value contracts</p>
<p>Strategic Policy Links (identify how proposals link in with current priorities and policy framework and if they do not, identify any potential implications).</p>	<p>Effective procurement underpins the delivery of the Authority's core strategies</p>
<p>Risk Management / Health & Safety (identify any risks, the proposed control measures and risk evaluation scores).</p>	<p>Contract standing orders are a key mitigator of risk in relation to the procurement process</p>
<p>Consultation (identify any public or other consultation that has been carried out on this matter)</p>	<p>None</p>
<p>Equalities (has an Equalities Impact Assessment been completed? If not, why not?)</p>	<p>None</p>
<p>Data Protection Impact Assessment (where personal data is processed a DPIA must be completed to ensure compliant handling)</p>	<p>N/A</p>

Supporting Information

Appendix 1 – Contract standing orders (as revised)

Background papers – Public Contracts Regulations 2015

Contract Standing Orders

1. Scope & Purpose / Introduction

- 1.1. These Contract Standing Orders (CSOs) are part of the Fire Authority's Constitution and must be applied in the procurement and disposal of goods, materials and services and in the execution of works.
- 1.2. The objective of these CSOs is to ensure that contracts are obtained on the most favourable terms, having due regard to quality, service and fitness for purpose. All procurement and disposal procedures must:
 - Achieve best value for money
 - Be consistent with the highest standards of integrity
 - Ensure fairness and transparency
 - Comply with all legal requirements
 - Support the Fire Authority's corporate aims and policies.

2. Value of Contracts

- 2.1. The value of the contract will determine the route to procurement. The Responsible Manager for the proposed contract must agree a procurement plan and process with the Procurement & Contracts Manager (and Head of Legal Services where the contract value exceeds £25,000).
- 2.2. The value of the contract is the total estimated value of the goods/services to be procured during the life of the contract. This must take into consideration the acquisition price (net of VAT) plus any other costs we will incur as part of the same contract e.g. on-going maintenance if this is included in the contract.
- 2.3. Where the duration of the contract is indeterminate the value should be taken to be the estimated value of the contract over a period of four years.
- 2.4. In some cases a contract may be legitimately divided into separate lots, e.g. goods and services offered as two separate contracts or contracts split geographically where this will aid service delivery or facilitate tendering by local contractors. However, contracts must not be artificially split to avoid the relevant threshold and in assessing the value of a contract all lots should be aggregated.
- 2.5. Where the total value for a purchase or disposal is within the values in the first column below, the award procedure in the second column must be followed as a minimum. Regard should always be had as to whether the chosen procurement route is likely to secure best value for the Authority proportionate to the sums involved.

Total Contract Value Exceeding	Award Procedure	Minimum Advertising Requirements
<p>Above Public Contract Regulations 2015 threshold*</p> <p>*Currently £177,897 (exc.VAT)</p>	<p>Either:</p> <p>(a) Full Public Contract Regulation compliant tender process</p> <p>or</p> <p>(b) Public Contract compliant Framework</p>	<p>Publish on UK e-notification service AND Publish on Authority website as required by the Transparency Code but not prior to publication UK r-notification service;</p>
<p>£50,000 to Public Contract Regulations threshold</p>	<p>Either:</p> <p>(a) formal <u>open</u> tenders, or</p> <p>(b) invite tenders from a minimum 3 <u>select</u> tenderers where the CFO is satisfied, having regard to the nature of the contract, that restricting the number of tenderers will not disadvantage the Authority</p>	<p>Open tenders over £25,000 must be published on Contracts Finder and on Authority website as required by the Transparency Code</p>
<p>£15,000 to £49,999</p>	<p>Either:</p> <p>(a) Minimum 3 written quotations; or</p> <p>(b) tender (as above)</p>	
<p>Below £15,000</p>	<p>One or more written quotations to be obtained.</p>	

2.6. **The terms and conditions of all contracts over £25,000 must first be approved by Legal Services). It will therefore be necessary for the documentation to be**

approved by Legal Services before the invitation to tender or request for quotes is sent out.

3. Exceptions to the Award Procedures

- 3.1. A contract that is below the Public Contracts Regulations 2015 threshold may be entered into on behalf of the Authority other than in accordance with Standing Order 2 (above) in the following circumstances and only with the prior approval of the Chief Fire Officer/Chief Executive or nominated responsible officer:
- (a) Where the works, supplies or services can be supplied only by a particular supplier for any of the following reasons:—
 - (i) goods, materials or services are of a unique or specialised nature;
 - (ii) competition is absent for technical reasons;
 - (iii) the protection of exclusive rights, including intellectual property rights;but only, where no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement;
 - (b) Where the supply of goods, materials or services are similar to or compatible with an existing provision so as to render only one source of supply appropriate. Special care must be taken and the Head of Legal Services must be consulted where the aggregate of the original contract value and any subsequent contracts exceeds the Public Contract Regulations threshold.
 - (c) Where the Chief Fire Officer/Chief Executive is satisfied that for reasons of extreme urgency brought about by events unforeseeable by the authority, the time limits for the relevant procurement procedures cannot be complied with. The circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority
 - (d) For the supply of used or second-hand goods or materials where the Chief Fire Officer/Chief Executive is satisfied that the market for such goods or materials demonstrate good value and is such that it would be unreasonable to tender or where the time required to tender would lead to loss of opportunity to purchase a used or second-hand item.
 - (e) For the supply of goods, materials or services in any other circumstances where the Chief Fire Officer/Chief Executive is satisfied that there are proper service reasons for not tendering and that there would be no financial disadvantage to the Fire Authority as a result.
 - (g) Where the Fire Authority considers that there are special circumstances justifying the waiving of Standing Orders and authorises such waiver by resolution.
 - (h) Where procurement is undertaken through a Framework Agreement negotiated by another organisation and approved by the Head of Legal Services
 - (i) For purchase or sale of goods by public auction.
 - (j) Where, despite observing the procurement process as laid out in this document, due to market or other conditions, no tenders or no suitable tenders have been

submitted and provided that the initial conditions of the contract are not substantially altered. [Where the contract is above the threshold in the Public Contract Regulations additional restrictions apply]

- (k) Where procurement is carried out in collaboration with another organisation and the procurement rules of that other organisation have been followed, subject to approval of the Head of Legal Services
- (l) Where the Police & Crime Commissioner procures property related services or works on behalf of the Authority and has complied with procurement procedures approved by the Head of Legal Services

3.2. The responsible officer shall complete an 'Officer Delegated Decision' record with reasons and explanations in respect of all contracts made in accordance with Standing Order No. 3. This shall be recorded in the Contracts Register and published on the Authority's website.

4. Framework Agreements

- 4.1. A Framework Agreement is an arrangement whereby the Fire Authority can enter into a contract known as a "call-off contract" direct with a supplier but under the auspices of an agreement that has been entered into by another organisation and which has already complied with the EU procurement requirements.
- 4.2. The specification of the contract must be determined prior to identification of a framework or supplier(s) who are part of a framework agreement.
- 4.3. A call-off contract from a framework agreement can be obtained either by direct award or mini-competition depending on the terms of the Framework Agreement. In order to use a direct award under a framework the ordering officer must be able to justify how this gives the best outcome for the Fire Authority. Where a mini-competition is conducted in accordance with the tender procedure it will be subject to the terms of the Framework.

5. Responsibilities

- 5.1. Before seeking any quotes, tenders or awarding a contract, the Responsible Manager must:
 - ensure they have all appropriate authorisations and approvals on file (see Scheme of Delegations);
 - ensure there is sufficient budgetary provision;
 - seek all necessary legal, procurement, financial, risk management and technical advice;
 - provide a full specification before entering any procurement process;
 - agree a procurement plan and process with the Procurement & Contracts Manager (and Head of Legal Services where the contract value exceeds £25,000);
 - ensure that appropriate maintenance regimes for equipment purchased are put in place. When evaluating tenders or bids received, consideration must be given the

whole life costs of the contract e.g. maintenance arrangements and any residual valuations;

- complete any investigations and/or risk assessments necessary to discharge the Service's duties under the Health and Safety at Work Act 1974 and subsequent regulations or approved codes of practice;
- Complete all appropriate data impact assessments and/or equalities impact assessments in respect of the services to be provided or works to be procured.
- confirm the appropriateness of the suppliers asked to quote or to tender. Responsible Managers should take reasonable care in supplier selection and should ask for reasonable supporting information commensurate with the value/risk of the procurement. Appendix A contains a list of example information that the ordering officer may consider in assessing suppliers. Where potential suppliers are picked from a select list or register, the ordering officer should confirm with the compiler that suppliers have submitted satisfactory supporting information commensurate with the value/risk of the procurement;
- ensure written records are kept in relation to any pre-tender or quotation enquiries, including notes of telephone conversations and/or meetings with potential suppliers to be filed in the central repository /contract file (SharePoint);
- avoid any suggestion of impropriety and ensure any offers of gifts or hospitality from potential suppliers are declined and any personal interests have been declared in accordance with as in SO 13 (Compliance/Probity). The Contract Manager should also ensure that they comply with SO13
- provide details of all contracts valued over £5,000 to the Procurement and Contracts Manager for inclusion in the Contracts Register
- where the contract value exceeds £25,000 ensure that an Officer Delegated Decision record is completed and sent to Committee Services for publication on the Authority's website
- monitor and review the performance of the contract following award.

6. Contracts Register

6.1. The Contracts Register shall be maintained by the Procurement & Contracts Manager or other nominated officer and shall contain a record of:

- All contracts entered into by the Authority valued over £5,000
- any action, statements of reasons and exceptions made under Sections 3 (Exceptions), 7 (Pre-tender / quotation enquiries), 9 (Submission, Receipt and Opening Tenders), 10 (Post Tender Negotiation), and 11 (Evaluation/Award of Contract) of these standing orders;
- any contracting decision and the reason for it;
- any information supplemental to the contract; and
- any conversations and meetings at any stage of the procurement process.

6.2. All contracts and relevant correspondence and records shall be retained in the Contracts Register for at least 6 years after the contract comes to an end. If made as a deed / under seal they must be kept for at least 12 years after the contract comes to an end.

7. Pre tender/quotation enquiries

7.1. Enquiries of potential contractors in advance of a procurement exercise may be undertaken to prepare the marketplace for a tender and/or to assist the Authority to better understand what the market is able to provide to meet the outcome the Authority is trying to achieve. Such consultation with potential suppliers may be made in general terms and:

- no information shall be disclosed to one contractor which is not then disclosed to all those of whom enquiries are made
- no contractor shall be led to believe that the information they offer will necessarily lead to them being invited to tender, submit a quotation or to be awarded the contract
- technical advice on the preparation of an invitation to tender or quotation must not be sought or accepted from anyone who may have a commercial interest in bidding for the contract as this may prejudice the equal treatment of all potential tenderers and distort competition
- a written record, including notes of telephone conversations and/or meetings held with potential suppliers and the responses and names of all individuals spoken to or present shall be kept in a central file maintained by the Procurement & Contracts Manager

8. Invitations to Tender

8.1. Contracts above the Public Contract Regulations threshold require specific information to be included with invitations to tender and such requirements must be followed.

When inviting tenders for below threshold contracts, the Contract Manager/Ordering Officer shall, as a minimum, supply the Tenderers with:

- An accurate specification or other description of the goods, materials works or services including copies of any relevant drawings or maps.
- All tenderers invited to tender or quote must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis
- The invitation to tender or to submit a quotation must state that the Authority is not bound to accept any quote or tender.
- Instructions as to the manner in which any tender or quotation is to be submitted, including dates and times by which the tender must be returned.
- All invitations to tender shall state that any tender received after the date and time stipulated in the invitation to tender may be rejected and not considered.
- An outline of how any arithmetical errors discovered in the submitted tenders are to be dealt with. In particular, whether the overall price prevails over the rates of the tender or vice versa.
- Details of the Authority's the terms and conditions of the contract that have been approved by the Head of Legal Services.
- The invitation to tender must include a form of tender and instructions to tenderers including the requirement to complete a certificate relating to non-collusion
- Details of any additional or supporting documents that are required such as those listed in Appendix A of this document (include Whistleblowing, Ethical Framework, etc.).

9. Submission, Receipt and Opening of Tenders

9.1. Potential tenderers must be given an adequate period to prepare depending on complexity / urgency. The Public Contract Regulations lay down specific time periods which must be followed in the case of procurements above the relevant threshold. For below threshold contracts the period should normally be a minimum of 4 weeks.

- 9.2. All tenders should normally be returned through the electronic tendering portal approved by the Head of Legal Services and which is designed to ensure the integrity and secrecy of tenders received. Emails and/or faxes cannot be accepted and must be rejected.
- 9.3. Once the deadline has passed the Procurement & Contracts Manager shall ensure there is a record of all tenders received and the amounts thereof and then provide the tender documents to the ordering officer / contract manager for assessment.
- 9.4. The Head of Legal Services may at his or her absolute discretion permit consideration of a tender submitted after the deadline has passed, provided:
 - (a) it is in the best financial interests of the Fire Authority to do so;
 - (b) they are satisfied that the tenderer has not secured an advantage over other tenderers; and
 - (c) the decision to admit the tender is taken before the remaining tenders are opened. A record of these tenders and the discretion exercised under this Standing Order must be kept in the Contracts Register.
- 9.5. If for technical reasons tenders are required to be returned by hard copy these— should be returned to the Head of Legal Services

10. Post Tender Negotiations

- 10.1. The Chief Fire Officer/Chief Executive or nominated officer (ordering officer/contract manager) shall be empowered to accept the most economically advantageous/favourable tender received.
- 10.2. Where no tender meets the Authority's exact requirements, whether because the value of the tender exceeds the approved budget, the goods are not as required or for any other reason,
- 10.3. the Chief Fire Officer/Chief Executive or nominated officer may negotiate with the tenderer submitting the most economically advantageous/favourable tender to obtain improvements in terms of price, delivery or content unless the Chief Fire Officer/Chief Executive considers in all the circumstances that all those persons who originally submitted a tender for the contract should all be given an opportunity to re-tender.. However, such negotiation is the exception rather than the rule and the Head of Legal Services must be consulted prior to any negotiation. Where post tender negotiation results in fundamental change to specification or contract terms the contract must not be awarded but re-tendered,
- 10.4. A written record shall be kept of all negotiations including notes of meetings and names of those present and file in the central contract file.

11. Evaluation /Award of Contract

- 11.1. Quotations and tenders must be evaluated and awarded in accordance with objective award criteria. The result must award the contract to the tender that achieves the highest score in the objective assessment.
- 11.2. Ordering officers / contract managers must ensure that:
 - submitted tender prices are compared with any pre-tender estimates and any discrepancies are examined and resolved;
 - arithmetic in compliant tenders is checked; and
 - a record is retained of the evaluation undertaken (for 6 years after expiration of contract)
- 11.3. All contracts must be in writing, either in terms of a formal legal agreement over £25,000 and/or a purchase order clearly indicating the nature and quantity of the work or service required, the price and any terms or conditions as to payment. Details of all orders must be entered and authorised on the Finance system.
- 11.4. The Head of Legal Services must sign all contracts over £25,000. Contracts below £25,000 may be signed by an Area Commander or Head of Service.

12. Following Award of Contract

- 12.1. The details of any contract awarded over £25,000 must be published on Contracts Finder no later than 90 calendar days after the contract award date. All contracts over £5000 must be published on the Authority's website on a quarterly basis.
- 12.2. Any decision to award a contract over the value of £100,000 must also be published on the Authority's website under the Openness of Local Government Bodies Regulations 2014, which requires the decision maker to set out the reasons for their decision and any alternative options that were considered but rejected. A record of Officer delegated decisions should be completed for this purpose.
- 12.3. Contracts above Public Contract Regulation thresholds cannot be awarded until after the mandatory standstill period. In these cases a standstill notice must be sent to all tenderers and any candidates.
- 12.4. Should an award of a contract be challenged, the contract must not be awarded and the Head of Legal Services must be notified.

13. Compliance / Probity

- 13.1. The CSOs aim to protect staff against allegations of impropriety and therefore, all staff and any agents or consultants acting on their behalf must fully comply with these CSOs. All staff must also comply with any guidance and instructions regarding contractual arrangements as issued by the Head of Legal Services, the Director of Finance or the Procurement & Contracts Manager. A failure to comply may result in disciplinary action being taken.
- 13.2. Staff must be transparent, objective and non-discriminatory in all procurement activities and must not deliberately mislead suppliers. Commercial information

obtained from suppliers, particularly pricing must be kept confidential and cannot be released to third parties without the prior approval of the supplier. However, there are various exceptions including requests under FOIA and publication of award notices.

- 13.3. The values and behaviours described in the Employee Code of Conduct and the Fire and Rescue Service Anti-Fraud, Bribery and Corruption Policy shall apply to all staff entering into and developing contracts. In addition, all staff must comply with the Register of Staff Interests Policy and register any interest they have in a contract or proposed contract with the Fire Authority, whether or not it is something they are dealing with personally. Staff must not invite any gift or reward in respect of the award or performance of a contract and must ensure that any offers of gifts and/or hospitality that are made by suppliers or potential suppliers are declined and registered in accordance with the Employee Code of Conduct and the Anti-Fraud, Bribery and Corruption Policy.

14. Consultants

- 14.1. The appointment of external consultants or architects must itself comply with Contract Procedure Rules. Subject to SO. 3.1(k) and (l) above, where external consultants or architects procure tenders on the Authority's behalf they must comply with Contract Procedure Rules as though it were being done in-house.

15. Fire Authority as a Supplier

- 15.1. The Director of Finance and Head of Legal Services must be consulted prior to contemplation of any contracts for the Authority to undertake work or provide services to other organisations.

16. Disposal of Assets

- 16.1. Any assets to be disposed of by the Authority to be shall be disposed of by whatever means is most likely to secure the best value for the Authority having regard to the nature and value of the assets concerned and shall first be approved by the Director of Finance and Head of Legal Services