

## WEST MIDLANDS FIRE SERVICE PROCUREMENT PROCEDURES

### 1. STRATEGY

It is the policy 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 these standing orders 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 four documents to ensure Spending Officers receive the support they need when undertaking any kind of procurement activity. These documents are as follows:

- Standing Order 8/1 – Procurement Policy;
- Standing Order 1/8 – Procurement Procedures;
- Procurement Manual; and
- Financial Regulations (Refer to Finance and Procurement Intranet Library).

**This standing order must also be read in conjunction with the Procurement Manual which is available on the Finance and Procurement Intranet Library. 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 (Standing Order 8/1) and related guidance.

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

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 Orders and Financial Regulations

These standing orders apply to capital and revenue expenditure. They 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).

#### 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 Administrative Officer, Secretariat detailing the nature of their interest.

Secretariat 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 2/15 – Acceptance of Donations, Gifts and Hospitality for further guidance).

## 2.3 Definition of Terms:

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

**'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 Director of Finance and Procurement.

**'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 Director of Finance and Procurement.

**'Formal Quotations'**: an offer to provide goods, services or works in writing, using the Authority's standard Quotation documentation, as provided by Corporate Procurement and Secretariat.

**'Formal Tenders'**: an offer to provide goods, services or works in writing, using the Service's standard documentation for the completion of Tenders as provided by Corporate Procurement and Secretariat.

**'Framework Agreement'**: an arrangement set up by 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.

**'Most Economically Advantageous Tender'**: represents value for money when assessing both quality and cost. Typically used as the basis to assess more complex Tenders higher in value and/or risk.

**'Procurement Manual'**: the guidance notes, together with a number of standard documents and forms, which support the implementation of these standing orders. The manual is available on the Finance and Procurement Intranet Library.

**'Secretariat'**: the section charged with the responsibility for despatching, opening and registering Formal Quotations and Tenders and notifying the successful tenderer of the Authority's intention to award. This section is also responsible for the retention of all documentation relating to Formal Quotations and Tenders.

**'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.

**'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 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 Director of Finance and Procurement 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 are specified and when considering Quotations and Tenders, that outcomes are evaluated on a comparable basis.

In respect of income, these Procurement Standing Orders 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 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 provided by other Public Sector Organisations, for example, FireBuy, Buying Solutions (previously Office of Government Commerce Buying Solutions - OGCbs), other Fire Authorities and so on, the Spending Officer must ensure that they offer value for money. 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 these standing orders 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 these Procurement Standing Orders, the appropriate estimated value shall be the Contract Value. Values (or estimated values) used in the operation of these standing orders 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.

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.

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.

## 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:

<b>Value of Purchase (Contract Value)</b>	<b>Procurement Process</b>	<b>Procedure</b>
Under £3,000	Obtain 3 Quotations if appropriate.	Section 2.8
£3,000 - £29,999	3 written Quotations  Where the estimated Contract Value exceeds £10,000 3 sealed written Quotations must be obtained	Section 2.9
£30,000 up to £99,999	Formal Quotations from at least three Suppliers processed through Secretariat	Section 2.10
£100,000 – E U Threshold	Formal Tenders from at least three Suppliers	Section 2.11
Goods or services in excess of £139,893*  Works or construction in excess of £3,497,313*	Formal Tender (in accordance with EU Legislation).	Section 2.11

The Director of Finance and Procurement shall review all monetary limits (with the exception of the EU Thresholds) shown in these Standing Orders annually and any resulting amendments shall be reported to the Authority. This Standing Order will also be amended accordingly.

*\*European Public Procurement Thresholds*

*For the procurement of goods and services the expenditure threshold value is €206,000 Euros or £139,893.*

*For construction the expenditure threshold value is €5,150,000 Euros or £3,497,313.*

These limits are applicable for the period 1<sup>st</sup> January 2008 to 31<sup>st</sup> December 2009.

## **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; and
- proprietary item(s)

Reference should also be made to the special exemptions detailed in Paragraph 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 £29,999)**

This section shall apply to Contracts for the provision of goods, services or works where the estimated Contract Value is between £3,000 and £29,999 and there is no existing Contract or Framework Agreement in place.

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.

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 Director with line management responsibility 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 Paragraph 2.17 of this Standing Order) must obtain prior approval from the Director of Finance and Procurement.

All associated documentation is to be retained locally for six years.

## **2.10 Formal Quotations (Contracts valued between £30,000 and £99,999)**

In the case of Contracts with an estimated value between £30,000 and £99,999, Formal Quotations must be processed via Secretariat.

Where standard documentation is not being used approval should be sought from the Corporate Procurement Manager before proceeding, unless otherwise agreed.

Following approval, Spending Officers must submit the following information to the Administrative Officer, in Secretariat using the appropriate pro-forma:

- a completed Specification;
- a note of any special conditions that will apply;
- a list of tenderers (minimum of 3) 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 Secretariat at least one week prior to the Quotation despatch date. Secretariat will arrange for Quotations to be invited and returned.

Completed Quotations must be returned to Secretariat. The time of receipt of Quotations shall be recorded and Quotations shall remain in the custody of the Administrative Officer, Secretariat until the time of opening.

The Quotations will be opened in the presence of:

- the Administrative Officer, Secretariat;
- the Director of Finance and Procurement or their nominated representative; and
- the Corporate Procurement Manager or their nominated representative.

At the time Quotations are opened, the following information shall be recorded:

- the nature of the Contract;
- the name of each person by or on whose behalf the Quotation was submitted;
- the date and time of receipt of each Quotation;
- the date and time of opening of the Quotation;
- the names of all persons present at the opening of the Quotation, and
- the Quotation value or where this is not immediately apparent the words 'Schedule of Rates' shall be recorded.

The Quotations will then be referred to the appropriate Spending Officer for them to submit a report to the Director of Finance and Procurement detailing their recommendations and requesting approval to proceed.

Where a Quotation is received after the closing time and date, the Quotation shall be opened by the Administrative Officer, Secretariat, to ascertain the name of the person or persons submitting the Quotation. No details will be recorded or disclosed and the Supplier will be notified by the Administrative Officer, Secretariat Section that the Quotation cannot be considered. Secretariat will inform the Spending Officer of any late Quotations.

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.

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;

- that the offer requires clarification, the Spending Officer shall contact the Supplier to seek clarification; and
- an arithmetical error, subject to prior approval of the Director of Finance and Procurement 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 Director of Finance and Procurement, the appropriate Spending Officer must send a copy of the report and recommendations and all Quotations received to Secretariat and place an order with or send a successful letter to the chosen Supplier. Secretariat will retain a copy of all relevant documents, for audit purposes, for a period of six years and will communicate the outcome to the unsuccessful Suppliers.

## **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 Policy (Standing Order 8/1). Formal Tenders must be processed via the Secretariat Section.

Prior to commencing the procurement process a report must be submitted to the Executive Committee or Authority detailing the rationale for the forthcoming tender exercise and including the proposed route to market and funding provisions.

### **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 2006 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. For example, Part B Services do not need to be advertised. To confirm whether a Contract necessitates advertising, Spending Officers shall contact the Administration Officer, Secretariat or Corporate Procurement to seek advice.

Any Contract for the provision of goods or services for which the estimated Contract exceeds £139,893 or any works or construction Contract for which the estimated Contract Value exceeds £3,497,313 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 thresholds are applicable to 'Public Contracts' with effect from 31<sup>st</sup> January 2008 and are revised every two years.

All OJEU notices shall be placed by the Administrative Officer, Secretariat who will also provide advice in this regard.

General guidance regarding EU Procurement Rules can be accessed on the Office of Government Commerce website <http://www.ogc.gov.uk/> or from Corporate Procurement.

### **2.11.2 The tendering process**

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

- public advertisement (in the EU Regulations this is known as an Open Procedure);

- select list following public advertisement and pre-qualification exercise (in EU Regulations this is known as Restricted Procedure);
- negotiation;
- approved list of pre-qualified Suppliers; or
- further competition under a Framework Agreement.

### 2.11.3 Public advertisement

Any Contract where a public advertisement is required must comply with the following guidance.

Methods of advertisement **may** include:

- Official Journal of the European Union (OJEU) - mandatory when value exceeds EU Thresholds;
- WMFS Procurement website;
- portal websites specifically created for Contract advertisements;
- national official journals;
- tender electronic daily;
- Supply2gov;
- local and national newspapers; and
- other specialist publications or trade journals.

All such advertisements will be placed by the Administrative Officer, Secretariat, who will advise on layout and content.

Advertisements must instruct Suppliers to demonstrate their capability in areas specific to the nature of goods, services or works being tendered (for example, technical capacity, financial stability, insurance cover, similar Contract experience).

The Secretariat Section is responsible for administering the Formal Tender process and will send the appropriate paperwork to all persons applying for Tender documentation who meet the criteria.

Those Suppliers who do not meet the criteria will be notified by the Secretariat Section indicating the criterion that they failed to demonstrate or areas where information was omitted.

### 2.11.4 Select list following public advertisement and pre-qualification exercise

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

- A minimum of 14 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 the Administrative Officer, Secretariat Section, who will advise on layout and content.
- All firms indicating an interest must be sent a pre-qualification questionnaire (PQQ), which will be produced by Corporate Procurement in conjunction with the appropriate Spending Officer.
- The purpose of the PQQ is to assess potential Suppliers in the following areas:
  - economic and financial standing including insurance cover;
  - technical ability and capacity;



- health and safety;
- equal opportunities; and
- sustainability.
- The process for the issue and receipt of PQQs will be handled by Secretariat.
- 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. Only Suppliers who meet the pre-qualification criteria will be included on the Select List. The Administrative Officer, Secretariat, will notify all applicants as to whether they have been included.
- Any appeal by an unsuccessful applicant or request for 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 Administrative Officer, Secretariat, who will provide a written response to the applicant.
- All those included on the Select List must be invited to Tender. If there are fewer than three persons who have expressed an interest or who meet the pre-qualification criteria, then the written approval of the Director of Finance and Procurement must be sought, prior to inviting Tenders.

#### **2.11.5 Developing the Invitation to Tender (ITT)**

All Tenders will be developed using the standard Tender documentation, provided by Secretariat. Unless otherwise agreed with the Corporate Procurement Manager the invitation to Tender 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 (lowest whole life cost or Most Economically Advantageous Tender) on which the Tenders will be evaluated;
- the evaluation criteria against which the Tenders will be evaluated (including weightings);
- the conditions of Contract or specimen contractual agreement (advice should be sought from Corporate Procurement and Secretariat 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).

### **2.11.6 Developing Specifications**

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, or service for delivery.

The Spending Officer must ascertain what are the relevant British, European or International Standards which are necessary to describe the required quality.

To comply with the EU Directives the use of brand/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.

### **2.11.7 Developing the Tender Evaluation Criteria (Contracts exceeding £100,000)**

Under the EU Regulations, there is an obligation to state the criterion on which the Tenders will be evaluated in addition to the relative weighting given to each criterion. Although this is not a mandatory requirement for Contracts valued at between £100,000 and the EU Threshold it is 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 evaluation of Tenders and must be published in either the Tender advertisement or the Tender documentation.

The basic criteria shall be either:

- Highest price – where payment is to be made to the Authority, for example, disposal of assets; or
- Most Economically Advantageous Tender (MEAT) or lowest price.

If the last criterion is adopted it must be further defined by reference to sub-criteria which may refer only to relevant considerations. These may include price, service, quality of goods, running costs, technical merit, previous experience, delivery date, cost effectiveness, environmental considerations, aesthetic and functional characteristics, safety, after sales service, technical assistance and any other relevant factors.

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; and
- criteria that has already been applied as part of the pre-qualification process

Once the Tender documentation is complete the Spending Officer or Corporate Procurement Officer should forward it to the Administrative Officer, Secretariat who will despatch the complete Tender to all short listed Suppliers

### **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 two weeks must be allowed for the submission of Tenders following despatch.

All communications in relation to Tender correspondence must be issued, returned and opened via Secretariat.

Secretariat, in conjunction with the Clerk, will ensure that all Tenders are opened at the same time, as soon as possible after the closing date and time.

Tenders will be returned to and opened at Fire Service Headquarters in the presence of: -

- the Chairman of West Midlands Fire and Rescue Authority or their nominated representative
- the Clerk or their nominated representative
- the Administrative Officer, Secretariat (as nominated by the Director of Corporate Services);
- the Director of Finance and Procurement or their nominated representative; and
- the Corporate Procurement Manager or their nominated representative.

Upon opening a summary of the main pricing and terms of each Tender must be recorded in the Tender Schedule (see following list), which must then be stamped and initialled by all officers present at the opening:

- the nature of the goods, materials to be supplied or the work to be executed or the services to be supplied (title of the Tender);
- the name of the person or firm who has submitted the Tender;
- the date and time of receipt of each Tender;
- the date and time of opening of the Tender;
- the names of all persons present at the opening of the Tender; and
- the Tender value or where this is not immediately apparent the words 'Schedule of Rates' shall be recorded.

The Tenders will then be referred to the appropriate Spending Officer for evaluation.

Where a Tender is received after the closing time and date, the Tender shall be opened to ascertain the name of the person or persons submitting the Tender. No details will be recorded or disclosed and the Supplier will be notified by Secretariat that the Tender can not be considered.

Secretariat will inform the Spending Officer of any late Tenders.

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 Corporate Procurement Manager. In the event of only one Tender being received the Corporate Procurement Manager may request that additional bids are obtained.

#### **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 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, the Spending Officer shall contact the Supplier to seek clarification; and
- an arithmetical error, subject to the prior approval of the Director of Finance and Procurement 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

Approval to accept Quotations and Tenders is summarised in the table below:

Contract Value	Approvals Required for Quotations and Tenders
Up to £3,000	<p>If lowest quote, accept.</p> <p>If wish to accept other than lowest quote, the reasons and justification must be recorded and retained by Spending Officer.</p>
Above £3,000 up to £29,999	<p>If lowest quote, accept (subject to the signing provisions contained in Standing Order 1/6)</p> <p>If wish to accept other than the lowest quote, report to be submitted to Director with line management responsibility to obtain approval prior to acceptance.</p>
Over £30,000 and up to £99,999	<p>Spending Officer must submit written report to Director of Finance and Procurement to obtain approval prior to acceptance or in his or her absence another Corporate Board Member.</p> <p>Copy of the report to be forwarded to Secretariat for information and retention.</p> <p>If accepting other than the lowest Quotation Secretariat will forward a retrospective report to the Executive Committee or Authority for their information</p>
In excess of £100,000	<p>Spending Officer must submit written report to the Director of Finance and Procurement to obtain approval prior to acceptance or in his or her absence another Corporate Board Member.</p> <p>Such approval will be subject to:</p> <ol style="list-style-type: none"> <li>a) The contract being awarded to the supplier submitting the most economically advantageous tender or lowest price tender</li> <li>b) The value of the contract being within identified funding provisions</li> </ol> <p>If either of the above criteria are not met, a report must be submitted to the Executive Committee/Authority for consideration prior to the award of the contract.</p> <p>A report would also be submitted to the Executive Committee/Authority prior to the award of a contract if such a requirement was indicated by Members</p>

	<p>following receipt of the pre tender report (See 2.11)</p> <p>As a minimum this report must include the following information:</p> <ul style="list-style-type: none"> <li>• title or details of the Contract;</li> <li>• number of Tenders invited;</li> <li>• number of Tenders received;</li> <li>• date Tenders were opened;</li> <li>• details of recommended Supplier;</li> <li>• period of Contract (including any extension options);</li> <li>• value of the Contract;</li> <li>• whether the award is within the approved budget;</li> <li>• justification for the recommendation; and</li> <li>• any other relevant information, for example, savings or efficiency gains.</li> </ul> <p>A retrospective quarterly Summary Report must be submitted to the Executive Committee or Authority for information only. This will be produced by Secretariat in conjunction with the Spending Officer.</p> <p>In respect of Contracts in excess of the EU Threshold the 'mandatory standstill period' must be undertaken prior to submitting a report to the Director of Finance and Procurement or the Executive Committee/Authority.</p> <p>Once approved the Spending Officer must send a copy of the report and all Tenders received to Secretariat for retention.</p>
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#### **2.11.11 Debriefing of Suppliers**

Apart from the debriefing required or permitted by these standing orders, 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.

If a Supplier requests in writing the reasons for an award decision, the Spending Officer must give the reasons in writing within 15 days of the request. If requested the Spending Officer may also provide a debrief.

When conducting a debrief the Spending Officer must only provide information regarding the requesters bid. The value and/or any pricing details relating to any other bids must not be disclosed. Appropriate support can be provided by Corporate Procurement upon request.

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'.

#### **2.11.12 Award of Contracts and notification of Suppliers**

Spending Officers may accept Quotations where the total value is less than £30,000 provided they have been sought and evaluated in accordance with these standing orders.

Where the Contract Value is over £30,000, Secretariat are responsible for the notification of all Suppliers simultaneously, of the intention to award the Contract to the successful tenderer.

Every Contract in excess of £30,000\* shall be in writing and must specify:

- the goods, services or works to be provided and the conditions to apply;
- the provisions for payment (i.e. 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;
- the reference of the Framework Agreement where the Contract is being placed under a Framework Agreement; and
- any other matters specific to the Contract.

\*Contracts between £30,000 and £99,999 must be accepted by issuing a purchase order containing the above information.

Spending Officers shall consult with the Secretariat Section prior to awarding any Formal Tenders (over £100,000) to ensure that the standard documents regarding the outcome of Tender evaluation are used and the correct legal procedures are adhered to. A minimum period of 6 weeks is required by Secretariat to prepare all the paperwork and for Sandwell Legal Services to send formal Contracts to the successful tenderer 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 (for example, the date that the new Contract begins).

Notification of the acceptance of a Tender shall be sent in writing to the successful tenderer. Such notification will be issued by Secretariat and clearly marked 'Subject to Contract' where a subsequent formal Contract let by the Clerk to the Authority is required by these standing orders.

The Secretariat Section will retain a copy of all relevant documents for 6 years for audit purposes and will inform unsuccessful firms.

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 with an explanation of why the exercise was terminated to the Administrative Officer, Secretariat so that Suppliers can be notified and documentation can be held on file for audit purposes for a period of 6 years.

For EU Tenders, Secretariat shall publish details of the successful firm(s) in a Contract Award Notice placed in OJEU within 48 days of the Contract award.

### 2.11.13 Signature of Contracts (including Purchase Orders)

Contracts will be signed as follows:

Total Value	Method of Completion	Person Responsible
Up to £29,999	Signature	Person authorised as per Standing Order 1/6
£30,000 - £99,999	Signature	Director of Finance and Procurement or in his or her absence another Corporate Board Member.
Above £100,000	Signature and common seal of	Clerk to the Authority

	the Authority	
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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 Director of Finance and Procurement or in his or her absence another Corporate Board Member. An award letter is insufficient. Refer to section 2.17 for special exemptions.

## 2.12 Negotiation

This section of the standing order shall have effect where it has been decided that it would be in the best interests of the Authority that a Contract shall be let by way of negotiation.

If the Contract Value is above the EU Threshold, then negotiations are only permitted if the 'negotiation procedure' is used. Advice on this procedure should always be sought from the Corporate Procurement Manager.

Spending Officers wishing to let a Contract by way of negotiation must obtain the prior written approval of the Director of Finance and Procurement. Once approval is obtained, the Corporate Procurement Manager 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;
- only officers designated by the Director of Finance and Procurement or Corporate Procurement Manager shall be permitted to conduct negotiations; and
- a minimum of two officers must be present during all negotiations.

If the Contract Value is below £100,000 then a report on the financial or other benefits resulting from any negotiations should be submitted to the Director of Finance and Procurement, prior to the award of any Contract.

If the Contract Value is above £100,000 then a report on the financial or other benefits resulting from any negotiations must be submitted to the next available Executive Committee or Authority Meeting, prior to the award of any Contract.

## 2.13 Use of approved lists of pre-qualified Suppliers

Approved lists 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 firms ready to perform Contracts to supply goods, services or works of particular types including without limitation on the basis of agreed Contract terms; and
- criteria for the selection of firms from the Approved List.

No firm may be entered onto an approved list until there has been an adequate investigation by representatives of Finance, Procurement and Estates into the firm's

financial standing (where the Contract exceeds £30,000) 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.

Constructionline (which is a register of pre-qualified contractors and consultants) will be deemed to be an Approved List for the purpose of these standing orders and shall not be subject to the above requirements.

## 2.14 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 OGC Buying Solutions, FireBuy, Yorkshire Purchasing Organisation, etc.

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. This option may only be used for purchases of under £100,000.
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 (unless where explicit guidance is specified by the framework co-ordinating body, for example, when running a further competition using OGC Buying Solutions).

### 2.14.1 Option 1 - Placing an order under a Framework Agreement

Before proceeding to use a Framework Agreement to place a Purchase Order approval must be obtained from the Director of Finance and Procurement for all purchases. Please refer to section 2.17 (h) Special Exemptions.

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 of the Purchase Order must therefore be as follows:

<b>Total Value of Purchase Order</b>	<b>Person Responsible for Authorisation</b>
Up to £29,999	Person authorised as per Standing Order 1/6
£30,000 up to £100,000	Director of Finance and Procurement or in his or her absence another Corporate



### **2.14.2 Option 2 - Conducting a Further Competition exercise using a Framework Agreement**

Before conducting a Further Competition exercise using a Framework Agreement approval must be obtained from the Corporate Procurement Manager for all purchases less than £100,000.

Where the value of the purchase exceeds £100,000 a preliminary report will need to be submitted to the Executive Committee or Authority as detailed in section 2.11

When conducting a Further Competition exercise the following requirements must be taken into account:

- 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 these Standing Orders fixing a sufficient time limit to allow 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 these standing orders) on the basis of the award criteria set out within the Framework Agreement;
- acceptance of Quotations or Tenders must follow the guidance contained in these Standing Orders under section 2.11.10; and
- a letter of acceptance must be sent to the successful tenderer which must be signed as per the provisions of section 2.11.13.

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.

### **2.15 Extensions or variations to existing Contracts (Contract Values exceeding £3,000)**

To clarify an extension refers to an extension of the Contract period and a variation refers to changes or amendments to the Contract Specification.

Extensions or Variations may be undertaken to existing Contracts awarded competitively or following invitation to Tender provided that:

- the total value of the extension or variation is not greater than 25% of the original Contract Value;
- the Corporate Procurement Manager or Spending Officer is satisfied that no better terms or pricing could be obtained by obtaining competitive quotes or Tenders or that the nature or urgency of the work make it desirable that the same Supplier or contractor is employed;
- the extended Contract may involve further work at the same site or similar work at a different site;
- the original Contract was let in accordance with standing orders;
- the likely benefit of further competition would be outweighed by the administrative cost and/or delay involved;
- the additional volume and value of goods, services or works does not breach EU tendering thresholds;

- the interests of the Authority will not be compromised;
- there is sufficient budget provision available and Finance have agreed and confirmed the revised Contract Value; and
- the details of the extension or variation have been recorded in writing and sent to the Supplier.

For extensions or variations between £3,000 and £29,999 and where the total Contract Value does not exceed £30,000, a written report should be compiled and submitted to the Line Manager for approval.

For extensions or variations in excess of £30,000 a written report should be compiled detailing the required extension or variation and submitted to the Director of Finance and Procurement for approval or another Corporate Board Member in his or her absence.

For Contract extensions (only) in excess of £30,000 that were not incorporated as an option at the time of Contract advertisement and award, a retrospective report must be submitted to the Authority or Executive Committee for their information. In this instance there should only be one negotiated Contract extension per Contract.

Extensions or variations should not be agreed with Suppliers until approval has been obtained.

## 2.16 Contingency allowance – Estates or Building Works Contracts only

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

## 2.17 Special exemptions to these Standing Orders

Spending Officers wishing to enter into a Contract where there is deemed to be a 'special exemption' **must** obtain prior approval from the Director of Finance and Procurement, identifying the reason for the exemption and that part of the Standing Order to which it applies.

If the Director of Finance and Procurement was involved in the initial decision making process then approval for the exemption must be sought from the Director of Corporate Services.

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 Director of Finance and Procurement or duty Principal Officer must be obtained

- h) where the value of the purchase is less than £100,000 and an existing third party Framework Agreement can be used to place a purchase order (refer to section 2.14)

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. Secretariat will be responsible for informing OJEU of the exemption. Under no circumstances does the Authority have the power to waive its obligations under law.

Where a Contract or agreement is entered into under section 2.17 (above) a report must be submitted to the Director of Finance and Procurement prior to entering into the Contract or agreement or as soon as possible thereafter if paragraph 2.17 (g) applies. This provision does not apply to Estates for emergency building works of less than £5,000 in value.

Where a Contract or agreement is entered into under paragraph 2.17 (above) and its value exceeds £100,000, a retrospective report must be submitted to the next available Authority Meeting or Executive Committee.

Where an exemption has been granted under section 2.17 it will be deemed to be in force until such time when an alternative method of procurement is considered to represent better value for money. Once the original report has been submitted to the Director of Finance and Procurement, no further reports are required when items are called off the original Contract.

## **2.18 Bonds and Parent Company Guarantees**

The Spending Officer must consult the Director of Finance and Procurement about whether a Parent Company Guarantee is necessary when a candidate is a subsidiary of a parent company and:

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

The Spending Officer must consult the Director of Finance and Procurement about whether a Bond is needed where:

- the total value exceeds £500,000; and
- it is proposed to make stage 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 candidate.

## **2.19 Contract management**

Heads of departments responsible for devolved procurements are required to name a Contract Manager for each Contract.

Contract Managers must follow the procedures and guidance contained within the Procurement Manual.

## **2.20 Risk assessment and contingency planning**

A 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 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.

### **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 - Official Conduct

Standing Order 2/22 – Declaration of Membership of External Organisations and Possible Conflict of Interest

Standing Order 2/25 - Secondary Employment Policy

Standing Order 2/15 – Acceptance of Donations, Gifts and Hospitality

Standing Order 8/1 – Procurement Policy

Standing Order 22/2 – Partnership Working

The Authority's Financial Regulations

Procurement Manual

### **4. KEY CONSULTEES**

Procurement staff

Secretariat staff

Estates Management Team

Strategic Head of ICT and ICT Management Team

Workshops Manager

The Director of Finance and Procurement

Sandwell MBC – Legal Department

Sandwell MBC – Internal Audit Department

Sandwell MBC – Clerks Department

### **5. EQUALITY IMPACT ASSESSMENT**

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

### **6. OWNERSHIP**

This standing order will be submitted to the Authority for approval.

### **7. RESPONSIBILITY AND REVIEW/AMENDMENT DETAILS**

#### **7.1 Responsible Corporate Board Member/Department**

Director of Finance and Procurement.

#### **7.2 Created/fully reviewed/amended**

January 2004 by Administration Officer, Secretariat

April 2006 by Administration Officer, Secretariat and Senior Buyer, Supply Chain Section

January 2007 by Senior Buyer, Supply Chain Section

June 2008 amended by Purchasing Administration Manager, Procurement

March 2009 fully reviewed by the Corporate Procurement Manager