Shropshire and Wrekin Fire and Rescue Authority Standing Orders relating to Contracts

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Standing Orders relating to Contracts

Part I - General

A Scope

A1 The objective of these Standing Orders is to ensure that any contract or series of aggregated purchases is properly regulated. Every contract, whether made by, or on behalf of, Shropshire and Wrekin Fire Authority (the Authority), shall comply with these Standing Orders unless specially authorised otherwise (see Special Exemption). These Standing Orders do not apply to contracts of employment or contracts relating to interests in land.

A2 These Standing Orders are supported by Procurement Policies and Procurement Procedures set out in Brigade Orders. The Chief Fire Officer will review the Procurement Policies and Procedures from time to time.

A3 These Standing Orders must be used in conjunction with the Financial Regulations Standing Orders of the Authority and apply to all contracts for works and the supply of goods and of services to the Authority. They remain subject to any relevant statutory or regulatory requirement of law or the European Union (EU).

A4 There is delegated to the Chief Fire Officer and, in his absence, to the Deputy Chief Fire Officer, power to enter into contracts on behalf of the Authority, subject to compliance with these Standing Orders.

A5 In these Standing Orders, unless otherwise stated, references to the Chief Fire Officer include such officers to whom the Chief Fire Officer may have delegated in writing the powers in question. It also includes the Treasurer to the Authority, where he/she is making purchases on behalf of the Authority.

A6 Some financial limits specified within these Standing Orders are subject to EU regulation and review by the Authority. If there is any conflict between these Standing Orders and any EU or other legislative requirement the legislative requirement shall prevail.

A7 No increase in the amount payable by the Authority will be permitted except as specifically provided for in the contract.

A8 The notes to these Standing Orders (printed in italics) are for guidance only and do **NOT** form part of Standing Orders.

B Definitions

The following expressions shall have the following meanings assigned to them:

B1 *"A tender"* means a written offer to execute works or supply goods or materials or services.

B2 *"A quotation"* means a written estimate of the likely cost or charge for the execution of works or the supply of goods or materials or services.

B3 *"A contract"* means any contract in writing or otherwise for the execution of works, the supply of goods or materials or services. It excludes contracts for the sale or purchase of any interest in land or of employment.

B4 *"Consideration payable"* means the total value of consideration payable by or to the Authority under the contract or any series of contracts of which it forms a part.

B5 *"Negotiation"* means any alteration in the terms of a tender offered to the Authority and shall include any variation in the terms of a tender, whether by deletion of any requirement or provision or the rectification of any error or omission or otherwise.

B6 *"EU Legislation" or "EU* Regulations*"* mean the Public Contracts Regulations 2015 and any EU legislation that may be applicable that sets out the compulsory expenditure thresholds and procedures for procurement of supplies, services and works. The current EU thresholds can be found on the website for Simap - the information system for European public procurement at the following link:

http://simap.europa.eu/index en.htm

Explanatory Note

The EU Regulations set out specific requirements for the following:

(i) Wording of advertisements
(ii) Choice of procedures for tendering
(iii) Minimum timescales for the tendering procedure
(iv) Use of standards or brand names in specifications
(v) Criteria for the award of contracts
(vi) Contract award notices

B7 *"Aggregated Value"* means the total value of a series of purchases made of similar items or groups of items during the term of the contract.

B8 *"The Register"* means the contract register containing schedules of action taken in prescribed form which shall be maintained by Chief Fire Officer and be open to inspection by any Member of the Authority.

C Application

C1 The procedures in these Standing Orders apply to all contracts with third parties and to all sub-contracts (where a sub-contractor is specified by the Authority to a contractor), and to those contracts to which the provisions of the Local Government Act 1988 apply.

C2 The Authority requires that all contracts for ‘supplies’ or ‘services’ over the European Union Public Sector Contract Threshold have a tender exercise in accordance with EU legislation. This will ensure legal compliance and use of best practice. ‘Works’ contracts in excess of £1,000,000 must be procured in accordance with clause C3 below and may require an EU tender procedure.

Advice must be sought from the Authority’s Solicitor or procurement advisor in the event that the use of EU procedures is deemed to be necessary.

C3 A business case detailing the procurement process to be used must be prepared and approved by the Authority for all contracts with an aggregated value of more than £2,000,000.

Explanatory Note

The terms ‘supplies’, ‘services’ and ‘works’ in clause C2 above are defined in European Regulations.

In legal terms a contract can arise from an oral arrangement just as much as from written documentation. The value of the contract will dictate the form of the documentation as set out in these Orders. For contracts made by the placing of an order, the Authority’s official order form and the resulting invoice will be the written evidence; and for contracts where the order was initially placed orally or by purchase card the resulting invoice will be the written evidence. Where the contract arises from the acceptance of a tender, the document will be the Chief Fire Officer’s acceptance letter (or notification) and the tender documents.

D Special Exemptions

D1 Exemptions from these Standing Orders may be obtained where an alternative route may represent better value, there are special circumstances justifying such exemption, or in cases of urgency. The Chief Fire Officer and the Treasurer, after consultation with the Chair of the Authority, may exempt any contract from any such provision. All such exemptions shall be reported to a meeting of the Authority or relevant committee within 6 months of award.

In the absence or inability to act of the Treasurer, the Deputy Treasurer may agree such exemptions. Likewise, in the absence or inability to act of the Chair of the Authority, consultation shall be with the Vice-Chair of the Fire Authority.

No exemptions may be obtained in respect of contracts above the relevant EU thresholds

Explanatory Note

It must be capable of demonstration to a third party that such a course of action was justified and in the best interests of the Authority.

A formal process for obtaining approval for exemptions is provided which may be used if alternative purchasing arrangements represent best value.

E Consortium Purchasing and Collaborative Arrangements

E1 On every occasion the Authority enters into a contract where the proposed contract is one to which the Authority will be a party in common with other fire or public authorities as part of a consortium or collaborative arrangement, these Standing Orders will not be applicable, provided that such action does not contravene any statutory or EU requirement.

The officer managing the contract must be satisfied that the process followed is appropriate and legally compliant.

E2 Further requirements to ensure a consortium tender is bona fide are at Standing Order N 'Tenders to be Bona Fide'.

F When tenders are required

F1 Tenders must obtained prior to awarding a contract except in the circumstances set out in Standing Order G 'When Tenders Are Not Required'.

F2 The tendering process should also be followed for those contracts where the supplier will cause serious risk to the Authority or service delivery if the contract does not perform as required. An assessment of this risk is required for all contracts.

F3 Except as specified in Standing Orders E1 and G4, where the consideration payable to or by the Authority under any contract may be reasonably expected to exceed £15,000 the contractor~~s~~ must be chosen by one of the following methods:

(i) An open electronic tender
(ii) Selective Tendering by Advertisement
(iii) Selective Tendering from Identified Contractors
(iv) The EU Tendering Procedure

Where the consideration payable may be reasonably expected to exceed the European Union Public Sector Contract Threshold for 'supplies', 'services', or 'works', (as appropriate to the contract type), the contractor~~s~~ must be chosen using the EU Tendering Procedure.

Explanatory Note

Where contracts below the figures referred to in G2 are entered into, the spirit of Standing Orders shall be followed and, whenever practicable, two competitive quotations or catalogue prices shall be obtained.

Part II to these Standing Orders sets out Tendering Procedures.

G When tenders are not required

G1 If an exemption from a requirement to tender has been obtained as detailed in Special Exemptions above (Standing Order D).

G2 The value of the contract is less than £25,000 and contract failure would not create a serious risk to the Authority or service delivery.

G3 The goods or services are supplied under Consortium Purchasing and/or collaborative arrangements through its own process in accordance with Standing Order E.

G4 The goods or services are supplied under national, regional or other collaborative procurement arrangements.

G5 A contract may be entered into by the Authority other than in accordance with Standing Order F in the following circumstances, subject to consultation with the Chair and Treasurer of the Authority:

(i) Where there is only one supplier and no acceptable alternative.

(ii) Where it has been decided to standardise by buying from only one supplier.

(iii) For the extension of, addition to, or maintenance of, existing goods materials or services, where this can only be done satisfactorily by the original contractor or supplier.

(iv) For the urgent supply of goods, where the Chief Fire Officer is satisfied that the tender process would prevent the supply of goods within the required timescale.

(v) For the supply of used or second-hand goods or materials, where the market for such goods or materials is such that it would be unreasonable to tender, or where the time required to complete the tender process is likely to lead to the loss of opportunity to purchase a used or second-hand item.

(vi) For the supply of goods, materials or services in any other circumstances, where the Chief Fire Officer is satisfied that there are proper service reasons for not tendering for the supply of goods, materials or services, and where he is satisfied that there will be no financial disadvantage to the Authority as a result of not so tendering.

(vii) Where the Chief Fire Officer enters into a contract as described in sub-clauses (i) to (vi) above, it must be determined that such action is lawful and reasonable and a written record must be entered in the Register of the action taken and the reason and reported to the Authority.

Explanatory Note

Tenders are usually the most appropriate way to demonstrate public probity and to secure best value for the Authority.

Use of any one of the tendering procedures will be governed by a number of factors, the most important being the anticipated value of the contract in question.

H Contract Values

H1 Where the contract is for the purchase of a related group of items, the contract value is the total price, or estimated total price, of the group.

H2 Where the contract may extend over a number of years, the contract value is the total value over the whole contract (assuming all extensions are utilised).

H3 Where the contract is for goods to be provided by way of short-term hire, the contract value is the capitalised value of the goods to be provided. The capitalised value is obtained by multiplying the periodic payment to be made to the hirer by the minimum number of payments agreed to be made under the contract.

H4 Where the contract is continuous, it is worth the amount which the Treasurer certifies to be the total value of goods or services, which will be taken by the Authority under the contract during the life of the contract.

H5 Contract figures shall be calculated exclusive of VAT.

Explanatory Note

In determining contract values, care must be taken to ensure that the requirements of EU Regulations *are not breached. In the event of any uncertainty, advice must be obtained from the Authority's Solicitor and or procurement advisor.*

The total value of a contact where the various components are priced separately but bought from a single supplier to be used together will be for the cost of all the related items.

Part II - Tendering Procedures

The Service will use proprietary electronic tendering systems as its preferred means of advertising and obtaining tenders, including mini-competitions under established frameworks. The systems used shall include the following features:

- The tender opportunity is advertised in national and international electronic journals.
- Tenderers are able to download definitive contract documents.
- Pre-tender clarifications and updates to documents are made available to all tenderers.
- Tenders are received electronically.
- Tenders are only made available for assessment after the advertised closing date.
- Post-tender clarifications, acceptance letters, and non-acceptance letters are issued and recorded through the system.

I Advertising

I1 Selective Tendering by Advertisement

An advertisement saying what the contract is for and asking for the names of contractors interested in tendering may appear electronically, in at least one local newspaper circulating throughout the County area or in a relevant trade journal, where considered appropriate. Details shall be entered in the Register.

A copy of the advertisement may be sent to all appropriate contractors.

The number of contractors invited to tender shall be in accordance with Standing Order J2 (i) and (ii).

I2 Selective Tendering from Identified Contractors

Tenders may be invited from specialist contractors identified by the organisation. The number of contractors invited to tender shall be in accordance with clauses J2 (i) and (ii).

Explanatory Note

Suppliers may also be identified through consultation with users of similar goods or services or through review of specialist press, those who have previously provided (or been invited to provide) goods or services, or on advice of any specialist supporting the contract (for example an architect or consultant).

I3 The EU Tendering Procedure

Advertisements shall be placed in the Official Journal of the European Union to accord with European Law and any directive of the EU for the time being in force in the United Kingdom.

J Invitation to Tender

J1 Selection of contractors in accordance with this Standing Order for individual projects shall be made by the Chief Fire Officer or his duly nominated representative.

J2 Number of External Contractors to be Invited to Tender

(i) Contracts estimated to cost less than £25,000

Not less than 2 contractors shall be invited to tender.

(ii) Contracts estimated to cost £25,000 or more

Not less than 4 contractors shall be invited to tender, unless fewer than 4 contractors have applied and are considered suitable, when all shall be invited to tender.

(iii) Contracts estimated to cost £100,000 or more

Not less than 6 contractors shall be invited to tender, unless fewer than 6 contractors have applied and are considered suitable, then all shall be invited to tender.

J3 Tenderers will be advised that the Authority does not bind itself to accept the lowest or any tender and reserves the right to withdraw from the process at any time and for any reason.

K Submission and Opening of Tenders

K1 Form and Receipt of Tenders

Tenders will be issued and received through a commercial electronic tender management system, which will include systems to ensure consistent communications with tenderers and a controlled tender opening process.

K2 Where the circumstances so warrant, the Chief Fire Officer may postpone for a reasonable period of time the closing time and date for receipt of tenders, provided that all persons from whom tenders have been invited are notified by the same method and that no tenders have been opened.

K3 No substantive alteration or amendment shall be permitted to any tender received.

Explanatory Note

A variation to such procedures may be required as a consequence of the need to adhere to EU Regulations, or if advice to do so is received from the Authority's Solicitor or procurement advisor.

Wherever practicable a minimum of 10 working days should be allowed for the return of tenders, but officers should consider the adequacy of any time given.

Once all tenders have been evaluated, any corrected arithmetical error included in a successful tender should be referred to the tenderer for acceptance. No other amendment may be made.

L Acceptance of Tenders

L1 The Chief Fire Officer will identify the most economically advantageous tender, having regard ~~for~~ ***to*** cost and quality of supply and assessed in accordance with the criteria established prior to seeking tenders.

L2 The Chief Fire Officer may accept the tender which scores highest when assessed against the criteria referred to at L1 above providing that tender is considered to be compliant with any minimum standards set {and the cost falls within the approved budget].

L3 The Chief Fire Officer may, in his sole discretion, choose not to accept any tender.

L4 There should normally be no post tender clarifications. Any significant clarifications should be made through the tender process. Clarifications should normally be issued and received in writing through the electronic tendering system

It is recognised that in some circumstances, particularly complex tenders involving some element of contractors design, it may be necessary to carry out discussions with some or all of the tenderers in order to clarify some aspects of the bid. It may also be necessary to make minor variations during the contract as it is appreciated that some projects require iterations which may result in minor amendments to the contract. This is permitted but must be in accordance with the requirements of the EU regulations on amendments and must be minor in nature. It is important to ensure that the principles of fairness, equal treatment and transparency are still adhered to and that any discussions will not result in any breach of these principles or of the EU Regulations

Full records of all conversations and correspondence will be maintained, including details of suggested amendments from either party and the purpose, effect and justification for these proposals.

L5 Consortium Purchasing and Standing Offer Arrangements

Where the tender is for a standing offer comprising a range of different goods or services at different tender prices, the Chief Fire Officer, after consultation with the Chair or Vice-Chair of the Fire Authority, may accept the most suitable tender irrespective of contract value **PROVIDED THAT** full details of the contract in question shall be recorded in the Register together with a statement of reasons and reported to a meeting of the Authority or relevant Committee within 6 months of award.

Explanatory Note

A compliant tender is one that meets the specification criteria in all important aspects, and is submitted in accordance with the tender arrangements. A tender which does not meet the specification criteria or which is not submitted in accordance with the tender arrangements may be rejected and not considered. The reasons for this rejection must be recorded.

When carrying out clarification Officers must be aware of the risk of misinterpretation of their actions and ensure that sufficient records are maintained to demonstrate probity.

No substantive alteration or amendment to any tender shall be permitted.

Particular note should be taken of the clause L4 above. Clarification is, and must be seen to only be, a process for clarifying aspects of a tender – it is not to negotiate or to enable appointment of a contractor other than the initially successful tenderer.

The Chief Fire Officer may accept lowest cost tenders where expenditure is included in approved estimates. Where other than lowest cost tender is accepted in compliance with these Standing Orders, reasons must be recorded in the Register and reported to a *meeting of the Authority or relevant committee.*

M Tenders to be bona fide

M1 The following expressions in Standing Orders M2 and M3 below shall have the following meanings assigned to them:

(i) "Person" includes any persons and any body of persons, corporate or unincorporated.

(ii) "Person outside the Consortium" means, where the consortium is a partnership a person other than a partner or an employee of a partner or the partnership, or where the consortium is a company a person other than a company holding shares in the consortium or any employee of such a company or the consortium.

(iii) "Agreement" or "Any agreement or arrangement" includes any such arrangement or transaction, formal or informal and whether legally binding or not.

M2 Every Person submitting a tender for consideration by the Authority shall certify that it is a bona fide tender intended to be competitive and that the tenderer has not fixed or adjusted the amount of the tender by, or under, or in accordance with, any agreement with any Person and that he or it has not done, and undertakes not to do, at any time before the hour and date specified for the return of the tender, any of the following acts:

(i) Communicating to a Person, other than the person calling for those tenders, the amount or approximate amount of the proposed tender, except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain insurance premium quotations required for the preparation of the tender.

(ii) Entering into any agreement or arrangement with any Person that he or it shall refrain from tendering or as to the amount of any tender to be submitted.

(iii) Offering or paying, or giving or agreeing to pay or give any sum of money or valuable consideration directly or indirectly to any Person for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender for the said work any act or thing of the sort described above.

M3 In the case of a consortium submitting a tender for consideration by the Authority the consortium shall certify that it is a bona fide tender which is intended to be competitive and that they have not done and will not do at any time before the hour and date specified for the return of the tender any of the following acts:

(i) Entering into any agreement with any Person outside the consortium with the aim of preventing tenders being made or as to the amount of any tender or the conditions on which the tender is made.

(ii) Informing a Person outside the Consortium, other than the person calling for the tender, of the amount or the approximate amount of the tender, except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain insurance premium quotations required for the preparation of the tender.

(iii) Causing or inducing any Person to enter into such an agreement as is mentioned in paragraph (i) above or to inform the consortium of the amount of any rival tender for the contract.

N Nominated Sub-Contractors / Nominated Suppliers under a main contract

N1 No nominated sub-contractor shall be engaged in work for the Authority who has not first produced to the appropriate Officer of the Authority:

(i) A sub-contractor's tax certificate in accordance with legislation; and

(ii) A statement in writing satisfying the Authority as to compliance with the Authority’s policies, such as its health and safety policy.

N2 Sub-contractors or suppliers to be nominated to a main contractor shall be appointed in accordance with these orders, as if they were a contractor to be employed by the Authority.

N3 It shall be a condition of the employment by the Authority of any person (not being an officer of the Authority) to supervise a contract that, in relation to such contract, he/she shall comply with the requirements of this paragraph as if he were an officer of the Authority.

O The Contract

O1 Form of Contract

Every contract for the execution of work or the supply of goods or services exceeding £5,000 shall be in writing and signed by a person duly authorised by these Standing Orders. Verbal agreements or agreements made by the use of purchase cards are required to comply with the spirit of these Standing Orders.

O2 Every contract in writing shall specify:

(i) The work, materials, matters or things to be furnished, had or done.

(ii) Where appropriate, the price to be paid, with a statement of discounts or other deductions.

(iii) Where appropriate, the time or times within which the contract is to be performed.

(iv) Reference to the Authority's terms and conditions of contract.

O3 Liquidated and Ascertained Damages

Contracts for the execution of work shall provide, where appropriate, for liquidated damages to be paid by the contractor in case the terms of the contract are not duly performed.

*O*4 Standards

Where an appropriate British Standard or British Standard Code of Practice issued by the British Standards Institution or equivalent European Standard is current at the date of the tender, every contract shall, where reasonable and practicable, require that, all goods and materials used or supplied and all workmanship shall not be inferior to that standard.

O5 Termination of Contract

There shall be inserted in every contract executed as a Deed a clause empowering the Authority to terminate the contract and to recover from the contractor the amount of any loss sustained by the Authority as a result of such termination in each of the following cases:

(i) If the contractor or any person engaged by him shall have offered or have given or agreed to give to any person:

- Any gift or consideration of any kind as an inducement

- Any reward for doing or not doing anything in relation to the obtaining of the contract

- Any reward for showing or not showing favour or disfavour in relation to any contract with the Authority

(ii) If the contractor or any person engaged by him shall have committed any offence under the Bribery Act 2010 or shall have given any fee or reward, the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

(iii) If the contractor shall fail to comply with any provision of these Standing Orders.

Part III - Miscellaneous

P Sales

P1 Surplus goods and materials belonging to the Authority may be sold by the Chief Fire Officer subject to compliance with Financial Regulations.

P2 Where sales are proposed, the procedures set out in these Standing Orders for the purchase of goods shall be followed, but "highest" shall be substituted for "lowest" in relevant paragraphs.

Q The Appointment of Consultants

Q1 Any consultant, who is responsible to the Authority for the preparation and/or supervision of a contract on its behalf, shall:

(i) Comply with these Standing Orders as though he were the Chief Fire Officer, subject to the modification that the procedure to be followed for inviting, opening and accepting tenders shall be approved in advance by the Chief Fire Officer;

(ii) At any time during the carrying out of the contract, produce on request to any officer authorised by the Authority all the records maintained by him in relation to the contract; and

(iii) On completion of a contract, transmit all such records to the Chief Fire Officer.

R Agency Contracts

R1 In relation to a contract or sub-contract which is being let on behalf of a Public Agency, (e.g. the Home Office) any provision of these Standing Orders which is inconsistent with the Standing Orders of that Agency will at the discretion of the Chief Fire Officer not apply in relation to that contract.