

CONTRACTS

GENERAL PROCEDURES

47. (1) In these Standing Orders the word “contractor” means a works contractor, a supplier of goods and services (including consultancy services).
- (2) All procedures for approval of contractors, inviting and receiving tenders and all other arrangements affecting contracts shall:
- comply with relevant legal requirements, EC Procurement Directives and associated Statutory Instruments and Regulations; and
 - seek to ensure that tenders are genuinely competitive and that best value is delivered for the Board.

CONTRACT DOCUMENTS

48. (1) The Assessor will prepare the contract documents setting out the scope, quality and quantity of the works or the goods and services. The Solicitor to the Board may be consulted on Conditions of Contract to be issued when inviting tenders.
- (2) The contract documents will state that the Board is not bound to accept the lowest or any tender.
- (2) Tenders received after the closing date and time will not be considered under any circumstances.

ELECTRONIC PROCUREMENT

49. The Assessor may direct that any suitable procurement procedure be carried out by electronic means of communication. Where such direction has been made the contract documents may be issued, tenders may be submitted and received, and information throughout the procurement process may be exchanged by electronic means. Such procedures may permit amendments to Standing Orders for the sole purpose of facilitating the procurement of a particular contract by means of electronic communication.

EVALUATION OF TENDERS

50. (1) Tenders shall be evaluated by the Assessor on the basis of most economically advantageous bid or where permitted lowest cost.
- (2) The proposed method of evaluation shall be specified in the tender documents. Where the proposed method is “most economically advantageous”, the criteria for the evaluation of tenders shall also be specified in the OJEU notice or the tender documents.
- (3) The evaluation process shall be fully documented by the Assessor.

- (4) Where these Standing Orders require that a contract must be approved by the Board, the criteria for the evaluation of tenders shall be included in the Assessor's report to the Board.

UNSATISFACTORY PERFORMANCE BY A CONTRACTOR

51. (1) If the Assessor considers that a contractor's engagement should be ended because of unsatisfactory performance, failing to keep to tendering procedures or contract conditions or failing to start work, he or she must report to the Board. This does not prevent the Assessor terminating a contractor's engagement immediately, in accordance with a right set out in a particular contract.
- (2) If the Board thinks there is a case to be answered, it will offer the contractor the opportunity to state its case.
- (3) The Board will decide what action to take against the contractor.

CONTRACT SECURITY

52. (1) If the estimated cost of a contract is more than £1.5million, the contractor will normally require to provide appropriate contract security to the Board. The Assessor shall consider what contract security may be appropriate, which may take the form of a performance bond and/or a parent company guarantee.
- (2) The Board and/or the Assessor may require any contract security considered appropriate on other contracts.

PARTNERSHIP AND OTHER COMPLEX CONTRACTS

53. It is recognised that some contracts are complex in nature, for example public private partnership transactions. Whether these relate to works contracts or goods and services contracts, the Assessor shall ensure that he or she obtains suitable advice in respect of procurement, legal, financial and personnel implications.

COLLABORATION AGREEMENTS

54. When the Board is participating in a collaborative Best Value procurement arrangement with other UK public sector bodies, the Board agrees that the lead authority's procurement regulations can be followed as an acceptable governance arrangement.

EU PROCUREMENT

55. (1) The procedure for the award of any contract depends upon the estimated value of the contract. The relevant values and the associated tendering procedure that will be applied by the Assessor must be in accordance with the EU Procurement Directives. These values will be the threshold values for the supply of goods, services or works contracts intimated from time to time by the EU Commission.

- (2) The Assessor must take into account the aggregated value of any requirement for goods, services or works to determine if it exceeds the EU threshold. If the aggregated value over the contract term equals or exceeds the relevant threshold the EU Procurement Directives apply to the award of each contract.
- (3) All procurement under the EU Procurement Directives shall be carried out with one of the following procedures;
- Open Procedure
 - Restricted Procedure
 - Negotiated Procedure
 - Competitive Dialogue
- (4) In relation to any contract award to which the EU Procurement Directives apply the minimum stand still period between the date of informing tenderers of the award decision and making the actual award of contract shall be in accordance with statutory requirements.

CONTRACTS FOR WORKS

QUOTATIONS AND COMPETITIVE TENDERS

56. (1) If the estimated cost of any one contract is no more than £50,000, the Assessor may seek quotations from suitably experienced contractors. Normally, more than one quotation will be sought.
- (2) Unless the Board decides otherwise, the procedure for placing a contract, where the estimated cost is more than £50,000 will be by competitive tendering.

CHOOSING TENDERERS

57. (1) Subject to Standing Order 56, the procedure for choosing tenderers shall be through an approved selection process as provided by:
- a Standing List of Contractors maintained by the Assessor and approved by the Board including lists held by the constituent Councils of the Board
 - “Constructionline” or other externally maintained list of contractors approved by the Board.

Where there is no appropriate list of contractors, the Assessor may choose from knowledge of specialist contractors.

- (2) Subject to sub paragraphs (3) and (4) below, if the estimated cost of carrying out work under any one contract is more than £1.5 million, the Assessor may choose no less than three contractors who will be invited to tender from one or more of the following sources:
- contractors responding to an advertisement placed on Lothian Valuation Joint Board’s website or other web portal service
 - contractors responding to an advertisement placed in at least one newspaper and/or one suitable trade journal inviting contractors to apply to tender;
 - contractors responding to a notice placed in the Official Journal of the European Union (OJEU) inviting contractors to apply to tender.

Where there is an insufficient response to the public advertisement and the OJEU notice, the Assessor may choose from knowledge of contractors.

- (3) Where the estimated cost is above the EU threshold, the Assessor will follow the requirements of the EU Procurement Directives.
- (4) Exceptionally, the Assessor may use the “negotiated procedure” only in circumstances allowed under the EU Procurement Directives.

SENDING IN QUOTATIONS AND TENDERS

- 58.** (1) If the estimated cost of any one contract is no more than £1.5 million, the Assessor may receive and open tenders.
- (2) Subject to sub paragraph (3) below, if the estimated cost of any one contract is more than £1.5 million, sealed tenders will be sent to the Chief Executive and Clerk to the Board. They will be opened in the presence of a member of the Board according to the rules set by the Board.
- (3) In the case of electronic tendering, the Assessor may receive and open all tenders according to any rules set by the Board.

ACCEPTING QUOTATIONS AND TENDERS

- 59.** (1) If the amount of a quotation for any one contract is no more than £50,000 the Assessor can accept it.
- (2) If the amount of the tender for any one contract is no more than £1.5 million, the Assessor can choose the most economically advantageous tender or where appropriate lowest cost. If the Assessor does not want to choose the lowest cost or most economically advantageous tender, the Board will be asked to choose a tender.
- (3) If the amount of the tender for any one contract is more than £1.5 million, the Board will be asked to choose a tender.
- (4) The Solicitor to the Board will sign:
- all contracts of more than £500,000
 - contracts of or less than £500,000 which, in the opinion of the Assessor are complex or otherwise unusual

All other tenders will be accepted by the Assessor.

CONTRACTS FOR THE SUPPLY OF GOODS AND SERVICES

PROCUREMENT ARRANGEMENTS

60. The Assessor will be responsible for the procurement arrangements on behalf of the Board, which involve contracts for the supply of goods and services (including the appointment of consultants). All contracts for the supply of goods and services should be made in accordance with the principles laid out in the Board's Code of Best Purchasing Practice, which is aligned with the Scottish Public Procurement Toolkit.

TENDERING ARRANGEMENTS

61. (1) The Assessor can choose the purchasing method for any contract if the estimated cost is not more than the aggregated threshold at which the EU Procurement Directive apply. The Assessor must take into account an assessment of the internal costs and benefits to the Board of a range of available purchasing methods.
- (2) The procedure for placing a contract where the estimated cost is more than the EU threshold will be in accordance with EU Procurement Directives.

SENDING IN TENDERS

62. (1) If the estimated cost of any one contract is no more than £1 million, the Assessor will receive and open tenders.
- (2) Subject to sub paragraph (3) below, if the estimated cost of any one contract is more than £1 million, sealed tenders will be sent to the Clerk and shall be opened in the presence of a member of the Board in accordance with any rules set by the Board.
- (3) In the case of electronic tendering the Assessor may receive and open all tenders according to any rules set by the Board.

ACCEPTING TENDERS

63. (1) If the amount of the tender for any one contract is no more than £1 million, the Assessor can choose and accept the successful tender.
- (2) If the amount of the tender sum for any one contract is more than £1 million, the Board will be responsible for choosing the successful tender.
- (3) The Solicitor to the Board will sign:
- all contracts of a value above the EU threshold
 - contracts of a value below the EU threshold which, in the opinion of the Assessor, are complex or otherwise unusual.

All other tenders will be accepted by the Assessor.

POST TENDER NEGOTIATIONS

- 64.** Subject to compliance with Standing Order 47, the Assessor can negotiate any aspect of a tender. An equitable procedure must be adopted which accords with:
- EU Procurement Directives
 - the principles of competitive tendering;
 - the terms and conditions included in the tender documents;
 - directions in the Chartered Institute of Purchasing and Supply's instruction booklet 'Post Tender Negotiations'.

CONTRACTS FOR PROPERTY

ESTATE MANAGEMENT

- 65.** (1) Unless the Board decides otherwise, the Assessor will be responsible for the management of the Valuation Board estate, including maintenance of property.
- (2) Any transaction for the purchase or sale of property exceeding £500,000 will be approved by the Board.
- (3) Any transaction relating to agreements exceeding an annual value of £500,000 will be approved by the Board.

ACQUISITIONS AND DISPOSALS

- 66.** Subject to Standing Order 65, the Assessor can on behalf of the Board:
- buy land or property so long as it has been specifically budgeted for;
 - market surplus property for sale or lease and to accept the highest offer subject to being satisfied that this represents full market value;
 - buy and sell property rights when this is required to help in the acquisition or disposal of a more valuable property and the cost can be offset against the project/disposal;
 - process any 'Right to Buy' application as deemed appropriate.

AGREEMENTS

- 67.** Subject to Standing Order 69, the Assessor can on behalf of the Board:
- process and conclude all rent reviews/extensions to leases/agreements;
 - terminate any lease/agreement;
 - grant wayleave agreements;
 - grant and to obtain a Minute of Waiver and to sell or acquire the superiority rights;
 - permit a tenant to assign his or her lease/agreement subject to the Board being in no worse a financial position;
 - grant or terminate temporary tenancies in respect of residential lets where deemed appropriate.