

# **LOTHIAN VALUATION JOINT BOARD**

## **CONTRACT STANDING ORDERS**

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## **CONTRACT STANDING ORDERS**

These Contract Standing Orders (the "Standing Orders") of the Lothian Valuation Joint Board ("LVJB") apply from 8 February 2016 and apply (with certain exceptions) to all contracts made by or on behalf of LVJB for the procurement of the execution of works, the supply of goods and materials to LVJB, and/or for the provision of services.

### **1 Preliminary**

#### **1.1 Extent and interpretation**

- 1.1.1 These Standing Orders must be interpreted in accordance with the key principles of transparency, equal treatment, non-discrimination and proportionality.
- 1.1.2 These Standing Orders apply from 8 February 2016 and apply, subject to the provisions of Standing Order 1.1.4, to all contracts made by or on behalf of LVJB for the procurement of the execution of works, the supply of goods and materials to LVJB, and/or for the provision of services (including consultancy services).
- 1.1.3 The Standing Orders are subject to the over-riding provisions of European Union, United Kingdom, or Scottish legislation. They are also subject to any EU Commission, UK government or Scottish Government guidance on public procurement that may be issued from time to time.
- 1.1.4 The Standing Orders do not apply to any of the following:
  - 1.1.4.1 contracts of employment;
  - 1.1.4.2 contracts solely relating to the lease or disposal of heritable property;
  - 1.1.4.3 circumstances in which a waiver of the Standing Orders has been granted in accordance with Standing Order 9.
- 1.1.5 The Standing Orders must be read in conjunction with, and all LVJB staff must comply with, the Scheme of Delegation to Officers, and the Financial Regulations. Where there is any discrepancy, the Standing Orders shall take precedence.
- 1.1.6 Failure to comply with these Standing Orders when making purchases or seeking offers may result in disciplinary action.
- 1.1.7 Any query regarding the application or interpretation of these Standing Orders should be made in the first instance to the Assessor.

#### **1.2 Definitions and interpretation**

- 1.2.1 "Act" means the Procurement Reform (Scotland) Act 2014;
- 1.2.2 "Assessor" means the Assessor and Electoral Registration Officer, the individual responsible for the day to day management of LVJB, LVJB being the procuring service in terms of these Standing Orders;
- 1.2.3 "Best Value" means the legal duty to secure continuous improvement in the performance of a local authority's functions as set out in section 1 of the Local Government in Scotland Act 2003 as follows:-

**"1 Local authorities' duty to secure best value"**

(1) It is the duty of a local authority to make arrangements which secure best value.

(2) Best value is continuous improvement in the performance of the authority's functions.

(3) In securing best value, the local authority shall maintain an appropriate balance among—

(a) the quality of its performance of its functions;

(b) the cost to the authority of that performance; and

(c) the cost to persons of any service provided by it for them on a wholly or partly rechargeable basis.

(4) In maintaining that balance, the local authority shall have regard to—

(a) efficiency;

(b) effectiveness;

(c) economy; and

(d) the need to meet the equal opportunity requirements.

(5) The local authority shall discharge its duties under this section in a way which contributes to the achievement of sustainable development.

(6) In measuring the improvement of the performance of a local authority's functions for the purposes of this section, regard shall be had to the extent to which the outcomes of that performance have improved.

(7) In this section, "*equal opportunity requirements*" has the same meaning as in Section L2 of Part II of Schedule 5 to the Scotland Act 1998 (c.46)";

- 1.2.4 "Constituent Authorities" means the authorities which have delegated their valuation and electoral registration functions to LVJB, namely the City of Edinburgh Council, East Lothian Council, Midlothian Council and West Lothian Council, and the phrase "Constituent Authority" shall be interpreted accordingly;
- 1.2.5 "Contract Owner" means the nominated contract owner for a specific contract;
- 1.2.6 "Convener" means the Convener of LVJB, a committee or sub-committee of LVJB;
- 1.2.7 "EU Thresholds" means the prescribed threshold values set by the EU Commission for supply, services or works contracts as they may be amended from time to time;
- 1.2.8 "Procurement Requirement" means a document setting out as a minimum:-

- 1.2.8.1 what is LVJB's requirement for the goods, works or services and why do we need it?
- 1.2.8.2 what are all the available options, including internal provision, which is the best and why?
- 1.2.8.3 can and should LVJB afford it?
- 1.2.8.4 what are the proposed supplier management arrangements and who is the nominated Contract Owner as required by Contract Standing Orders?
- 1.2.8.5 how do we track, measure and account for the benefits?
- 1.2.9 "Regulations" means the Public Contracts (Scotland) Regulations 2012 or successor legislation (as amended from time to time);
- 1.2.10 "Solicitor" means the solicitor to LVJB as appointed by LVJB;
- 1.2.11 "Schedule" means the schedule to these Standing Orders; and
- 1.2.12 "Standing Orders" means these standing orders including the Schedule and "Standing Order" shall be interpreted accordingly; and
- 1.2.13 "Treasurer" means the treasurer of LVJB appointed by LVJB in terms of paragraph 4 of Schedule 2 to the Valuation Joint Boards (Scotland) Order 1995.

### **1.3 General Principles**

- 1.3.1 The relevant officer with responsibility for procuring shall, prior to commencing any procurement process, ensure that an appropriate Procurement Requirement that meets the strategic and service objectives of LVJB is completed in order to ensure that Best Value is achieved and that the Procurement Requirement complies with relevant sustainable development and equality requirements. Where the approximate value of any proposed procurement is likely to exceed £50,000 the relevant Procurement Requirement or options appraisal shall require the approval of the Treasurer prior to proceeding to procurement.
- 1.3.2 Throughout the life of a contract the contract should be monitored by the Contract Owner in respect of performance; compliance with the specification and other terms of the contract; cost and benefits; Best Value requirements; equality requirements, delivery and risk management.

1.3.3 All procedures for initiating procurement, developing procurement plans, inviting and receiving tenders, approval of contracts, and all contractual arrangements entered into shall comply with LVJB's equality and sustainability requirements and policies and, where appropriate, contractual or procurement arrangements shall include the use of community benefit clauses.

1.3.4 All expenditure must comply with LVJB's Financial Regulations.

## **2 Procedures**

2.1 In addition to the obligations in Standing Order 1.3.3, before commencing a tendering procedure or making a purchase where no contract exists the Assessor shall consult with the Treasurer where appropriate to establish whether:

2.1.1 any existing contracts or framework contracts accessible to LVJB may fulfil their requirements; or

2.1.2 there is any existing provision within one of the Constituent Authorities or other resources which could be used.

2.2 Unless there is no suitable existing contract or framework contract in relation to a particular Procurement Requirement of LVJB, LVJB shall in relation to all relevant Procurement Requirements seek to use existing contracts, framework contracts or existing provision within one of the Constituent Authorities.

2.3 The procedure for the award of any contract shall depend upon the estimated aggregated value of that contract. The EU rules on aggregation of contracts shall apply and the artificial splitting of purchase orders or requirements to avoid the application of these Standing Orders is not permitted.

2.4 Subject to Standing Order 9, or where otherwise legally permitted in respect of proposed contracts which exceed the EU Thresholds, the minimum associated tendering procedures that must be applied are detailed in the Schedule.

2.5 The general EU principles of equal treatment, non discrimination, transparency and proportionality require a degree of advertising to enable open competition apply to all public contracts.

2.6 LVJB may reserve the right to participate in a tendering procedure to providers operating supported businesses, supported employment programmes or supported factories where more than 50% of the workers are disabled persons. Where this right is exercised by LVJB the contract award procedures provided by the Regulations and Act shall be followed.

2.7 Where legally permissible LVJB shall seek to ensure that for purchases or contracts of an estimated value of £50,000 or less that at least one Small or Medium Enterprise (SME) from the Constituent Authorities or an SME who is a

significant employer within the Constituent Authorities is invited to tender in any process. For future repeat procurements for similar goods, services or works LVJB shall seek to ensure that at least one new SME from the Constituent Authorities or a new significant employer within the Constituent Authorities is invited to tender in any process.

- 2.8 Direct purchasing below £3,000 without competitive tendering is permissible subject to the duty to secure Best Value.
- 2.9 The Treasurer shall be consulted as appropriate in respect of tendering arrangements for any proposed contracts with an estimated value of between £3,000 and £50,000.
- 2.10 The Treasurer shall advise on, and, as appropriate, make, tendering arrangements for any proposed contracts with an estimated value in excess of £50,000.
- 2.11 Direct purchasing above £3,000 without competitive tendering is permissible only in those circumstances that would be permitted by the Regulations or in accordance with Standing Order 9.
- 2.12 If an unsuccessful tenderer brings a written or formal challenge against LVJB in relation to a tender exercise or questions the integrity of the tender process, the recipient of the notice of challenge or shall inform the Treasurer and the Solicitor.

### **3 Role and Responsibilities**

- 3.1 The Assessor retains responsibility for selecting and appointing contractors, providers or suppliers for LVJB, but shall seek guidance as appropriate from the Treasurer . The Treasurer shall be consulted at the earliest opportunity to ensure that all purchasing arrangements are made in compliance with these Standing Orders.
- 3.2 The Assessor has responsibility for all contracts tendered and let by LVJB and is accountable to LVJB for the performance of their duties in relation to contract letting and management, which are:
  - 3.2.1 to ensure compliance with these Standing Orders;
  - 3.2.2 to ensure no contract is entered into by LVJB without seeking advice where appropriate from the Treasurer and the Solicitor and having proper regard to such advice;
  - 3.2.3 to ensure that appropriate contract security (for example guarantees or performance bonds) is obtained where required or considered prudent;

- 3.2.4 to prepare and approve where required by these Standing Orders an appropriate Procurement Requirement for each proposed purchase or contract;
- 3.2.5 to prepare, in consultation with the Solicitor and Treasurer , appropriate contract and tender documents which clearly specify the scope, quality and quantity of the works, goods or services;
- 3.2.6 to check whether there is any existing LVJB framework, Constituent Authority framework or other collaborative framework that can appropriately be used to achieve Best Value for LVJB before undergoing a further competitive tender process;
- 3.2.7 to keep all bids confidential subject to any legal requirements;
- 3.2.8 to ensure no supplier is requested by LVJB to provide goods, services or works without first having a valid purchase order in place;
- 3.2.9 to enter all purchase order information onto the relevant LVJB financial system prior to the service or goods being delivered;
- 3.2.10 to ensure that all necessary contract information for contracts of a value of £3,000 or more for goods and services and £10,000 or more for works is provided to the Treasurer for the purposes of maintaining an up-to-date contract register within one month of entering into a contract;
- 3.2.11 to ensure all relevant staff are familiar with these Standing Orders or other guidance issued in respect of these Standing Orders;
- 3.2.12 to ensure contracts and any appropriate contract security documents are signed before work, services or supply provision commences;
- 3.2.13 to put in place arrangements for efficient supplier management including the identification of a Contract Owner and monitoring of benefits and performance, for the entire duration of the contract;
- 3.2.14 to retain a copy of the contract and keep proper records of all contracts and tenders, including minutes of tender evaluation panels and other meetings;
- 3.2.15 to take immediate action in the event of a breach of these Standing Orders;
- 3.2.16 to consult with Elected Members on matters reasonably considered politically, reputationally or financially sensitive in relation to proposed procurement activity; and
- 3.2.17 to make appropriate arrangements for the opening of tenders and their secure retention so as to protect the integrity of the procurement process and where tenders are received in paper form to ensure they



are opened in the presence of an officer nominated by the Assessor together with a witness.

3.2.17.1 For particularly significant or complex projects or contracts, the Assessor shall ensure that tenders are opened in the presence of an officer nominated by the Treasurer together with a witness.

#### **4 Tender Documents**

4.1 The tender documents shall clearly set out the proposed method of evaluation as well as the scope, timing, quality and quantity of the works, services and supplies required by LVJB.

4.2 The Solicitor will be consulted:

4.2.1 on conditions of contract for particularly significant or complex projects or contracts; and/or

4.2.2 where LVJB is participating in a collaborative procurement arrangement with local, Scottish or UK governments, associated professional organisations or other public sector bodies.

#### **5 Evaluation of Tenders and Quotes**

5.1 Tenders and quotes shall be evaluated on the basis of either of the following:

- a) lowest cost; or
- b) most economically advantageous.

Lowest cost should generally only be the basis of evaluation for simple procurements of short-term, low-level services or goods of a standard specification.

5.2 Tenders and quotes received after the closing date and time stipulated for return of tenders, or tenders which are incomplete or in an incorrect format will not be opened or considered unless the Assessor, acting proportionately, decides that there are circumstances which allow it to exercise discretion in allowing consideration of the tender. The Treasurer must be consulted if tenders are submitted late, incomplete or in an incorrect format.

5.3 Tenders shall be evaluated by a tender evaluation panel which should comprise officers having sufficient knowledge and technical ability to enable them to evaluate detailed tenders appropriately. The evaluation process shall follow any guidance issued by the Treasurer and be fully and appropriately documented.

## **6 Acceptance and Award of Contracts**

- 6.1 Following the conclusion of the procedure for awarding contracts set out in these Standing Orders and, where applicable, the expiry of the mandatory standstill period, the resulting contract between LVJB and the successful tenderer shall be entered into following the approval process detailed in the Schedule. The signing of the contract document or letter of acceptance shall be in accordance with the Scheme of Delegation.

## **7 Eligibility to tender and termination, variation or suspension of a contract**

- 7.1 The Assessor, having due regard to legal advice from the Solicitor, may treat a potential tenderer as ineligible to tender where there are reasonable grounds to conclude that the contractor or potential tenderer:

7.1.1 has committed an act of grave misconduct in the course of their business or profession; or

7.1.2 falls within one or more of the other grounds set out in Regulation 23 of the Regulations or

7.1.3 has compiled, used, sold or supplied a prohibited list which: (i) contained details of persons who are or have been members of trade unions or persons who are taking part or have taken part in the activities of trade unions, and (ii) was compiled with a view to being used by employers or employment agencies for the purposes of discrimination in relation to recruitment or in relation to the treatment of workers, within the meaning of the Employment Relations Act of 1999 (Blacklists) Regulations 2010.

- 7.2 The Assessor may, in consultation with the Treasurer and/or the Solicitor where required, terminate, suspend or vary a contract, in accordance with the express or implied terms of the contract and may also take such further action with regard to any contract as LVJB is legally entitled to take.

- 7.3 The Assessor, will where appropriate, report any actions taken in accordance with Standing Order 7.1 to 7.3 to the next LVJB meeting.

## **8 Electronic Procurement**

- 8.1 Requests for quotations and invitations to tender should where practicable be issued and/or received by electronic means.

## **9 Waiver of Contract Standing Orders**

- 9.1 The requirement to comply with any provision of these Standing Orders may be waived in accordance with the table in 9.2 below if on considering a written report by an appropriate officer it is considered that the waiver is justified because:-

9.1.1 the circumstances of the proposed contract are covered by legislative exemptions including the nature of the market for the works to be carried out or the goods or services to be provided has been investigated and is demonstrated to be such that a departure from the requirement of Standing Orders is justifiable in accordance with EU law and principles (for example when for artistic or technical reasons, or for reasons connected with the protection of exclusive rights, the contract may only be awarded to a particular provider) or the contract is for works, goods or services that are required in circumstances of extreme urgency that could not have been foreseen; or

9.1.2 it is in LVJB's best interests.

9.2 Table setting out the relevant values and waiver approval requirements:

<b>Value</b>	<b>Reason</b>	<b>Approval Procedure</b>
0-£50,000	9.1.1 EU exemptions 9.1.2 best interests	The Assessor in consultation with the Treasurer where appropriate
£50,000-£250,000	9.1.1 EU exemptions 9.1.2 best interests	The Assessor in consultation with the Treasurer and the Chief Executive and Clerk
Above £250,000 for services or goods contracts and above £250,000 for works contracts.	9.1.1 EU exemptions	LVJB
Above £250,000 (above £25,000 in the case of consultancy spend)	9.1.2 best interests	LVJB

9.3 A record of the decision approving a waiver must be kept by the Assessor and a copy of such signed waiver provided to the Treasurer who shall where appropriate make an entry in the appropriate register.

## **10 Contract extensions or variations**

10.1 Subject to 10.2, the Assessor may authorise in consultation with the Treasurer an extension to a contract, or any other variation including a consequent change in price, provided such extension or variation is not contrary to the Regulations or LVJB's EU obligations and that any consequent change in price does not exceed £10,000 without first obtaining the approval of LVJB.

10.2 The Assessor shall not extend or vary a contract if such extension or variation is not expressly permitted by the contract without seeking advice from the Solicitor.

10.3 The EU rules on aggregation of contracts shall apply.

## **11 Review of Contract Standing Orders**

11.1 These Contract Standing Orders will be reviewed as deemed appropriate by LVJB, and in any event on at least a five-yearly basis.

## SCHEDULE

### RELEVANT VALUES AND ASSOCIATED TENDERING PROCEDURE

Total value for duration of contract or purchase (aggregation rules apply)	Procedure	Approval of contractual obligation	LVJB Approval
Up to £3,000	<p><b>Appropriate choice of provider</b> documenting reasoning and quote  <i>or</i>                      use existing local, national, LVJB or Constituent Authority framework or call- off contracts  <i>or</i>                      Public Contracts Quick Quote facility.</p> <p>Best Value must be delivered and this will usually be demonstrated by more than one quote.</p>	Assessor	Not required
£3,000 to £50,000 *	<p><b>3 written/formal quotations</b> –written description of requirements followed by written / electronic submission of quotes ( <b>only for contracts worth up to £25,000</b>)  <i>or</i>                      use existing local, national, LVJB or Constituent Authority framework or call- off contracts  <i>or</i>                      Public Contracts Quick Quote facility.</p>	Assessor, in consultation with Treasurer as appropriate	Not required
£50,000 to EU Thresholds for services and supplies *	<p><b>Invitation to tender following public advertisement</b> - Public Contracts Scotland portal and/or equivalent should be used  <i>or</i>                      use existing local, national, LVJB or Constituent Authority framework or call- off contracts</p>	Assessor, in consultation with Treasurer and Solicitor as appropriate	Not required
£50,000 to EU Thresholds for works	<p><b>Invitation to tender following public advertisement</b> - Public Contracts Scotland portal and/or equivalent should be used  <i>or</i>                      use existing local, national, LVJB or</p>	Assessor, in consultation with Treasurer and Solicitor as appropriate up to £250,000	Approval to award sought from LVJB where value exceeds

	<p>Constituent Authority framework or call- off contracts or Public Contracts Quick Quote facility up to a value of £50,000.</p>		£250,000
<p><b>Above EU Threshold for services and supplies *</b></p>	<p><b>Invitation to tender following advertisement in OJEU - Public Contracts Scotland portal and/or equivalent should be used</b> <i>or</i> use existing local, national, LVJB or Constituent Authority framework or call- off contracts</p>	<p>Assessor, in consultation with the Chief Executive and Clerk, Treasurer and Solicitor as appropriate up to £250,000</p>	<p>Approval to award sought from LVJB where value exceeds £250,000 or £25,000 in the case of services of a consultant.</p>
<p><b>Above EU Threshold for works</b></p>	<p><b>Invitation to tender following advertisement in OJEU - Public Contracts Scotland portal and/or equivalent should be used</b> <i>or</i> use existing local, national, LVJB or Constituent Authority framework or call- off contracts</p>		<p>Approval to award sought from LVJB</p>