

# Contract Procedure Rules

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## 1. Introduction

- 1.1 As a public body using public resources Cleveland Fire Authority must set and follow the highest possible standards of financial control and stewardship. These Contract Procedure Rules (CPR) give Elected Members and employees, procedures to follow which ensure the Authority's expected standards are met in relation to the procurement of goods, works and services for Cleveland Fire Authority and its Brigade.
- 1.2 These rules ensure that value for money is obtained, statutory requirements are met in terms of United Kingdom (UK) procurement law, and that the Authority's affairs are managed prudently and in an appropriately controlled and transparent manner. These rules will be subject to any relevant directives at the time being in force in the UK.
- 1.3 As a result of the UK leaving the European Union on 31 December 2020, amended iterations of the 'Public Contract Regulations 2015' will be applied with immediate effect.
- 1.4 The two main changes the Amending UK Legislation makes to note are:
  - The introduction of a UK only e-notification portal to publish, access and respond to procurement notices called 'Find a Tender' which will replace OJEU and TED for UK procurement.
  - The Amending legislation transfers the EU Commission's supervisory functions to the Cabinet Office. This means the Cabinet Office will be responsible for reviewing the financial thresholds for procurements as well as updating the procedures for the electronic communication of tenders (for example, considering the tools and devices which may be used for the electronic receipt of tenders or any exceptions to the obligation to require use of electronic means of communication).
- 1.5 In the longer term, the UK Government has made clear that it intends to make further changes to the procurement rules which will more than likely come into place late 2021.
- 1.6 These procedures are standing orders made pursuant to Section 135 of the Local Government Act, 1972, relating to contracts and are referred to as the Contract Procedure Rules.

## **2. Application of Contract Procedure Rules (CPR)**

- 2.1 These CPR apply to every contract for the supply of goods, materials or services or for the execution of works, so far as they are relevant to a contract of the type determined by the Authority, except as provided in 2.2 below.
- 2.2 These rules may not apply to contracts for the execution of works or the provision of services in which the professional knowledge and skill of suppliers is so specialised that it has a sole source or is limited in availability. Each occurrence will be gauged on its own individual merit.
- 2.3 No exception from any of the rules shall be made otherwise than by direction of the Authority or in cases of unforeseeable emergencies involving immediate risk to persons, property or serious disruption to Brigade services, through the Chief Fire Officer in consultation with the Legal Advisor and Monitoring Officer (and where necessary or where otherwise desirable with the Authority's Section 151 Officer). A record of a decision of any exception from any of the provisions of these CPR shall be compiled by the above officers in consultation with the Chair of the Authority and reported to the Authority's Executive Committee at the next available meeting or otherwise be included within a quarterly report of exceptions, which shall identify the case or urgency by which the exception shall have been justified.
- 2.4 For the purposes of any financial limit referred to in these rules, if the application of the rules to a particular contract cannot be identified until after opening of any tender, the value of the contract shall be as estimated by the Chief Fire Officer in consultation with the Head of Procurement (or equivalent) and where necessary with the Section 151 Officer. If the value of the contract exceeds or could potentially exceed Higher Value thresholds the tender process should follow the relevant Higher Value procedures and timetables.
- 2.5 The letting of any contract shall also comply with any legislation or regulations relevant to the contract, in particular the Public Contract Regulations 2015 (and any amendments or revisions thereto), Health and Safety Regulations, the Authority's Financial Procedure Rules and the Authority's Procurement Policy.
- 2.6 In respect of any contract to which, for whatever reason, the procedures set out in these rules do not apply, there shall be followed a procedure which
- has been determined and recorded prior to its commencement
  - ensures a level of competition consistent with the nature and value of the contract
  - is transparent and auditable
  - provides value for money, and
  - records the reasons for choosing the successful supplier

- 2.7 **The Public Services (Social Value) Act 2012** places a statutory requirement on public Authority's to consider the economic, social and environmental benefits of their approaches to procurement.
- 2.8 When preparing to procure or making arrangements for procuring a service contract or the carrying out of works where the estimated total contract value exceeds the Higher Value threshold, then consideration must be given to how the contract might improve the economic, social and environmental well-being of the Cleveland Fire Area as required by the 2012 Act.
- 2.9 At the outset of any procurement exercise the Authority must therefore consider:
- how what is proposed to be procured might improve the economic, social and environmental well-being of its area, and
  - how, in conducting the process of procurement, it might act with a view to securing that improvement
  - whether to undertake any consultation as to the matters that fall to be considered under the above.

### **3. The Principles of Tendering**

- 3.1 In order to demonstrate value for money a competitive exercise should be carried out between potential suppliers. Tender and quotation exercises will be transparent and fair.
- 3.2 All potential suppliers invited to submit tenders or quotations shall be provided in all instances with identical information and instructions. Where considered appropriate the Chief Fire Officer may permit potential suppliers to also submit variant tenders and quotations (i.e. tenders or quotations which do not comply with some or all of the requirements of the primary tender or quotation). The same opportunity to submit variant tender or quotation must be given to all potential suppliers.
- 3.3 The Chief Fire Officer shall ensure that records of all tenders and quotations received are kept in line with the Brigade's Record Management Policy.
- 3.4 Procurement activities will reflect the fact that suppliers are dealt with in an impartial, legal and ethical manner.

### **4. Procurement Team Involvement**

- 4.1 Brigade personnel will utilise the Procurement Team where any purchasing requirement is over the £5k threshold or where any requirement under the £5k threshold has an ongoing contract term and associated Terms and Conditions.

- 4.2 The Authority's Procurement thresholds are defined within section 7 and Appendix 1.

## **5. Whole Life Costing**

- 5.1 Before any Procurement exercise commences, the procurement lead must calculate its estimated value in accordance with the following;
- 5.1.1 Where the contract period is fixed the estimated value shall be the total estimated maximum value of the supplies, services or works to be supplied over the period covered including any extensions to the contract.
- 5.1.2 Where the contract period is unknown, the estimated value shall be calculated by multiplying the estimated annual value by 4.
- 5.1.3 For feasibility studies the estimated value shall be the value of the scheme or contracts which may be awarded as a result.
- 5.1.4 Where the Authority leads on any collaborative procurement and where any other Authority contributes to the total value of that procurement, it is the estimated total value that should be applied in determining the correct procedures to be applied under these rules.

## **6. Disaggregation**

- 6.1 A procurement opportunity should not be sub-divided for the purpose of reducing the total value of the contract. For example if the procurement requirement was £18,000 then this cannot be split into four smaller opportunities quite simply to bring the requirement into the lower value threshold.
- 6.2 Disaggregation can be defined simply as the separation of a purchase into several smaller purchase requisitions or contracts to avoid thresholds and competitive procedures.

## **7. Procurement Thresholds and Routes to Market**

- 7.1 The following procurement thresholds should be based on the whole life cost of the required goods/services/works as identified in section 5 and must take into account all aspects of the procurement including any additional costs such as annual maintenance, system upgrades etc.
- 7.2 Full details of each of the below processes associated with the thresholds are contained within Appendix 1 – Route to Market Process Map.

### ***Procurement Requirements below £5,000***

- 7.3 Where the procurement requirement is below £5,000, is not covered by an existing contract and has no ongoing contract term, a purchase order can be placed directly by the budget holder with the selected supplier.

***Procurement Requirements between £5,000 and £25,000 (Goods, Services) or between £5,000 to £50,000 (Works)***

- 7.4 Goods and Service requirements between £5,000 and £25,000 or Works between £5,000 to £50,000 will be managed **by the Procurement team** via a competitive quotation process whereby at least 3 formal quotations must be obtained via e-tendering.
- 7.5 Brigade Personnel should engage with the Procurement Team to ensure appropriate procurement planning takes place, development of bid documentation.

***Procurement Requirements between £25,000 and £180,000 Higher Value threshold (Goods, Services) or between £50,000 to £4m Higher Value threshold (Works)***

- 7.6 Goods and Service requirements between £25,000 and £180,000 or Works between £50,000 to £4m will be managed **by the Procurement team** via a competitive procedure either through a suitable framework or open tender via e-tendering.
- 7.7 Brigade Personnel Units should engage with the Procurement Team to ensure appropriate procurement planning takes place, development of bid documentation.

***Procurement Requirements above Higher Value thresholds (Goods, Services and Works)***

- 7.8 Goods, Service and Works requirements above Higher Value thresholds will be managed by the Procurement team via a competitive procedure either through a suitable framework or full tender procedure via e-tendering.
- 7.9 Brigade Personnel should engage with the Procurement Team to ensure appropriate procurement planning takes place, development of bid documentation.

## **8. Procurement through Framework Agreements**

- 8.1 If the Chief Fire Officer considers it appropriate to maintain an internal framework of suitable suppliers or participate in collaborative framework agreements for particular types and/or values of work the following procedure shall apply:
- 8.2 Where the Authority has entered into a framework agreement for the provision of specific goods, services or the execution of works then that framework agreement must be used to purchase those specific goods, services or the execution of works.

- The provisions for tendering regarding procedures, specifications, selection and contract award
- The agreement may be with a single supplier or several, if several then there should be a minimum of three.

### **Introduction to external frameworks**

- 8.3 A procurement framework is an agreement put in place with a provider or range of providers that enables the Authority to either place orders direct for goods and services (direct award without competition) or run a mini competition process (Call off) for goods and services with the framework suppliers.
- 8.4 The purpose of procuring through a framework is to enable the Authority to award contracts (Either direct award or mini-competition) without going through a full procurement process which can be costly and time consuming especially at Higher Value threshold level.
- 8.5 Framework procurement provides direct access to a supply base that is tested on capability, experience and cost modelling; Procuring this way creates efficiencies within the Procurement process and also as the majority of framework agreements are priced on volume further economies of scale can be leveraged through increased buying power.

### **When external framework agreements should be used**

- 8.6 The procurement team will always endeavour to advise on the most efficient and compliant route to market for any Procurement requirement; should a framework agreement be identified as a potential route to market, the below assessment will be carried out on the framework agreement by the Procurement Lead.
- Does the framework agreement offer the right supplier base to meet the particular requirement? (E.g. it may be that if the framework agreement has been in place for a considerable time then a full procurement exercise may provide innovation from any new suppliers to the market).
  - Does the framework agreement offer the right level of choice in terms of the goods, services or works available (E.g. new products may have entered the market since the framework was established)
  - Is pricing under the framework agreement still considered competitive (E.g. a framework agreement could have been established at a time when relevant market prices were high). In the event of a contracting market, prices may become more competitive.

- Are the terms and conditions that apply under the framework agreement acceptable? (E.g. for any complex procurement requirement in relation to certain services the terms applying to call offs under the framework may envisage relatively straightforward requirements). As the terms and conditions must not be the subject of further substantive negotiation, it may be that there is a requirement to conduct a full procurement on the basis of a more appropriate set of terms and conditions

8.7 The final justification and business rationale for the route to market will be recorded on a 'Contract Preliminaries' form and approved by the Procurement Manager, with the contract award recommendation approved in line with the scheme of delegation.

### **Framework Compliance**

8.8 In order to use an external framework, the framework terms must clearly identify that the Authority can participate and use the framework agreement: this can either be identified by name or specific class of contracting Authority.

8.9 The framework itself must have been established in full accordance with Public Contract Regulations 2015.

8.10 Confirmation that the particular goods, services, works required are available under the framework agreement (i.e. within the scope of the framework agreement as originally advertised).

8.11 A framework agreement must not be used in such a way as to prevent, restrict or distort competition. It must also comply with the general principles of non-discrimination, proportionality, transparency and equal treatment. (E.g. when undertaking any call offs under a multiple provider framework agreement it is important that the process is transparent to all relevant suppliers and that everyone is treated equally).

8.12 Where the Authority is able to 'call off' from existing Framework Agreements provided by other public sector bodies (such as the Crown Commercial Services, purchasing consortia) then the Authority may benefit from using these Framework Agreements without entering into a separate procurement exercise. In such cases, advice should be sought from the Legal Advisor and Monitoring Officer. Contracts based on a Framework Agreement must be for the maximum duration of four years.

- 8.13 However, in some (albeit exceptional) cases, individual contracts placed under a framework may need to extend for longer than four years. (E.g. Procurement of goods and services such as vehicle leasing where a longer term contract would offer greater efficiencies and return on investment; further examples would be where maintenance of equipment with an expected useful life of more than four years is included or where extensive training of staff to perform the contract is needed”);
- 8.14 Contracts through a framework agreement can be awarded by either:
- applying the terms provided in the Framework Agreement (where such terms are sufficiently precise to cover the particular ‘call off’) without re-opening competition; or
  - where the terms prescribed in the Framework Agreement are not precise enough or complete (for the particular ‘call off’ ), holding a mini competition in accordance with the rules for mini-competitions and the following procedures:
    - inviting all suppliers within the Framework Agreement that are capable of executing the subject of the contract to submit written tenders, and
    - fixing a time limit sufficient to allow tenderers for each specific contract to be scrutinised, taking into account factors such as the complexity of the subject of the contract, and
- 8.15 Awarding each contract to the tenderer who has submitted the best tender on the basis of the award criteria prescribed in the Framework Agreement In order to ensure a consistent and compliant application of procurement via frameworks, all sourcing activity through frameworks (regardless of whole life cost) will be managed centrally by the Procurement team.
- 8.16 Framework consortia and procurement activity through framework agreements will be regular reviewed by the Procurement team to ensure value for money and commercial benefit is being achieved

#### **Available Frameworks**

- 8.17 In order to ensure a consistent and compliant application of procurement via frameworks, all sourcing activity through frameworks (regardless of whole life cost) will be managed centrally by the Procurement team.
- 8.18 The Authority is either members or associate members of the following Procurement consortia which ensure direct access to their framework agreements.

Consortia	Type	Solutions
NEPO (North East Procurement Organisation)	Goods, Services, Works	Construction, Energy, Facilities Management, ICT, Fleet, Food, Professional services, Social care.
ESPO (Eastern Shires Purchasing Organisation)	Goods, Services	Facilities Management, Waste & environment, fleet & highways, HR, Safety & security. IT hardware & software
YPO (Yorkshire Purchasing Organisation)	Goods, Services	Control & restraint, Verification software, Uniform, Incident command control software, Laundry, Smoke Alarms, Training.
CCS (Crown Commercial Services)	Goods, Services, Works	Construction, energy, Facilities management, recruitment solutions, ICT hardware & software, professional services.
NHSBS (NHS Business Services)	Goods, Services	Audit services, bill validation, construction consultancy, IT solutions, managed print, legal services, travel management.

- 8.19 The above list is not an exhaustive list and does not include any frameworks that are available to the Authority which have been let by other emergency services organisations and the National Fire Chiefs Council.

#### **Review of frameworks**

- 8.20 Framework consortia and procurement activity through framework agreements will be regular reviewed by the Procurement team to ensure value for money and commercial benefit is being achieved

### **9. Contract Opportunities, Public Notices**

- 9.1 All procurement exercises where the estimated value of £25,000 or more must be advertised on Contracts Finder within 24 hours of the time when the Procurement is advertised via the Authority's e-tendering portal or website. Procurement exercises over the relevant Higher Value threshold must be advertised on find a tender as well as contracts finder.

<https://www.gov.uk/contracts-finder>

<https://www.find-tender.service.gov.uk/Search>

- 9.2 For all proposed Contracts which are advertised a period of at least ten working days should be allowed between the date when an Invitation to Tender becomes available to all bidders and the opportunity closing date.
- 9.3 The Contract Opportunity Publication must express the nature and purpose of the Procurement Exercise, stating where further details may be obtained, how and to whom an interested supplier is to respond and any other requirements such as suitability requirements or explanatory information.
- 9.4 If the Estimated Value exceeds the relevant Higher Value threshold the Procurement lead must ensure that the Contract Opportunity Publication is first published on the find a tender portal and then on Contracts Finder.
- 9.5 The advertisement of any contract opportunity does not apply in relation to the below:
- purchase by auction
  - the work to be executed or the goods, materials or services to be supplied consist of repairs to or parts for existing machinery or plant
  - purchase or repair of patented or proprietary article or articles sold only at fixed price
  - the goods, materials or services to be purchased are such that effective competition is prevented by government control
  - the prices of the goods, materials or services to be purchased are controlled by a trade organisation or for other reasons there would be no genuine competition
  - the goods, materials or services to be purchased can be obtained by use of a public authority's previously tendered contract, providing that it is clearly stated in the scope of the contract that it is available for Cleveland Fire Authority to use
  - the goods, materials or services are to be purchased by agreement with one or more public Authorities. However, in this case, by prior agreement, the contract procedure rules of one of the participating Authorities are to be adopted, e.g. collaboration/partnering

## **10. Transfer of Undertakings (Protection of Employment) Regulations, 2014 (TUPE)**

- 10.1 Officers undertaking procurement activity must consider any potential implications of TUPE at the earliest possible stage of the procurement process. The Chief Fire Officer and Legal Advisor and Monitoring Officer must be consulted as soon as potential TUPE issues have been identified.

## **11. State Aid**

11.1 State Aid is any advantage granted by a public authority through state resources on a selective basis to any organisation that could potentially distort competition and trade within the European Union (EU). It can apply to the provision of grants, loans, guarantees and the use or sale of an asset for free or at less than its market value.  
\*\* Currently awaiting further Government guidance on this which will ensure this section is updated once received

11.2 Prior to undertaking any tender exercise the Head of Finance and Procurement must assess whether there are any State Aid implications. Where such implications are identified they must seek advice from the Legal Advisor and Monitoring Officer before continuing with the procurement.

## **12. Receipt of Tenders, Quotations**

12.1 All quotations and tenders will be submitted via the Authority's e-tendering platform, to ensure a full and transparent audit trail all quotations and tenders are registered when received, and left unopened until the due time and date. (This is automatic with the e-tendering system).

### **Late Tenders**

12.2 A Quotation or tender received late but before the other tenders have been opened may be considered if there is evidence of technical difficulties within the e-tendering system which ensured that the bidder could not submit their proposal.

12.3 A tender rejected due to late delivery or other valid reason will not be opened and the bidding organisation will be informed after the analysis process.

### **Errors in Tender, Quotation Submissions**

12.4 When the Procurement Lead finds an error in a submission, the bidder will be advised that an error may exist in their offer and be given the opportunity to:

- Confirm that the submission stands in its current form.
- Withdraw the submission.
- Correct that part of the submission that is in error within a specified time frame.

12.5 No request by a supplier to amend a submission after the return date shall be accepted.

### **13. Evaluation of Tenders/Quotations**

- 13.1 All award criteria and sub-criteria together with weightings and sub-weightings must be disclosed within every competitive bid package.
- 13.2 An evaluation must be made of all tender or quotation responses by an evaluation panel. The number of people on the evaluation panel will be a minimum of two (2) but can vary depending on the type and complexity of the Contract.
- 13.3 Any collaborative procurement exercise must follow the same principles of evaluation and also the same governance procedures with regard to contract sign off and approval.
- 13.4 The Authority will evaluate and award Contracts to the Supplier(s) it considers offers the best value having regard to both price and quality factors. This is referred to as the 'most economically advantageous tender' (MEAT) and provides for the Contract to be awarded to the Supplier best able to meet the Authority's requirement, specification and budget.

### **14. Post Tender Negotiation and Clarification**

- 14.1 Negotiation can be used when deemed advantageous to the competitive process.
- 14.2 When negotiation is employed it should be conducted with short-listed bidders and a record of each negotiation maintained.
- 14.3 Negotiation focusing only on price will not be used during the tender process. During any Higher Value Procurement Process the Procurement Lead can enter into "Clarification" discussions to understand technical and operational issues of the offer that may result in a change to the cost of the contract.
- 14.4 During the negotiation and clarification process the Procurement Lead must ensure impartiality to all tenderers invited to negotiate.
- 14.5 Negotiation will be utilised **by trained Procurement personnel** and will be used to enhance better value of goods and services.
- 14.6 It is unethical in negotiation practice for tenderers commercial information to be used as a lever to reduce other offers.

### **15. Acceptance of Tender**

- 15.1 The Quotation or Tender for a Contract which has been assessed in accordance with the published award criteria, the preferred Quotation or Tender may be recommended for acceptance by the Procurement Lead.

- 15.2 If for any reason a preferred Quotation or Tender is withdrawn or ceases to be preferred before it has been accepted, the Procurement Team Lead may recommend another Quotation or Tender for acceptance.
- 15.3 Where the Cost of a Contract is above the Higher Level threshold, before a Tender for the Contract is accepted, between notification of the provisional award decision to suppliers who submitted Tenders and the date on which the successful Tender is accepted there shall be a standstill period of 10 working days.
- 15.4 All contracts recommended for approval must be approved by the Authority's contract governance group and executive committee for any above the Higher Value threshold before any engagement with the successful/unsuccessful suppliers commences.

## **16. Signature of Contracts**

- 16.1 The Authority's Legal Advisor and Monitoring Officer shall be the agent of the Authority to sign on behalf of the Authority all contractual documents (including Licences and external Service Level Agreements) agreed to be entered into by or on behalf of the Authority. The Authority's Monitoring Officer authorises contracts up to the value of the High Value threshold.
- 16.2 Contracts which are for a value of the Higher Value threshold or more shall be either:
- executed by the Authority's Monitoring Officer, or,
  - executed under the Authority's seal
- 16.3 No contract for a value of the Higher Value threshold or more will be signed without the approval of the Authority's Executive Committee.

## **17. Contracts to be in Writing**

- 17.1 All contracts shall be the subject of an Authority order or other formal contract and shall specify (a) the work, materials, matters or things to be furnished, had or done; (b) the price to be paid, with statement of discounts or other deductions; and (c) the time or times within which the contract is to be performed.

## **18. Notification of Contract Award**

- 18.1 The Procurement Team Lead must notify the successful Tenderer of the acceptance of their Tender and for all Procurement Exercises with an Estimated Value of £5,000 or more this notification must be in writing.
- 18.2 Where a Contract with an Estimated Value of £25,000 or more is awarded the Authority must publish information as required by the Public Contracts Regulations 2015 on Contracts Finder within a reasonable time.

18.3 Where the Authority has awarded a contract via a Framework and the value is over £25,000 or more than a contract award notice must also be placed in contracts finder.

## **19. Registers**

19.1 A register of all Tenders received and contracts subsequently placed shall be kept by the Chief Fire Officer. The register shall be open to inspection by any Elected Member of the Authority, the Legal Adviser and Monitoring Officer and the Treasurer and shall be regularly inspected by the Authority's Auditors.

19.2 The Authority is also required by law to publish ALL CONTRACTs over £5,000 on an electronic Contract Register.

## **20. Post Contract Variations**

20.1 Any variation to extend the period or value of a Contract (other than those already provided for within the original terms of the Contract) may be approved by the procurement lead, where Best Value to the Authority can be demonstrated.

20.2 The Treasurer and the Monitoring Officer shall be consulted if approval of a proposed variation would mean that the Supplies, Services and / or Works to be added to or deleted from the Contract would render the Contract substantially different in scope and cost.

20.3 In relation to any such variation, the Contract Officer must ensure that before the variation is approved:

- The variation can be made without the Authority breaching Procurement Directives and any relevant English law;
- The Cost of the Contract after the variation is within the financial capability of the Authority
- Either that provision has been made for the cost of the variation in the Authority's approved budget or that appropriate adjustments to the budget are made in accordance with Financial Regulations.

## **21. Contract Management**

21.1 Throughout the duration of a contract, the designated project manager, or, where no project manager has been appointed, the procurement team must monitor the contract/contractor in respect of:

- Performance
- Compliance with the specification and the contract
- Cost
- User satisfaction
- Risk management

## **22. Contract Extensions**

- 22.1 An extension to a Contract may only be permitted where the details of any extension provisions were included within the scope of the Contract, tender documents and contract notice (where relevant).
- 22.2 Prior to exercising a contractual right to extend a Contract, the Procurement Team Lead must ensure that approval from the appropriate Head of Service (or higher authority if this is deemed appropriate).

## **23. Contract Termination**

- 23.1 No contract prior to its expiry date shall be terminated without first obtaining advice from the Legal Adviser and Monitoring Officer.
- 23.2 Where a contract is coming to its natural expiry and is no longer required, notification should be sent to the contractor by the Procurement lead.

## **24. Disposal of Supplies**

- 24.1 When the Chief Fire Officer determines, under his delegated power to authorise the disposal of surplus supplies, that competitive Quotations or Tenders shall be sought, the Contract Officer shall seek to comply with the essence of Contract Procedure Rules.
- 24.2 The Contract Officer shall take instructions as necessary from a head of Paid Service in relation to the disposal method to be followed and the extent to which the CSOs shall be applied in the circumstances of the proposed disposal.
- 24.3 The Contract Officer shall ensure compliance with any recycling, environmental protection, data security and / or electrical supply requirements arising from any disposal.

## **25. Liquidated Damages and Performance Bonds**

- 25.1 Every contract which is deemed to be high risk in terms of business continuity, value or amount and is either for the execution of works or for the supply of goods, materials or services, shall, unless the Chief Fire Officer otherwise decides after consultation with the Authority's Legal Adviser and Monitoring Officer, provide for liquidated damages to be paid by the supplier in case the terms of the contract are not duly performed, and the Authority shall also require and take sufficient security for the due performance of any such contract. In the case of any such contract for the execution of works such security shall be provided by requiring the retention of a proportion of the contract sums payable until the work has been satisfactorily completed and maintained and, unless the Chief Fire Officer, after consultation with the Authority's Legal Adviser and Monitoring Officer considers it unnecessary in any particular case, additional provision of a bond for due performance.

## **26. Other Remedies for Breach**

- 26.1 In every written contract for the supply of goods, materials or services which exceeds £5,000 in value or amount a clause shall be inserted to secure that, should the supplier fail to deliver the goods, materials or services or any portion thereof within the time or times specified in the contract, the Authority, without prejudice to any other remedy for breach of contract, shall be at liberty to determine the contract either wholly or to the extent of such default and to purchase other goods, or materials, as the case may be, of the same or similar description to make good (a) such default or (b) in the event of the contract being wholly determined the goods, materials or services remaining to be delivered. The clause shall further secure that the amount by which the cost of so purchasing other goods, materials or services exceeds the amount which would have been payable to the supplier in respect of the goods, materials or services, as the case may be, replaced by such purchase if they had been delivered in accordance with the contract shall be recoverable from the supplier.

## **27. British Standards**

- 27.1 Where an appropriate British Standards Specification or British Standard Code of Practice, issued by the British Standards Institution or Euronorm Standard, is current at the date of the tender, every contract shall require that, as the case may be, all goods and materials used or supplied and all workmanship shall be in accordance with that Standard.

## **28. Prevention of Corruption**

28.1 There shall be inserted in every written contract a clause empowering the Authority to cancel the contract and to recover from the supplier the amount of any loss resulting from such cancellation, in any of the following circumstances:

- if the supplier shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward:
- for doing or forbearing to do, or for having done or forborne to do, anything in relation to the obtaining or execution of the contract or any other contract with the Authority or
- for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Authority; or
- if the like acts shall have been done by any person employed by him/her or acting on their behalf (whether with or without the knowledge of the supplier) or
- if in relation to any contract with the Authority the supplier or any person employed by him/her or acting on their behalf shall have committed any offence under the Bribery Act, 2010, namely;
  - (i) Section 1 – offence of bribing another person, through offers, promises or through giving a financial or other advantage to another
  - (ii) Section 2 – offence relating to being bribed, as a recipient or potential recipient of a bribe
  - (iii) Section 6 – offence of bribery of a foreign public official
  - (iv) Section 7 – offence of failing to prevent bribery by a relevant commercial organisation

or shall have given any fee or reward the receipt of which is an offence under Section 117 of the Local Government Act 1972.

28.2 The form of invitation to tender shall include an assurance in writing from the tenderer that s/he will not follow, or has not followed, in relation to that tender, the under-mentioned practices:

- communicating to a person other than the person calling for tenders for the execution of the work, the amount of any proposed tender in accordance with any agreement or arrangement so to communicate
- adjusting the amount of any proposed tender for the execution of the work in accordance with any agreement or arrangement by the proposed tenderer, and any person other than the person calling for tenders for the execution of such work.

## **29. Non-Involvement with Serious and Organised Crime**

- 29.1 Where it is considered that the Authority is at risk from serious and organised crime through its procurement of goods, services or works, it shall include the following terminology where procurement requires advertisement or such other comparable public notice provision and in any invitation to tender (ITT);

### CONTRACT NOTICE/PUBLIC NOTICE PROVISION

- 29.2 The contracting authority has identified that the scope of this procurement falls within a business sector which may be attractive to infiltration by organised crime groups. The contracting authority therefore reserves the right to include enhanced appropriate checks/requirements at both the selection and award stages of the procurement.”

### INVITATION TO TENDER

- 29.3 The contracting authority has identified that the scope of this procurement falls within a business sector which may be attractive to infiltration by organised crime groups. The contracting authority therefore reserves the right to include enhanced appropriate checks/requirements at both the selection and award stages of the procurement. This may include, but not be limited to, clarification that a contractor/supplier or any person with powers of representation, decision or control therein, has not infringed the mandatory grounds for exclusion.

## **30. Blacklisting**

- 30.1 The Authority will seek the following warranty from bidders to ensure that they have not undertaken or otherwise engaged in “blacklisting”, namely, in relation to their employees on the basis of their trade union membership or trade union activities, that:
- The bidder has not compiled or disseminated any “blacklist” which is intended to discriminate against workers on the grounds of their trade union membership or trade union activities.
  - That it is understood that such activities are expressly prohibited by law and that should the bidder engage in such practices, the Authority has the right to exclude the bidder from tendering for any Fire Authority contracts.
  - The bidder also warrants that they have not been convicted of any offence under the Employment Relations Act, 1999 (Blacklists) Regulations, 2010.

30.2 The Authority's contract terms and conditions shall incorporate the following clauses;

'Subject to the provisions of the Force Majeure clause in these terms and conditions, the Authority may terminate this contract with immediate effect by notice in writing to the contractor/supplier at any time, if the contractor/supplier is convicted of any offence under the Employment Relations 1999 (Blacklists) Regulations, 2010.

### **31. Modern Slavery**

31.1 'Modern Slavery' is a term which encapsulates slavery, servitude, forced or compulsory labour and human trafficking. Where a bidder is a commercial organisation (for the purposes of Section 54 of the Modern Slavery Act, 2015) it shall provide assurances to the Authority that there is transparency in that organisation's supply chain through enforcement of its anti-slavery and human trafficking statement.

31.2 In performing its obligations under the agreement the contractor/supplier shall ensure that each of its sub-contractors/suppliers;

- comply with all applicable laws, statutes, regulations in force from time to time, including but not limited to the Modern Slavery Act, 2015, and
- shall take reasonable steps to ensure that there is no modern slavery or human trafficking in their supply chain or in any part of their business.

31.3 The contractor/supplier shall warrant that;

- neither the contractor/supplier nor any of its officers, employees or other persons associated with it;
- has been convicted of any offence involving slavery and human trafficking, and
- having made reasonable enquiries to the best of its knowledge, has not knowingly been the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body, regarding any offence or alleged offence of or in connection with slavery and human trafficking.

## 32. Delegated Authority Matrix

32.1 The Chief Fire Officer has the authority to delegate the practical delivery of the procurement process in accordance with the below delegated Authority Matrix.

Delegated Power	Delegated Officer	Authorised Officer
<b>Procurement – Contracts</b>		
<b>Contracts below threshold (Under £5,000)</b> <b>Contracts £5,001 - £25,000</b> <b>Contracts £25,001 – Higher Value threshold</b>		
Opening of Quotations/Tenders	CFO	HoFP <b>and</b> PM
Awarding and Signing of Contracts and Purchase Orders	CFO	ACFOSPR in consultation with LAMO
<b>Contracts above Higher Value threshold</b>		
Opening of Tenders	CFO	ACFOSPR <b>and</b> HoFP
Awarding Contracts	Executive Committee	
Signing of Contracts	LAMO	
Purchase Orders	CFO	ACFOSPR and HoFP

## 33. Glossary

Unless the context otherwise indicates, the following terms used in these rules have the meanings stated:

**Above threshold** – The procurement tendering thresholds (Higher Value) of any goods/service above £180,000 or works above £4m in total value

**Award criteria** – The relative weightings and scoring mechanism associated to a competitive exercise.

**Bid** - an offer made by a prospective supplier in the form of a tender, Quotation or as part of the negotiation process.

**Bidder** - A supplier offering to buy or sell a product, service. This term applies prior to the formation of contract.

**“Chief Fire Officer”** is the Chief Fire Officer of the Brigade who is responsible for letting and supervising the completion of a contract or of contracts of a particular nature

**Contract** - a legal agreement between the Authority and external suppliers for the supply of goods and services.

**Delegated Authority**- Delegated Authority is what a person, group or organization, etc receives from a higher power or authority e.g. The Chief Fire Officer, Cleveland Fire Authority.

**E-Tendering** - utilisation of an electronic tendering process that enables the full process from advert to assessment to be completed via computers, significantly reducing timescales for both the buyer and supplier.

**Exception** – A request (which is over the £5k threshold but under the Higher Value threshold) to place an order direct with a particular supplier with regard to a proprietary offering or business emergency.

**Framework Agreements** - an agreement between one or more contracting Authority’s (CCS, NEPO, Emergency Services, Consortiums) with one or more Suppliers to supply a range of works, goods or services.

**Proprietary Product** - a product that has unique characteristics produced by one manufacturer. A proprietary product specification could exclude Competitors from competing on equal terms. In consultancy the services of a named person or firm would be considered as a proprietary product.

**Purchase Order** - a serial numbered document raised by the buyer on a specific supplier for the supply of goods or services. This document is a formal legal agreement with specific conditions for the supply of goods.

**Purchase Requisition** - the formal request to obtain the supply of goods or services made by the internal client, authorised by the budget holder and passed to the procurement team.

**Quotation** - a statement of price, delivery and specification against the specific enquiry provided by a specific supplier.

**Specification** - a clear statement of requirement for goods and/or services, normally detailed as a generic specification to enable competition and the delivery of Value for money.

**Supplier** - an organisation that contracts with the Authority to supply goods, services or works.

**Tender** - a formal offer from a supplier to supply specified goods or services at a stated cost or rate.

**Terms and Conditions** - the specific conditions under which the Authority will enter into a contract or purchase order with a supplier.

**Total Contract Value** - the total value of a requirement calculated as the value of a “single” purchase and or the value of the total contract period or four years whichever is the lesser value

**Value for money** - a combination of criteria that includes competitive price, quality, reliability, timeliness and whole life costs analysis. This is not always portrayed by the lowest priced offer.

**Whole Life Cost** – Takes into account all aspects of the procurement including any additional costs such as annual maintenance, system upgrades etc.

Route to Market Process Map

