

WEST MIDLANDS FIRE SERVICE PROCUREMENT PROCEDURES

1. STRATEGY

It is the strategy of West Midlands Fire Service (WMFS) that all expenditure or income, incurred or received, in relation to any contract into which the Service enters, shall be processed in accordance with this standing order and the Authority's Financial Regulations. The aim is to ensure a consistent value for money approach to procurement in all areas of activity, in a way that maintains public accountability and complies with all UK and EU Procurement Legislation and minimises the risk of any allegations of fraud or malpractice.

There are three documents to ensure spending officers receive the support they need when undertaking any kind of procurement activity. These documents are as follows:

- Standing Order 1/8 – Procurement Procedures;
- Procurement Manual; and
- Financial Regulations (Refer to Alfresco, Finance and Resources).

This standing order must be read in conjunction with the Procurement Manual which is available on Alfresco (Finance and Resources). The manual contains more detailed guidance on all areas of the procurement process.

When letting a contract, its monetary value and strategic importance shall determine the appropriate course of action in accordance with the WMFS Procurement Policy. All procurements, no matter of value, must follow the EU Treaty principles of Equal Treatment, Non-discrimination, Mutual Recognition, Proportionality and Transparency.

All procedural matters set out in the Procurement Standing Order shall be subject to audit by the Authority's internal and external auditors.

It is a mandatory requirement that all expenditure by the Authority in excess of £5,000 is published on the Authority's internet site and this can lead to the submission of Freedom of Information requests. It is therefore vital that suitable records of all expenditure are maintained for this as well as audit purposes.

The Procurement Standing Orders must be complied with on all occasions.

The procurement of all ICT goods and services must be secured via ICT and must not be purchased directly.

2. PROCEDURES

2.1 Conformity with Procurement Standing Order and Financial Regulations

This standing order applies to capital and revenue expenditure. It shall also apply in respect of income, excluding income obtained from external funding, partnerships, sponsorship, or any special funding obtained as part of a bidding process, (see Standing Order 22/2 Partnership Working)

These procedures will also apply to any tendering activity that is carried out by West Midlands Fire Service Business Safety Limited (currently dormant).

2.2 Pecuniary and other interests

Any employee of WMFS with a pecuniary or other interest in any contract let by the Authority must, whether or not they have been directly involved in the award of such a contract, submit a report to the Team Leader, Service Support Administration detailing the nature of their interest.

Service Support Administration will maintain a register of pecuniary interests for inspection by auditors and will verify annually that any declared interests are still current.

Employees should not let personal or private interests affect their judgement of the public interest. Members of the Authority and employees should treat these non-pecuniary interests on the same basis as the law requires them to treat pecuniary interests. Members' interests shall be registered by the Clerk to the Authority.

Employees should ensure that hospitality given or received in connection with their appropriate duties can always be justified in the public interest. Similarly, gifts should not be accepted, the only exception being items of a very minor complimentary or token nature which could in no way be construed as offering financial or other material inducement (see Standing Order 1/22 Anti Fraud & Corruption Policy and [Standing Order 2/15](#) – Declaration of Membership of External Organisations and Acceptance of Donations, Gifts and Hospitality for further guidance).

2.3 Definition of terms:

'Administration Officer': the Officer charged with the responsibility for despatching, opening and registering formal quotations and tenders and notifying the successful supplier of the Authority's intention to award.

'Authority': West Midlands Fire and Rescue Authority (WMFRA)

'Central Purchasing Team': the team responsible for sourcing and converting non catalogue requisitions into Purchase Orders (including supplier selection) plus resolving invoice issues.

'contract': an agreement between two or more competent parties for the provision of goods, services or works. Some contracts are required to be in writing in order to be enforced.

'contract value': the total sum for the whole period of the contract excluding VAT.

'Corporate Procurement': central procurement charged with providing strategic direction and advice to secure value for money on all procurement matters. The Corporate Procurement Manager is in charge of this section under the Strategic Enabler - Finance and Resources.

'EU Threshold': the contract value at which the EU Procurement Directives apply.

'Financial Regulations': The financial regulations outlining employee responsibilities for financial matters and issued by the Strategic Enabler – Finance and Resources.

'formal quotations': An offer to provide goods, services or works, with a value exceeding £25,000, in writing, using the Authority's quotation documentation, as provided by Corporate Procurement.

'formal tenders': An offer to provide goods, services or works, with a value exceeding £100,000, in writing, using the documentation for the completion of tenders as provided by Corporate Procurement.

'framework agreement': An arrangement set up by the Authority or a third party organisation for the procurement of specific goods, services or works on agreed terms with agreed supplier(s) that may be utilised by other organisations as specified in the contractual agreement.

'Lots': The parts into which a procurement of supplies, works or services might be divided.

'most economically advantageous tender': Represents value for money when assessing both quality and cost. This should be used as the basis to assess more complex tenders that are high risk or above £25,000 in value.

'Procurement Manual': the guidance notes, together with a number of standard documents and forms, which support the implementation of this standing order. The manual is available on Alfresco, Finance and Resources.

'Service Support Administration': the section charged with the responsibility for despatching, opening and registering formal quotations and tenders and notifying the successful supplier of the Authority's intention to award. This section is also responsible for the retention of all documentation relating to formal quotations and tenders.

'Social Value': a measure of outcomes and benefits from any activity that tackles social problems, improves people's lives, communities or the environment.

'spending officer': an employee of WMFS who has a requirement for goods, services or works to be purchased from a third party in order to support the West Midlands Fire Service.

'specification': a detailed description of the characteristics of a commodity or service required or desired.

'supplier': a person, firm, company or organisation supplying, tendering or quoting for goods, services or works. May also be known as a contractor or service provider.

'whole life costs': all costs associated with the acquisition, use, maintenance and disposal of the good(s) being purchased.

2.4 Letting contracts

The letting of all contracts shall comply with any UK legislation and/or any overriding requirement of the European Union.

Financial provision must exist within the approved budgets; if it does not, a report should be submitted to the Strategic Enabler - Finance and Resources to consider the issue.

Spending officers shall ensure that a purchase order is raised for the provision of all goods, services or works.

Spending officers must determine whether there is an existing contract already in place for the goods, services or works to be purchased. This information can be obtained from the contracts database by contacting Corporate Procurement.

Spending officers must ensure they protect the interests of the Authority and it may be appropriate to enter into a legally binding contract irrespective of the level of expenditure. Clarification can be sought from the Corporate Procurement Manager.

In obtaining quotations and tenders, spending officers must ensure that (where possible) the appropriate levels of quality and social value are specified and when considering quotations and tenders, that outcomes are evaluated on a comparable basis.

In respect of income, this Procurement Standing Order and values shall apply, for example, for the disposal of assets.

When any employee either of the Authority or of a service provider may be affected by any transfer arrangement, spending officers must ensure that the Transfer of Undertaking (Protection of Employment) (TUPE) issues are considered and obtain advice from People Support Services and Corporate Procurement before proceeding with inviting quotations or tenders.

2.5 Use of other public sector contracts or framework agreements

Where it is considered advantageous to make use of the contracts or framework agreements awarded by other Public Sector Organisations, for example, Crown Commercial Services (CCS), or other Fire Authorities, the spending officer must ensure that they offer value for money.

A contract may be awarded to another Contracting Authority (e.g. Local Authority, Fire and Rescue Service) where the contract establishes or implements a co-operation between the participating contracting authorities with the aim of ensuring that the public services they have to perform are provided with a view to achieving objectives

they have in common and the implementation of that co-operation is governed solely by considerations relating to the public interest.

Advice should be sought from the Corporate Procurement Manager before using any such contracts or agreements.

2.6 Monetary limits

All reference to monetary limits included in this standing order shall be deemed to exclude value added tax applicable to the contract, levied by the Government, for the time being in force.

For the purpose of applying the monetary limits throughout this Procurement Standing Order, the appropriate estimated value shall be the contract value. Values (or estimated values) used in the operation of this standing order will normally be the total value of the goods and services supplied. However, where a series of purchases are made for the same or similar purpose, then the value will be the aggregate value (or estimated value) of the purchases made within any single contract or period of 12 consecutive months or financial year and should take into account where possible the changes in quantity or value which would occur in the course of the 12 months following the initial contract.

The aggregate contract value must also take into account both capital and revenue expenditure during the life of the contract, for example, the purchase of a software package may also include ongoing annual support and training. All of these costs must be aggregated to arrive at the total contract value where it is to be included in the same quotation or tender exercise.

In the case of innovation partnerships, the value to be taken into consideration shall be the maximum estimated value, net of VAT, of the research and development activities to take place during all stages of the envisaged partnership as well as of the supplies, services or works to be developed and procured at the end of the envisaged partnership.

Purchase orders must not be artificially divided to make two or more orders of a lower value to avoid the requirement to obtain quotations or tenders.

In the event that the contract value exceeds the EU threshold the contract should be awarded in lots where appropriate. A lot can be a specific geographical area or subject category e.g. goods and training. Where the contract value exceeds the EU threshold and is not divided into lots an audit trail of the reasons must be submitted to the Strategic Enabler - Finance and Resources. Corporate Procurement should also be contacted for advice in this instance.

2.7 Contract value guidance

The procurement process adopted is dependent on the value of the purchase. Please refer to the table below to determine the process to be adopted and refer to the appropriate section within this order to obtain guidance.

If an existing contract or framework agreement is not in place, the appropriate procedure shall be followed as detailed in the table below:

Value of purchase (contract value)	Procurement process	Approval Required	Procedure
Under £3,000	Obtain three quotations if appropriate.	If lowest quote, accept. If you wish to accept other than the lowest quote, the reasons and justification must be	Section 2.8

		recorded and retained by spending officer.	
£3,000 - £24,999	Three written quotations Where the estimated contract value exceeds £10,000 three sealed written quotations must be obtained and opened in the presence of two officers	If lowest quote, accept (subject to the signing provisions contained in <u>Standing Order 1/6</u>) If wish to accept other than the lowest quote, report to be submitted to the Corporate Procurement Manager to obtain approval prior to acceptance.	Section 2.9
£25,000 up to £99,999	Formal quotations from at least three suppliers processed through Service Support Administration	Spending officer must submit written report to the Corporate Procurement Manager (where contract value is less than £50,000) or the Strategic Enabler - Finance and Resources (where the contract value exceeds £50,000) to obtain approval prior to acceptance or in his or her absence refer to a Brigade Manager. A copy of the report and approval must be forwarded to Service Support Administration for information and retention.	Section 2.10
£100,000 – E U Threshold	Formal tenders from at least three suppliers	Spending officer must submit written report to the Strategic Enabler - Finance and Resources to obtain approval prior to acceptance or in his or her absence refer to a Brigade Manager. Such approval will be subject to: a) The contract being awarded to the supplier submitting the most economically advantageous tender b) The value of the contract being within identified funding provisions If either of the above criteria are not met, a report must be submitted to the Executive Committee or	Section 2.11

		Fire Authority for consideration prior to the award of the contract.	
Goods or services in excess of £172,514* Works or construction in excess of £4,322,012*	Formal tender (in accordance with EU Legislation).	As, £100,000 to the EU threshold, above	Section 2.11

The Strategic Enabler - Finance and Resources shall review all monetary limits (with the exception of the EU Thresholds) shown in this standing order annually and any resulting amendments shall be reported to the Authority.

**European Public Procurement Thresholds*

For the procurement of goods and services the expenditure threshold value is €207,000 Euros or £172,514.

For construction the expenditure threshold value is €5,186,000 Euros or £4,322,012.

These limits are applicable for the period 1st January 2014 to 31st December 2015.

2.8 Contracts valued at under £3,000

This section shall apply to contracts for the provision of goods, services or works where the estimated contract value is below £3,000 and there is no existing contract in place.

Due regard should be given to the desirability of securing competition in appropriate cases and, in so doing, spending officers must take steps to obtain the best value for money and be prepared to justify the method of selection of the supplier.

Where considered appropriate, a minimum of three verbal or written quotations must be recorded and documentation retained locally for a period of six years. In circumstances where three quotations have not been obtained, the reasons to justify the method of selection shall be recorded for audit purposes.

Examples of cases where it may not be considered appropriate to obtain 3 verbal or written quotations are as follows:

- security works;
- health and safety works;
- operational impact;
- specialist works;
- Contract valued under £100; and
- proprietary item(s).

Reference should also be made to the special exemptions detailed in section 2.17 of this standing order.

Spending officers must not disclose the contents and value of quotations between competing suppliers.

2.9 Written quotations (contracts valued between £3,000 and £24,999)

This section shall apply to contracts for the provision of goods, services or works where the estimated contract value is between £3,000 and £24,999 and there is no existing contract or framework agreement in place.

Where practically possible quotations should be evaluated based on quality, social value and price.

Where the estimated cost exceeds the sum of £10,000 spending officers should obtain at least three sealed written quotations which must be opened simultaneously. Spending officers shall record and retain the quotations received. The Central Purchasing Team will arrange for the documents to be uploaded on the Authority's e-tendering system and for the quotations to be opened as soon as possible after the closing date.

Where the spending officer has endeavoured to obtain three quotations and where fewer than three were received, the reasons why must be justified and approved by the Corporate Procurement Manager. In the event of only one quotation being received the Corporate Procurement Manager may request that additional bids are obtained.

If the spending officer wishes to accept other than the lowest quote a report must be submitted to the Corporate Procurement Manager to obtain approval prior to acceptance.

Spending officers wishing to enter into a contract where there is deemed to be a 'special exemption' (as detailed in section 2.17 of this standing order), must obtain prior approval from the Corporate Procurement Manager.

The Spending Officer must contact Corporate Procurement to place a Purchase Order.

All associated documentation is to be retained within the section of the spending officer for six years.

2.10 Formal quotations (contracts valued between £25,000 and £99,999)

In the case of contracts with an estimated value between £25,000 and £99,999, formal quotations must be processed via Service Support Administration.

The involvement and approval of Corporate Procurement is required on all occasions for contracts with an estimated value that exceeds £25,000.

Spending officers must submit the following information to Corporate Procurement:-

- The name and contact details of the spending officer
- a completed specification, including social value requirements;
- a note of any special conditions that will apply;
- evaluation criteria, e.g. minimum (pass/fail) criteria plus cost
- completion or delivery date
- a list of suppliers (minimum of three) from which quotations are to be invited;
- an estimate of the predicted contract value, and
- the proposed closing date for quotations (this should be a minimum of 2 weeks from the date the quotation is despatched and the date must not fall on a weekend or public bank holiday).

The quotation request must be submitted to Corporate Procurement at least two weeks prior to the quotation despatch date. The Authority's e-tendering system should be used for this purpose. Service Support Administration will arrange for the documents to be uploaded and for quotations to be opened as soon as possible after the closing date. Late bids will be automatically rejected by the e-tendering system.

The quotations will be opened by the Team Leader, Service Support Administration or their nominated representative;

At the time of opening the Team Leader will print a report detailing the bids received. The Team Leader will sign, date and retain this report.

The quotations will then be forwarded to both Corporate Procurement and the appropriate spending officer to evaluate quality, social value and cost and to submit a report to the Strategic Enabler - Finance and Resources (when the value of the quotation exceeds £50,000) or the Corporate Procurement Manager (when the value of the quotation is less than £50,000) detailing their recommendations and requesting approval to proceed.

Where the spending officer has endeavoured to obtain three quotations and where fewer than three were received, the reasons why must be justified and approved by the Corporate Procurement Manager or the Strategic Enabler - Finance and Resources. In the event of only one quotation being received the Corporate Procurement Manager may request that additional bids are obtained.

Where examination of a quote reveals:

- any manifest error or ambiguity (such as an obvious arithmetical error) that can readily be clarified, the supplier shall be given the opportunity to clarify their quotation and confirm this in writing;
- an abnormally low quote, the spending officer shall ask the supplier to confirm the details of the costing
- that the offer requires clarification, the spending officer shall contact the supplier to seek clarification; and
- an arithmetical error, subject to the prior approval of the Strategic Enabler - Finance and Resources or an officer designated by him or her, the necessary correction shall be notified to the supplier in writing who shall within seven days from receipt of such notice either confirm their quote in writing as corrected or withdraw it.

Once approved by the Corporate Procurement Manager or the Strategic Enabler - Finance and Resources, the appropriate spending officer must send a copy of the report and recommendations and all quotations received to Service Support Administration who shall send successful and regret letters to the suppliers as appropriate. Service Support Administration will retain a copy of all relevant documents, for audit purposes, for a period of six years and will upload them onto the contracts database. The Spending Officer must then contact Corporate Procurement to place a Purchase Order.

2.11 Formal tenders (contracts valued in excess of £100,000)

For any contract for the provision of goods, services or works where the estimated contract value exceeds £100,000, a sourcing strategy shall be agreed between the spending officer and Corporate Procurement in accordance with WMFS Procurement Manual. Formal tenders must be processed via Service Support Administration.

Prior to commencing a procurement process with a value in excess of £250,000 a report must be submitted to the Executive Committee or Fire Authority detailing the rationale for the forthcoming tender exercise and must include the proposed route to market and funding provisions. Corporate Procurement is responsible for collating and submitting these reports.

2.11.1 EU Directives

The EU Procurement Directives set out the legal framework for public procurement. They apply when public authorities and utilities seek to acquire goods, services, civil engineering or building works. They set out procedures which must be followed before awarding a contract when its value exceeds the published thresholds. They are incorporated into UK law by the Public Contract Regulations 2015 and amendments.

It is necessary to advertise in the Official Journal of the European Union (OJEU) in the case of contracts to which the Regulations apply. To confirm whether a contract necessitates advertising, spending officers shall contact Corporate Procurement to seek advice prior to processing any tender.

Any contract for the provision of goods or services for which the estimated contract values exceeds the limits stated in 2.7 (formal tender in accordance with EU legislation) must be advertised in the OJEU irrespective of the method of letting the contract.

It should be noted that the contract value is the total estimated value over the **whole** of the contract life including any extension options and includes both capital and revenue expenditure that is to be included in the same tender exercise.

The above financial thresholds are applicable to 'public contracts' with effect from 31st January 2014 and are revised every two years.

The Authority is also required to consider the provisions of the Public Services (Social Value) Act 2012 for any service contracts that are above the EU financial threshold. The main aim of this Act is to ensure that public bodies consider how the services that they are commissioning and procuring might improve the economic, social and environmental well-being of the area in which the services will operate.

All OJEU notices shall be placed by Corporate Procurement who will also provide advice in this regard.

General guidance regarding EU Procurement Rules and the requirements of the Social Value Act 2012 can be obtained from Corporate Procurement.

2.11.2 The tendering process

The sourcing strategy shall encompass the tendering process, which may be by:

- competitive tendering
- further competition or direct award under a framework agreement.
- E-auction

2.11.3 Public advertisement

A public advertisement is required for all contracts over £100,000 except when a Framework Agreement is being utilised.

Methods of advertisement **may** include:

- Official Journal of the European Union (OJEU) - mandatory when value exceeds EU Thresholds;
- Contracts Finder – mandatory for all contracts advertised
- WMFS Procurement website;
- Other portal websites specifically created for contract advertisements, e.g. Find it in Birmingham, Find it in Sandwell
- Local and national newspapers; and
- Other specialist publications or trade journals.

All such advertisements will be placed via Corporate Procurement, who will advise on the content.

Advertisements must provide information regarding the nature of goods, services or works being tendered and the minimum capabilities required from a supplier e.g. technical capacity, financial stability, insurance cover, relevant contract experience, etc. The advertisement will also disclose the scoring criteria and the closing date.

All documentation shall be available to download from the Authority's e-tendering portal.

A Prior Information Notice (PIN), if required, can be published 12 months in advance of the procurement. The PIN shortens the timescales for the procurement exercise and means that no further advertising of the procurement needs to be carried out.

2.11.4 Invitation to tender

2.11.4.1 Short listing following public advertisement and pre-qualification exercise (Restricted Procedure)

The restricted procedure is not to be used for contracts under the EU Threshold.

If it is intended that after public advertisement a shortlist of suppliers will be compiled then the procedure below must be followed:

- A minimum of 30 days' public notice should be given using one or more of the advertising methods mentioned in section 2.11.3 above. The wording of any advertisement must clearly indicate that a select list of potential suppliers will be compiled.
- All such advertisements will be placed by Corporate Procurement who will advise on the content.
- A pre-qualification questionnaire (PQQ) will be produced by Corporate Procurement in conjunction with the appropriate spending officer and will be available for all interested firms to download from the Authority's e-tendering portal on same day the EU notice is published.

The purpose of the PQQ is to assess whether potential suppliers can meet minimum criteria in the following areas:

- economic and financial standing including insurance cover;
- technical ability and capacity;
- health and safety (where applicable);
- equality & diversity (where applicable);
- sustainability (where applicable);

All adverts and the contract notice shall indicate the objective and non-discriminatory criteria or rules that apply, the minimum number of suppliers to be invited to tender and, where applicable the maximum number. The minimum number of suppliers shall be no less than 5. Only suppliers that meet the minimum criteria can be invited to tender.

All tender documentation (e.g. Invitation to Tender (ITT), specifications, drawings, evaluation criteria etc) must be made available electronically from the date of publication of the OJEU notice (or Contracts Finder advert).

Completed questionnaires must be evaluated by the appropriate spending officer in conjunction with Corporate Procurement (and other stakeholders as appropriate) against the above mentioned and pre-determined criteria. Corporate Procurement or Service Support Administration, if advised by Corporate Procurement, will notify any applicants that are excluded with the reasons why.

Any appeal by an unsuccessful applicant or request for further details of the reason for exclusion must be handled by Corporate Procurement in conjunction with the spending officer. Details should then be forwarded to the Team Leader, Service Support Administration, who will provide a written response to the applicant.

If there are fewer than five persons who have expressed an interest or who meet the minimum pre-qualification criteria, then the written approval of the Strategic Enabler - Finance and Resources must be sought, prior to inviting tenders.

From April 2017 all Contracting Authorities must accept a European Single Procurement Document (ESPD) from a supplier as proof that the supplier meets the mandatory and discretionary criteria for the procurement.

2.11.4.2 Open procedure

If the contract value is below the EU threshold or it is not intended to shortlist following public advertisement then the procedure below must be followed:

- A minimum of 30 days' public notice should be given using one or more of the advertising methods mentioned in section 2.11.3 above.
- All such advertisements will be placed by Corporate Procurement who will advise on the content.
- An invitation to tender (ITT) will be produced by Corporate Procurement in conjunction with the appropriate spending officer and will be available for all interested suppliers to download from the e-Tendering system.
- The ITT will include selection and award sections with detailed scoring criteria. All suppliers passing mandatory selection questions will go through to the award section.
- The timescales for conducting an open tender process for an EU tender exercise are prescribed within the EU Procurement Directives and Corporate Procurement **must** be contacted for advice in this instance.
- The process for the receipt of tenders will be handled by Service Support Administration via the e-tendering system.
- Completed tenders must be evaluated by the appropriate spending officer in conjunction with Corporate Procurement (and other stakeholders as appropriate) against the criteria detailed in the ITT.

2.11.5 Developing the invitation to tender (ITT)

All tender documentation must be developed in conjunction with Corporate Procurement and should include:

- a specification of the goods, services or works that describes the Authority's requirements in sufficient detail;
- the schedule of rates or pricing schedule;
- the terms and conditions of payment;
- the contract period or time within which the contract is to be performed (including any extension options);
- the basis (minimum criteria plus lowest whole life cost or most economically advantageous tender) on which the tenders will be evaluated;
- the evaluation criteria (mandatory and discretionary) against which the tenders will be evaluated (including weightings);
- the conditions of contract or specimen contractual agreement (advice should be sought from Corporate Procurement regarding suitable conditions of contract); and
- the statement that the Authority does not bind itself to accept the lowest or any tender and will not be responsible for any costs incurred by suppliers associated with the preparation of their tender.

Unless otherwise agreed, the formal advice of the Corporate Procurement Manager must be sought for the following types of tenders or contracts:

- where the total value exceeds £100,000;
- those involving leasing arrangements;
- where it proposed to use a supplier's own terms and conditions; and
- those involving the purchase of ICT hardware and/or application software (Note: The strategic head of ICT should also be informed of these types of contracts).
- any tenders that may be let using an e-auction.

2.11.6 Developing specifications

The Authority may conduct market consultations prior to preparing the specification and should inform the market of their plans. Any decisions made from the

engagement should not distort competition or result in a violation of the principles of non-discrimination and transparency. A record of any market consultations must be kept with the tender records.

Where a supplier or a third party related to a supplier has been involved in a pre-market consultation exercise, the Authority must ensure that it takes appropriate measures to ensure that competition is not distorted by the participation of that supplier in the procurement process.

Specifications should set out the characteristics and quantity of the goods, service or works to be purchased to enable the supplier to determine and understand that which is to be supplied. This information can be in the form of a description of the physical, functional or performance characteristics. It can include a description of any requirement for inspecting, testing or preparing a material, equipment, supplies, social value or service for delivery.

The spending officer must ascertain the relevant British, European or International Standards which are necessary to describe the required quality.

The Authority is permitted to request specific labels when procuring goods, services or works with the specific (relevant) social or environmental characteristics linked to the subject matter of the procurement as long as the label requested is objectively verifiable, established in an open and transparent manner and accessible to all interested parties e.g. Fairtrade.

To comply with the EU Directives the use of brand or trade names must be avoided where possible when describing products. Alternatively, the words 'or equivalent and approved' must also be included.

Specifications must not be written to discourage competition regardless of the contract value.

2.11.7 Developing the tender evaluation criteria

Under the EU Regulations, there is an obligation to state the criterion and sub-criterion on which the tenders will be evaluated in addition to the relative weighting given to each criterion. The criterion should be split into quality, social value and cost, with a minimum of 5% being allocated to social value. Although this is not a mandatory requirement for contracts that are valued below the EU Thresholds it is still considered best practice to follow this same procedure when developing the evaluation criteria.

Tender evaluation criteria and their relevant weightings should be determined and agreed prior to the invitation of tenders and must be published in either the tender advertisement or the tender documentation.

The criteria for awarding contracts shall be most economically advantageous tender (MEAT).

Tender shall be evaluated on the basis of the price or cost, using a cost-effectiveness approach, such as life-cycle costing in accordance with regulation 68 of the Public Contract Regulations 2015, and criteria, such as qualitative, environmental and/or social aspects, linked to the subject-matter of the public contract in question.

Such criteria may comprise, for example—

- quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions;
- organisation, qualification and experience of staff assigned to performing the contract, where the quality of the staff assigned can have a significant impact on the level of performance of the contract; or
- after-sales service and technical assistance, delivery conditions such as delivery date, delivery process and delivery period or period of completion.

Evaluation criteria must not include:

- non-commercial considerations;
- matters which discriminate against suppliers from the European Economic Area or signatories to the Government Procurement Agreement, for example, giving preference to local or UK based suppliers; or
- anything that contravenes the EU Treaty principles of equal treatment, non-discrimination, mutual recognition, proportionality and transparency
- criteria that has already been applied as part of the pre-qualification process

Once the tender documentation is complete the spending officer should forward it to Service Support Administration or Corporate Procurement, who will upload the tender documents on the e-tendering system.

2.11.8 Submission, opening and registration of formal tenders

Where the procurement falls above the EU Threshold then specific tendering time periods must be adhered to (refer to the guidance in the Procurement Manual and seek advice from Corporate Procurement).

For tenders below the EU Threshold, suppliers must be given an adequate period of time in which to prepare and submit a proper tender which is consistent with the complexity of the contract requirement.

Normally a minimum of 30 days must be allowed for the submission of tenders following despatch.

All communications in relation to tender correspondence must be issued, returned and opened via Service Support Administration on behalf of Corporate Procurement using the e-tendering portal.

Service Support Administration will ensure that all tenders are opened at the same time, as soon as possible after the closing date and time. Late bids will automatically be rejected by the e-tendering system.

The tenders will be opened by the Team Leader, Service Support Administration or their representative.

At the time of opening the Team Leader will print a report from the e-tendering system, detailing the opening of each bid. The Team Leader will sign, date and retain this report.

The tenders will then be forwarded to Corporate Procurement and the appropriate spending officer for evaluation.

Where the spending officer has endeavoured to obtain three tenders and where fewer than three were received, the reasons why must be justified and approved by the Strategic Enabler - Finance and Resources. In the event of only one tender being received the Corporate Procurement Manager may request that additional bids are obtained and that the tender exercise is repeated.

2.11.9 Tender evaluation

Tenders shall be evaluated to assess how requirements will be met and to ensure that consideration has been given to the cost, social value and quality of the solutions offered. Evaluations shall be carried out by the spending officer and Corporate Procurement following receipt of completed tenders.

Evaluations shall be carried out in an open and transparent manner ensuring that all tenders submitted are treated equally.

All completed tenders shall be evaluated against the assessment or award criteria as set out in the invitation to tender documentation.

Where the examination of a tender reveals:

- any manifest error or ambiguity (such as an obvious arithmetical error) that can readily be clarified, the supplier shall be given the opportunity to clarify their tender and confirm this in writing;
- that the offer requires clarification, Corporate Procurement shall contact the supplier to seek clarification; and
- an arithmetical error, subject to the prior approval of the Strategic Enabler – Finance and Resources or an officer designated by him or her, the necessary correction shall be notified to the supplier in writing who shall within seven days from receipt of such notice either confirm their tender in writing as corrected or withdraw it.

2.11.10 Acceptance of quotations and tenders

The Spending Officer must submit a written report to the Strategic Enabler - Finance and Resources to obtain approval prior to acceptance or in his or her absence a Brigade Manager. Such approval will be subject to:

- a) The contract being awarded to the supplier submitting the most economically advantageous tender
- b) The value of the contract being within identified funding provisions

If either of the above criteria are not met, a report must be submitted to the Executive Committee or Fire Authority meeting for consideration prior to the award of the contract.

A report would also be submitted to the Executive Committee or Fire Authority prior to the award of a contract if such a requirement was indicated by Members following receipt of the pre tender report (see section 2.11).

As a minimum this report must include the following information:

- title or details of the contract;
- date tenders were opened;
- details of recommended supplier;
- period of contract (including any extension options);
- value of the contract;
- whether the award is within the approved budget;
- social value benefits
- any other relevant information, for example, savings or efficiency gains.

A retrospective twice yearly Summary Report must be submitted to the Executive Committee or Authority for information only for contract awards in excess of £250,000. This will be produced by Corporate Procurement in conjunction with the spending officer(s).

In respect of contracts in excess of the EU Threshold the 'mandatory standstill period' must be undertaken prior to submitting a report to the Strategic Enabler - Finance and Resources or the Executive Committee or Fire Authority.

Once approved the spending officer must send a copy of the report, approval and all tenders received to Service Support Administration for retention.

2.12 Award of contracts and notification of suppliers

2.12.1 Award of contracts

Spending officers may accept quotations where the total value is less than £25,000 provided they have been sought and evaluated in accordance with this standing order and they have the appropriate authorisation limit as stated in Standing Order 1/6 Authorisation or Expenditure and Certification and Retention of Documents. The Spending Officer must arrange for a purchase order to be raised via Corporate Procurement.

2.12.2 Where the contract value is over £25,000, Service Support Administration are responsible for the notification of all suppliers simultaneously, of the intention to award the contract to the successful supplier.

Every contract in excess of £25,000 shall be in writing and must specify:

- the goods, services or works to be provided and the conditions to apply;
- the provisions for payment (for example, what is to be paid and when with a statement of discounts or other deductions);
- the time or times within which the contract is to be performed (contract period) including any extension provisions;
- the provisions for the Authority to terminate the contract;
- details of the social value agreed and the monitoring arrangements
- the reference of the framework agreement where the contract is being placed under a framework agreement; and
- any other matters specific to the contract.

All Contracts between £3,000 and £99,999 must be accepted by issuing a purchase order containing the above information.

All contract awards in excess of £25,000 must be reported on Contracts Finder by Corporate Procurement.

2.12.3 Award of contracts over £100,000

Spending officers shall consult with Corporate Procurement following receipt of an approval to award, regarding any formal tenders (over £100,000). A minimum period of 6 weeks is required by Service Support Administration, Corporate Procurement and Sandwell Legal Services to prepare all the paperwork to send formal contracts to the successful supplier for signature. Where possible Spending Officers should build this timescale into the procurement process to ensure that contracts can be awarded prior to the required commencement date i.e. the date that the new contract begins.

Service Support Administration will retain a copy of all relevant documents for 6 years for audit purposes and will inform unsuccessful suppliers.

If it is determined that the contract for the goods, services or works is no longer required and therefore the procurement exercise needs to be terminated, the spending officer shall forward all associated documentation to Corporate Procurement with an explanation of why the exercise needs to be terminated. In the event that the procurement exercise is terminated Service Support Administration will notify the suppliers via the e-tendering system and retain the documentation on file for audit purposes for a period of 6 years.

For EU tenders, Corporate Procurement shall publish details of the successful suppliers in a Contract Award Notice placed in OJEU within 30 days of the contract award.

2.12.4 Notifying and debriefing of suppliers

Apart from the debriefing required or permitted by this standing order, the confidentiality of quotations, tenders and the identity of suppliers must be preserved at all times and information about one supplier's response must not be given to another.

Where the total value of the contract exceeds the EU Threshold the debriefing process will be handled by Corporate Procurement in conjunction with the spending officer. This is a mandatory process which is governed by the EU Procurement Directives and is known as the 'mandatory standstill period'.

Notification of the acceptance of a tender shall be sent in writing to the successful supplier. Such notification will be issued by Service Support Administration and clearly marked 'Subject to Contract' where a subsequent formal contract let by the Clerk to the Authority is required by this standing order.

All rejection letters shall include the scores awarded and reasons for the score. Where the value of the contract exceeds the EU Threshold the rejection letter shall also include the relative characteristics/advantages of the winning supplier and shall comply with the EU Directive 'mandatory standstill period'.

In addition to the above if a supplier requests a debrief this will be carried out within 15 days from receipt of written request.

2.12.5 Signature of contracts (including purchase orders)

Contracts will be signed as follows:

Total value	Method of completion	Person responsible
Up to £24,999	Signature and Purchase Order	Person authorised as per <u>Standing Order 1/6</u>
£25,000-99,999	Signature on acceptance letter and purchase order	Person authorised as per <u>Standing Order 1/6</u>
Above £100,000	Signature and common seal of the Authority	Clerk to the Authority

All contracts must be concluded formally in writing before the supply, service or construction work begins, except in exceptional circumstances, and then only with the written consent of the Strategic Enabler - Finance and Resources or in his or her absence a Brigade Manager. An award letter is insufficient. Refer to section 2.17 for special exemptions.

2.13 Competitive Procedure with Negotiation or Competitive Dialogue Procedures

2.13.1 Using these procedures

A competitive procedure with negotiation or a competitive dialogue may be used in the following situations:—

- with regard to works, supplies or services fulfilling one or more of the following criteria:—
- the requirement cannot be met without adaptation of readily available solutions;
- the requirement includes design or innovative solutions;
- the contract cannot be awarded without prior negotiation because of specific circumstances related to the nature, the complexity or the legal and financial make-up or because of risks attaching to them;
- the technical specifications cannot be established with sufficient precision with reference to a standard, European Technical Assessment, common technical specification or technical reference;
- with regard to works, supplies or services where, in response to an open or a restricted procedure, only irregular or unacceptable tenders are submitted.

Advice from Corporate Procurement must be sought prior to the use of either of the above procedures.

2.13.2 Using Negotiation

Contracts under £100,000 may be awarded by negotiation when one or more of the criteria in section 2.13.1 applies. Spending officers wishing to let a contract by way of negotiation must obtain the prior written approval of the Strategic Enabler - Finance and Resources or a Brigade Manager in his absence. Once approval is obtained, Corporate Procurement shall agree a negotiation strategy with the spending officer and support or conduct negotiations as appropriate.

The following procedures shall be adopted in all negotiations:

- an agreed record of the discussions held with prospective suppliers shall be kept;
- any agreement must be confirmed in writing by the prospective supplier;
- no information shall be given to a potential supplier as to any competitors' quotation or tender, particularly prices and discounts;
- all negotiations must be held in an open and fair manner;
- each supplier should be given the same opportunity to revise their offer;
- documentation must allow the Authority to reserve the right to award following the initial offer without the need for further negotiation;
- only officers designated by the Strategic Enabler - Finance and Resources or Corporate Procurement Manager shall be permitted to conduct negotiations; and
- a minimum of two officers must be present during all negotiations.

A report on the financial or other benefits resulting from any negotiations should be submitted to the Strategic Enabler - Finance and Resources, prior to the award of any contract.

2.14 Use of approved supplier lists

Approved lists of pre-qualified suppliers should be used where recurrent transactions of a similar type are likely but where such transactions need to be priced individually and cannot easily be aggregated and priced in a single tendering exercise. Approved lists cannot be used where the EU procedure applies.

Spending officers with devolved procurement responsibilities may draw up in consultation with Corporate Procurement:

- approved lists of suppliers ready to perform contracts to supply goods, services or works of particular types including without limitation on the basis of agreed contract terms;
- minimum criteria to be accepted on the approved list e.g. health and safety policy, social value policy; and
- criteria for the selection of suppliers from the approved list.

No supplier may be entered onto an approved list until there has been an adequate investigation by representatives of Finance, Procurement and any other appropriate sections into the supplier's financial standing (where the contract exceeds £25,000) and their technical ability to perform the contract, unless such matters will be investigated each time quotes are invited from that list.

The list and short listing criteria must be reviewed periodically.

Review means:

- the reassessment of the financial and technical ability and performance of those persons on the list, unless such matters will be investigated each time quotes are invited from that list; and
- the deletion of those persons no longer qualified, with a written record kept justifying the deletion.

All approved lists shall be maintained in an open, fair and transparent manner.

2.15 Use of framework agreements

A framework agreement is an arrangement set up by a third party organisation for the procurement of specific goods, services or works on agreed terms with agreed suppliers, that may be utilised by other organisations as specified in the contractual agreement. Examples of organisations with framework agreements include Crown Commercial Services (CCS), Yorkshire Purchasing Organisation (YPO), The Consortium, etc. Other Fire and Rescue Services and Public Sector bodies may also

establish framework agreements. It is the responsibility of the spending officer and Corporate Procurement to ensure the framework agreement can be utilised.

Contracts based on framework agreements may be awarded in one of two ways as follows:

1. applying the specification and terms laid down in the framework agreement (where such specification and terms are sufficiently precise to cover the particular call-off) without reopening competition, that is, placing an order against a catalogue of goods and/or services.
2. where the specification and terms laid down in the framework agreement are not precise enough or sufficiently detailed for the particular call-off, by conducting a further competition exercise in accordance with the procedure detailed below. In any event the framework call-off conditions must **always** be followed.

2.15.1 Option 1 - Placing an order under a framework agreement

When placing an order against a framework agreement catalogue the purchase order essentially acts as the contract.

The spending officer will be expected to compare the pricing from the listed suppliers for the products or services required in order to justify best value.

The authorisation prior to placing the purchase order must therefore be as follows:

Total value of purchase order	Person responsible for authorisation
Up to £24,999	Person authorised as per <u>Standing Order 1/6</u>
£25,000 – £49,999	Corporate Procurement Manager or in his or her absence the Strategic Enabler - Finance and Resources
£50,000 up to £100,000	Strategic Enabler – Finance and Resources or in his or her absence a Brigade Manager
Over £100,000	Strategic Enabler - Finance and Resources or in his or her absence a Brigade Manager plus a retrospective report for contracts over £250,000 to the Executive Committee or Fire Authority will be required as per section 2.11.9

2.15.2 Option 2 - Conducting a further competition exercise using a framework agreement

Where the value of the purchase exceeds £250,000 a preliminary report will need to be submitted to the Executive Committee or Fire Authority as detailed in section 2.11.

When conducting a further competition exercise the following requirements must be taken into account:

- always follow the framework agreement call-off conditions
- invite to tender all the suppliers listed within the framework agreement that are capable of meeting the particular need or requirement. This should be undertaken as per this standing order and should allow a sufficient time limit for tenders to be submitted, taking into account factors such as the complexity of the contract and the required response. Ideally this should be a minimum period of 2 weeks;
- evaluating and awarding each contract to the supplier who has submitted the best tender (as per the guidance in this standing order) on the basis of the award criteria set out within the framework agreement;
- acceptance of quotations or tenders must follow the guidance contained in this standing order under section 2.11.9; and

- a letter of acceptance or signed order form must be sent to the successful supplier which must be signed as per the provisions of section 2.12.5

It should be noted that an OJEU advertisement or any other advertisement does not need to be placed when conducting a further competition exercise under a framework agreement.

The advice of Corporate Procurement should always be sought prior to using a framework agreement.

2.16 Contract modifications

2.16.1 Modifications to existing contracts (contract values exceeding £3,000)

A contract modification may refer to an extension of the contract period or to changes/amendments to the contract specification or service provision.

Modifications may be undertaken to existing contracts awarded competitively or following invitation to tender provided that:

- where the modification, irrespective of value has been provided for in the initial procurement documents in precise, clear and unequivocal review clauses.
- where additional works, services or supplies have become necessary and were not included in the original procurement but a change of contractor is not possible for economic or technical reasons or because it would cause significant inconvenience or duplication of costs. The modification may not exceed 50% of the original contract price. Where the original contract value was above the EU threshold value, a notice must be sent to OJEU.
- where the modification has been brought about by circumstances that could not have been foreseen and the modification does not alter the overall nature of the contract and any increase in price does not exceed 50% of the value of the contract. Where the original contract value was above the EU threshold value, a notice must be sent to OJEU.
- where a new contractor replaces the previous contractor as a consequence of an unequivocal review clause or the succession of the initial contractor due to a merger, company acquisition etc provided that the new contractor meets the qualitative criteria established during the procurement.
- where the modification is not substantial within the meaning of the Presettext case e.g.
 - the modification does not render the contract materially different in character;
 - the modification does not introduce conditions which would have allowed other suppliers to bid;
 - the modification does not change the economic balance in favour of the contractor in a manner not provided for in the initial tender;
 - the modification does not extend the scope of the contract considerably.
- the modification is very small and below the threshold (for the type of contract) and is below 10% for supplies and service and 15% for works of the original contract price as long as the modification does not alter the overall nature of the contract.

For modifications between £3,000 and £49,999 and where the total revised contract value does not exceed £49,999, a written report should be compiled and submitted to the Corporate Procurement Manager for approval.

For modifications to contracts where the revised contract value is in excess of £50,000 a written report should be compiled detailing the required extension or

variation and submitted to the Strategic Enabler – Finance and Resources for approval or a Brigade Manager in his or her absence.

Where the revised contract value (following modification) now exceeds £250,000, a retrospective report must be submitted to the Authority or Executive Committee for their information. For any modifications to a contract that was originally awarded under the EU Tendering Regulations, advice must be obtained from Corporate Procurement.

Contract modifications should not be agreed with suppliers until approval has been obtained.

2.16.2 Contingency allowance

Where contingency sums are deemed necessary contingency allowances should not exceed 10% of the original estimated contract value.

2.17 Special exemptions to this standing order

Spending officers wishing to enter into a contract where there is deemed to be a 'special exemption' **must** obtain prior approval from the Corporate Procurement Manager for contracts valued under £50,000 and the Strategic Enabler – Finance and Resources for contracts valued at £50,000 and over, identifying the reason for the exemption and that part of the standing order to which it applies.

This provision does not apply to Facilities Management for emergency building works of less than £5,000 in value.

If the Strategic Enabler – Finance and Resources was involved in the initial decision making process then approval for the exemption must be sought from a Brigade Manager.

Examples of circumstances in which an exemption might be appropriate are as follows:

- a) the goods or materials are purchased or sold at auction, public fairs or markets;
- b) the provision of goods, services or works is obtainable only from one supplier and no satisfactory alternative is available;
- c) there are less than three suppliers known to be in the market for particular goods, services or works, (in such cases, tenders shall be invited from such lesser number of suppliers);
- d) the prices of the goods, services or works are wholly controlled by trade organisations or government order and no reasonable satisfactory alternative is available;
- e) tenders have or will be invited on behalf of any consortium, collaboration or similar body in which the Authority is participating, in accordance with any method adopted by such a body;
- f) the goods or services are deemed expedient for Service requirements;
- g) where the goods, services or works are so urgently required as not to permit the invitation of tenders. In such case, the prior approval of the Strategic Enabler – Finance and Resources, or a Brigade Manager in their absence, must be obtained; and

Separate special exemption rules apply where the value exceeds the E U Threshold and are very limited. Advice must be sought from the Corporate Procurement Manager in this instance. Under no circumstances does the Authority have the power to waive its obligations under law.

Where a contract or agreement is entered into under paragraph 2.17 (above) and its value exceeds £250,000, a retrospective report must be submitted to the next available Fire Authority Meeting or Executive Committee. Corporate Procurement is responsible for the compilation and submission of these reports.

2.18 Bonds and parent company guarantees

The spending officer must consult the Strategic Enabler – Finance and Resources about whether a parent company guarantee is necessary when a supplier is a subsidiary of a parent company and:

- the total contract value exceeds £100,000;
- the award is based on evaluation of the parent company; and
- there is some concern about the financial stability of the supplier.

The spending officer must consult the Strategic Enabler – Finance and Resources about whether a bond is needed where:

- the total contract value exceeds £500,000; and
- it is proposed to make staged or other payments in advance of receiving the whole of the subject matter of the contract and there is concern about the financial stability of the supplier.

2.19 Risk assessment and contingency planning

A corporate risk assessment must be prepared for all procurements with a potential value over the EU Threshold or where the failure of the contract will have a significant impact on the core operations of the Authority.

Contract managers (in conjunction with Corporate Procurement) must:

- maintain a risk register during the contract period;
- undertake appropriate risk assessments for identified risks; and
- ensure contingency measures are in place to comply with the WMFS Business Continuity Plan where appropriate.

2.20 Social Value

"As a concept, social value seeks to maximise the additional benefit that can be created by procuring or commissioning services, above and beyond the benefit of merely the services themselves" – The Public Services (Social Value) Act 2012.

Spending Officers must take Social Value into account when awarding a contract in excess of £3,000 for Supply, Services or Works. Social Value requirements must be included in the specification, the award criteria and the evaluation of bids.

A minimum of 5% of the overall award marks must be allocated to Social Value where Most Economical Advantageous Tender (MEAT) is used. It should be noted that a Supplier's bid cannot be rejected if they decline to offer Social Value unless Social Value is a fundamental part of the specification, and in such cases it must be shown as a mandatory requirement.

Details of the Social Value offered by the preferred Supplier must be included in the written report to the Corporate Procurement Manager or the Strategic Enabler, Finance and Resources, where reports are required.

The Spending Officer must monitor and record details of the performance and benefits obtained through the Social Value offered.

General guidance regarding Social Value can be obtained from Corporate Procurement.

3. CROSS REFERENCES

[Standing Order 1/6](#) – Authorisation or Expenditure and Certification and Retention of Documents

[Standing Order 1/22](#) - Anti Fraud and Corruption Policy

[Standing Order 2/12](#) – Code of Conduct

[Standing Order 2/15](#) – Declaration of Membership of External Organisations and Acceptance of Donations, Gifts and Hospitality

Standing Order 2/14 – Equality Impact Assessment

[Standing Order 2/25](#) - Outside Employment and Secondary Contracts Policy

[Standing Order 22/2](#) – Partnership Working

Standing Order 2/20 – Whistle Blowing Policy

Standing Order 22/7 – Corporate Risk Management

The Authority's Financial Regulations

Procurement Manual

4. KEY CONSULTEES

Procurement staff

Team Leader, Service Support Administration

Facilities Manager

The Strategic Enabler - ICT

Transport and Engineering Workshops Manager

Finance Manager

The Strategic Enabler – Finance and Resources

Sandwell MBC – Legal Services Department

Sandwell MBC – Internal Audit Department

The Strategic Enabler - Strategic Hub

Area Commander - Strategic Enabler Community Risk Management

Station Commander - Haden Cross

Station Commander – Community Safety

Station Commander – Technical Rescue Unit

Station Commander – Solihull

Group Commander - Black Country North

West Bromwich Green

Willenhall Blue

Highgate Green

Woodgate Valley Red

The Strategic Enabler – DICE

Safety, Health and Environmental Team

FBU

UNISON

Fire Officers' Association

5. EQUALITY IMPACT ASSESSMENT

The EIA Preliminary Assessment classed this standing order as low impact and a full Equality Impact Assessment was not required.

6. OWNERSHIP

This standing order was approved by the Fire Authority.

7. RESPONSIBILITY AND REVIEW/AMENDMENT DETAILS

7.1 Responsible SET Member/Department

The Strategic Enabler – Finance and Resources/Corporate Procurement.

7.2 Created/fully reviewed/amended

December 2009 fully reviewed by the Corporate Procurement Manager

March 2011 amended by the Corporate Procurement Manager

Amendment made to EU Threshold, section 2.7 and 2.11.1, December 2011, by Senior Contracts Manager, Procurement

September 2014 fully reviewed by Corporate Procurement Manager

October 2014 amended by Corporate Procurement Manager

September 2015 amended to include changes in The Constitution made on 29th April 2015, The Public Contract Regulations 2015, and the introduction of an e-tendering system by the Senior Contracts Manager, Procurement.