

# West Yorkshire Combined Authority

## Contracts Standing Orders

### Contents

#### Part 1 - Contracts

1. Introduction
2. Compliance with Standing Orders and EU Legislation
3. Sealing Documents
4. Tendering – Financial Categories
5. Category A Procedures
6. Category B Procedures
7. Category C Procedures
8. Category D Procedures
9. Category E Contracts
10. Tender Criteria and Weighting
11. Nominated Sub-Contractors and Suppliers
12. Duties of Agents
13. Exceptions
14. Tendering Procedure
15. Acceptance of Tenders and Quotations
16. Equality of Tenders and Quotations
17. Records and Notifications
18. Contracts for Local Services and Education Transport Services
19. Approval of Local and Education Transport Service Tenders by the Authority Board
20. Tender Procedures for Local and Education Transport Services

2017/18

Approved at the Annual Meeting 29 June 2017

21. Receipt of Tenders for Local and Education Transport Services
22. Opening and Registration of Tenders for Local and Education Transport Services
23. Tender Criteria and Weighting
24. Acceptance of Tenders
25. Equality of Tenders for Local and Education Transport Services etc
26. Records and Notifications
27. Preparation and Signature of Contracts – Category A
28. Preparation and Signature of Contracts – Category B
29. Preparation and Signature of Contracts – Category C
30. Preparation and Signature of Contracts – Categories D and E
31. Preparation and Signature of Contracts – Local and Education Services
32. Contents of Contracts
33. Use of e-mail in Contracts and Awards
34. Issue of Final Certificate
35. Variations to Contracts
36. British Standards
37. Cancellation of Contracts in Cases of Corruption etc
38. Assignment and Underletting of Contracts
39. Restrictions on Contracts with Certain Persons
40. Work by Authority's Departments
41. Acquisition and Disposal of Interests in Land

## **Part 2 – Legal Proceedings**

42. Conduct of Legal Proceedings

## **Part 1 – Contracts**

### **1. Introduction**

- 1.1. This part of Standing Orders exists for the following main reasons:
  - 1.1.1. To protect the Authority, its Directors and other Officers involved in the award of contracts;
  - 1.1.2. To demonstrate that the Authority is obtaining value for money in the award of contracts;
  - 1.1.3. To provide the means of securing competition in the award of contracts;
  - 1.1.4. To prevent corruption, or allegations of corruption, in the award of contracts; and
  - 1.1.5. To ensure compliance with legislation and regulations.
- 1.2. In this part of Standing Orders these definitions shall apply:
  - 1.2.1. “the Director” or “a Director” means the Director to whom the relevant functions have been delegated within the Scheme of Officers’ Delegations of the WYCA.
  - 1.2.2. “budget holder” and “budget controller” have the meanings set out in the Financial Regulations of West Yorkshire Combined Authority.
  - 1.2.3. “Authority” means West Yorkshire Combined Authority.

### **2. Compliance with Standing Orders and Eu Legislation**

- 2.1. Every contract made by or on behalf of the Authority and all procedures relating thereto shall comply with these Standing Orders and Financial Regulations and no exception from any of the provisions of these Standing Orders and the Financial Regulations shall be made otherwise than in accordance with Standing Order 4.2 of the Procedure Standing Orders (Suspending and Amending Standing Orders).
- 2.2. Any subsidiary company of the Authority shall be required to adopt the provisions of Part 1 of these Standing Orders insofar as they are not inconsistent with, or in conflict with, any provisions of the Companies Act and regulations made thereunder or the Articles of Association of that Company.
- 2.3. No contract for goods services or an interest in property shall be granted to any employee of the Authority or any close relative of theirs without the written approval of two directors.

- 2.4. All relationships of a business or private nature with external contractors, or potential contractors, must be made known to the appropriate manager in accordance with the Officers' Code of Conduct. Orders and contracts must be awarded on merit, by fair competition against other tenders, and no special favour should be shown to businesses run by, for example, friends, partners or relatives.
- 2.5. Officers who engage or supervise contracts must declare any interest or relationship in accordance with the procedures set out under the Officers' Code of Conduct.
- 2.6. All Officers must be prepared to justify to the Authority their actions and those of their staff in relation to the invitation of tenders and the placing of work and should take all necessary precautions to safeguard the Authority, its staff and themselves against allegations that any person has been unduly favoured without proper cause.
- 2.7. It shall be a guiding principle, when any Director or Officer is making a determination under this part of Standing Orders, that in making such determination they have regard to the need to demonstrate that the Authority will obtain value for money and that reasonable steps are taken to ensure that no supplier or potential supplier is treated unfairly in the selection process and that a written record of each determination and the reasons for making it is kept on a file maintained by the Director or Officer for that purpose or on Proactis.

#### **European Union Legislation**

- 2.8. These Standing Orders shall be subject to any procedures that may apply pursuant to the Public Contracts Regulations 2015 and by reason of the United Kingdom's membership of the European Union ("EU") and if any conflict with Standing Orders arises, the former shall prevail.
- 2.9. A contract, or series of contracts, the aggregate amount or value of which exceed the financial thresholds set in EU Directives, shall be let only in accordance with the requirements of those Directives. The Purchasing Officer shall notify all Directors and Heads of Service of any changes in the financial thresholds.

*NB Financial thresholds set by EU Directives are reviewed every two years and as from 1 January 2016 they are:*

- **Public Works - £4,104,394**
- **Services - £164,176**
- **Supplies - £164,176**

- 2.10. Contracts must not be artificially divided to bring them below the relevant threshold.
- 2.11. Within 14 days of the commencement of each financial year, Budget Holders shall notify the Purchasing Officer of contracts to be let in the course of the financial year of which they are aware and which it is anticipated will fall within Standing Order 2.9 above to enable consideration to be given to the insertion of a Prior Information Notice in the Official Journal of the EU (“OJEU”).
- 2.12. Where a framework is in place tenders must be sought and evaluated, if necessary via mini-competitions, in accordance with regulations and the Purchasing Manual

### **3. Sealing of Documents**

- 3.1. A resolution of the Authority, a committee of the Authority or a decision of an Officer (where the committee or officer has the power) authorising the taking of any action shall be sufficient authority for sealing of any document necessary to give effect to such resolution. In other cases the Common Seal of the Authority shall be affixed to any document only when:
  - 3.1.1. sealing has been authorised by a resolution of the Authority or of a Committee or officer to which the Authority has delegated its powers in this behalf, or
  - 3.1.2. the Head of Legal and Governance Services has delegated authority to enter into the contract or agreement.
- 3.2. The application of the Authority’s Seal shall be authenticated by the signature of the Head of Legal and Governance Services or the Head of Paid Service.
- 3.3. The sealing of a document shall be entered in a register kept for that purpose in the custody of the Head of Legal and Governance Services. The Common Seal of the Authority shall be kept in a safe place in the custody of the Head of Legal and Governance Services or some other person authorised by the Head of Legal and Governance Services.
- 3.4. The Head of Legal and Governance Services shall be authorised to sign all other documents and in their absence any other Solicitor employed by the Authority shall be authorised to sign any such documents other than cheques and other negotiable instruments.

### **4. Tendering - Financial Categories**

- 4.1. Standing Orders 4 to 17 shall apply to all contracts except:-

- 4.1.1. to the extent stated otherwise in Standing Orders 18 to 26 in relation to contracts for Local Services and Education Transport Services; and
- 4.1.2. contracts for the acquisition or disposal of interests in land.
- 4.2. For the purpose of determining the requisite tendering procedure, the following financial categories shall apply to all contracts for the execution of works, the supply of goods or the supply of services (whether by or to the Authority):
  - Category A Up to £5,000
  - Category B Over £5,000 to and including £25,000
  - Category C Over £25,000 to and including £50,000
  - Category D Over £50,000 up to and including the OJEU threshold then in force
  - Category E Over the OJEU threshold then in force
- 4.3. Categorisation is to be determined on the basis of a proper and reasonable estimated value of the contract and contracts must not be artificially divided to bring them into a lower value category.

## 5. **Category A Procedures**

- 5.1. No quotations or tenders are required for this category of contract, but the relevant Budget Holder must be satisfied (and able to demonstrate to the Authority if required) that they are obtaining value for money.
- 5.2. Orders that fall within this category can be placed in writing, orally or by e-mail, but instructions given to a supplier must be confirmed by an official Purchase Order on Proactis.

## 6. **Category B Procedures**

- 6.1. Subject to Standing Order 6.2, the Purchasing Officer, in consultation with the relevant Budget Holder, or the Budget Holder themselves must invite at least three written quotations for all contracts within this category. Quotations may be submitted by e-mail or via the electronic tender management system. An order confirmed under this procedure must be placed via an official Purchase Order on Proactis.
- 6.2. The requirement to invite at least three quotations for this category of contract can be waived in writing by a Budget Controller or a Director, subject to them being satisfied that value for money will be obtained.

## **7. Category C Procedures**

- 7.1. Subject to Standing Order 7.2, the Purchasing Officer, in consultation with the relevant Budget Holder, must invite at least three tenders for all contracts within this category using the electronic tender management system then operated by the Purchasing Department.
- 7.2. The requirement to invite at least three tenders for this category of contract can be waived in writing by the relevant Budget Controller or a Director, and the Head of Legal and Governance Services acting together, subject to them being satisfied that value for money will be obtained.

## **8. Category D Procedures**

- 8.1. The Purchasing Officer in consultation with the relevant Budget Holder must invite at least five tenders for all contracts within this category using the electronic tender management system then operated by the Purchasing Department.
- 8.2. The requirement to advertise for and then invite at least five tenders for this category of contract can be waived in writing by a Director and the Head of Legal and Governance Services acting together, subject to them being satisfied that value for money will be obtained.
- 8.3. At least fourteen days before tenders are to be invited for any Category D contract, the Purchasing Officer shall be responsible for ensuring proper publication of at least one notice seeking expressions of interest for that contract. Notices shall be published via such media, electronic or otherwise, as the Purchasing Officer considers likely to circulate amongst persons who undertake such contracts.
- 8.4. Invitations to tender shall be sent to at least five of the persons who expressed an interest in response to the notice(s) or who have previously carried out work for the Authority and have submitted a Pre-Qualification Questionnaire for the contract under consideration. If fewer than five persons have applied and are considered suitable, invitations shall be sent to all such persons. A Director must approve the list of invitees.

## **9. Category E Contracts**

- 9.1. Whenever the Restricted Procedure is used, the notice placed in the OJEU inviting expressions of interest shall indicate that a minimum of five persons who express an interest will be invited to bid.
- 9.2. All tenders must be via the electronic tender management system then operated by the Purchasing Department.
- 9.3. The requirement to invite at least five tenders can only be waived with the approval of the Director in circumstance where to do so would be in

accordance with the Public Contracts Regulations 2015 and subsequent legislation.

- 9.4. Publication of Category E contracts by the Purchasing Officer shall be carried out strictly in accordance with OJEU requirements.
- 9.5. The tender shortlist must be approved by a Director.
- 9.6. The Purchasing Officer shall ensure that Contract Award Notices are submitted in accordance with the relevant EU Directive.

## **10. Tender Criteria and Weighting**

- 10.1. In all cases where tenders are invited, the relevant selection and evaluation criteria and weightings shall be agreed between the Budget Holder and Purchasing Officer, and in all cases be clearly set out in any Pre-Qualification Questionnaire and the Invitation to Tender.
- 10.2. For each Category E contract, the criteria for selection of the successful tenderers shall be only those permitted by the relevant EU Directive, but subject to that, shall be such criteria as may have been specified in the tender documents (e.g. price, quality, technical merit, aesthetic and functional characteristics, technical assistance, after-sales service delivery date, delivery period and completion date).
- 10.3. Tender evaluation criteria shall be set so that, as far as possible, the criteria may be scored on a numerical basis with the intention that the highest score taking all criteria into account will be awarded the tender.
- 10.4. Appropriate non-price criteria and weightings must be considered for all contracts above Category B. Contracts above Category B should not be evaluated on the basis of price alone except with the approval of the Budget Controller and the Head of Legal and Governance Services.

## **11. Nominated Sub-Contractors and Suppliers**

- 11.1. This Standing Order shall have effect where a sub-contractor or supplier is to be nominated to a main contractor.
- 11.2. The requirements of Standing Orders 4 to 10 above shall apply to the procurement of sub-contractors and suppliers who are to be nominated to a main contractor by the Authority.
- 11.3. The terms of any invitation to a sub-contractor or supplier to submit a tender or quotation shall require an undertaking by them that if they are selected they will be willing to enter into a contract with the main contractor on terms which indemnify the main contractor against the sub-contractor's or supplier's obligations under the main contract in relation to the work or



goods included in the sub-contract unless provision is made to the contrary under the conditions of contract.

## 12. Duties of Agents

It shall be a condition of the engagement by the Authority of any person (not being an Officer of the Authority) to supervise a contract that, in relation to such contract, they shall comply with the requirements of these Standing Orders and Financial Regulations as if they were an Officer of the Authority, and also with all other requirements of the Director or Officer concerned.

## 13. Exceptions

Standing Orders 4 to 10 above shall not apply to the execution of works or the purchase of goods or materials necessary for urgent maintenance repairs to land, buildings, vehicles or plant to prevent danger to authorised users or the general public or to prevent rapid and progressive deterioration, or to maintain essential or statutory services PROVIDED THAT the expenditure incurred shall be recorded and reported in accordance with the requirements for contracts of the relevant category within the Purchasing Manual.

## 14. Tendering Procedure

14.1. All tendering must be carried out via a secure electronic tender management system.

14.2. The Purchasing Officer shall be responsible for maintaining and operating an electronic tender management system.

14.3. All invitations to tender must contain precise details as to:-

14.3.1. the information required from the tenderers;

14.3.2. the evaluation criteria and weightings;

14.3.3. a closing date and time;

14.3.4. a statement that a tender that does not contain all the information required **may** not be considered valid;

14.3.5. a statement that a tender which is submitted late **will** not be considered; and

14.3.6. a statement that there is no obligation to accept the lowest price or any tender.

14.4. Any tender which does not contain all the required information may be rejected by the Budget Holder or a Director, as the case may be, in conjunction with the Purchasing Officer.

- 14.5. Any tender which is submitted late or submitted outside the electronic tender management system shall not be accepted for consideration without the approval in writing of the Purchasing Officer and the Head of Legal and Governance Services.

**15. Acceptance of Tenders and Quotations**

- 15.1. Acceptance of quotations for Category A or B contracts may be made by the Budget Holder, Budget Controller or the Purchasing Officer, as the case may be.
- 15.2. Evaluation of tenders for Category C contracts shall be approved and signed by the Budget Controller or a Director and the Purchasing Officer in writing before a contract is awarded.
- 15.3. Evaluation of tenders for Category D contracts shall be approved and signed by a Director and the Purchasing Officer in writing before a contract is awarded.
- 15.4. Evaluation of tenders for Category E contracts shall be approved by a Director and the Head of Legal and Governance Services or their nominee (being a solicitor) before a contract is awarded.
- 15.5. Tenders shall be awarded to the party that achieves the highest score.
- 15.6. Where the amount of a tender or a quotation is within an amount of an estimate and does not exceed the upper limit for contracts within Category D the Purchasing Officer may, at the request of the Budget Holder concerned, accept the tender or quotation on behalf of the Authority.
- 15.7. A tender which exceeds the upper limit for contracts within Category D, or which is not within the amount of an estimate, shall not be accepted until a Director has considered a report thereon by an Officer designated by them which shall include details of the financial implications approved by the Chief Finance Officer or their nominee. In all cases the report shall state why the recommended tender represents the most economical application of the Authority's funds. The Director may refer the matter to the Authority for consideration and approval if the Director considers it appropriate in all the circumstances.
- 15.8. Subject to the provisions of Standing Orders 18 to 22 below, the acceptance or rejection of a tender by or on behalf of the Authority shall be notified in writing to the person submitting the tender or quotation by the Purchasing Officer, PROVIDED there shall be no necessity to write to an unsuccessful bidder where the invitation to tender has indicated that the elapse of a specified period of time shall mean that the bid has been unsuccessful.

## **16. Equality of Tenders and Quotations**

- 16.1. In any Category A or B contract where there are two or more equal quotations all bidders shall be sent written or electronic invitations in identical terms to submit a revised quotation which will be considered in accordance with these Standing Orders and Financial Regulations. Should a further tie occur the award of the contract will be determined by the drawing of lots.
- 16.2. In any case where two or more tenders for Category C, D or E contracts achieve an equal score on a full and fair evaluation of the criteria then if the Purchasing Officer in conjunction with the Budget Holder considers it appropriate the contract may be awarded to the tender with the lowest price. The relative weight of quality over price in the tender shall form part of the considerations. If the prices are equal or if it would not be appropriate to award the tender based on lowest price then those bidders shall be sent a written or electronic invitation in identical terms to submit a revised quotation or tender which will be considered in accordance with these Standing Orders.

## **17. Records and Notifications**

- 17.1. The requirements for keeping records of the details of all tenders, bids and awards under all categories of contract and the notification of any such information to Officers and Directors shall be in accordance with the policy approved by the Authority, the Chief Finance Officer and the Head of Legal and Governance Services from time to time.
- 17.2. This policy shall form part of the Purchasing Manual and shall be implemented by the Purchasing Officer in conjunction with the Chief Finance Officer and Budget Holders as appropriate.

## **18. Contracts for Local Services and Education Transport Services**

- 18.1. It shall be the responsibility of the Head of Transport Operations to identify all local public and education transport requirements in accordance with the policies formulated by the Authority pursuant to its statutory powers and duties.
- 18.2. All procurement of services in accordance with the Authority's said policies shall be in accordance with the procedures set out in the Authority's local and education transport services policy from time to time in force. Copies of these policies of the Authority shall be maintained by the Director, Transport Services and Head of Transport Operations.
- 18.3. All procurement of subsidised services and invitations to tender shall be pursuant to sections 88-91 of the Transport Act 1985 and all associated Regulations. Invitations to tender shall be issued by the Head of Transport

Operations and sent to any persons which have indicated in writing or electronically that they wish to receive such invitations to tender.

18.4. Invitations to tender shall contain the following documents, information and requirements in every case:-

- 18.4.1. the identity of the party requesting the invitation;
- 18.4.2. the Authority's Instructions to tenderers including a closing date and time;
- 18.4.3. the Service Specification setting out the full details of the services being tendered for;
- 18.4.4. the Authority's General Conditions of Contract for the relevant service, together with any schedules of special requirements;
- 18.4.5. the Authority's Form of Tender and Form of Agreement;
- 18.4.6. clear and unambiguous scoring criteria and weightings;
- 18.4.7. a statement that the Authority is not obliged to accept the cheapest or any tender;
- 18.4.8. a statement that a non-compliant tender **may** not be considered;
- 18.4.9. a statement that a tender submitted late **will** not be considered;
- 18.4.10. a statement to the effect that when deciding whether or not to accept a tender the Authority has a statutory duty to consider the effect on competition in the local market, and a combination of economy efficiency and effectiveness.

18.5. Where the de-minimis provisions of the Transport Act 1985 and Regulations made under it apply, contracts for local services may only be awarded in accordance with those regulations and any criteria approved from time to time by the Authority.

18.6. Notwithstanding the above, emergency contracts may be awarded without tender subject to the provisions of s91 Transport Act 1985.

## 19. **Approval of Local and Education Transport Service Tenders by the Authority**

19.1. The approval of the Director, Transport Services shall only be required:-

- 19.1.1. before tendering for any new services or for any services previously provided on a commercial basis;
- 19.1.2. before re-tendering on existing service;

- 19.1.3. before awarding any contract following a tender;
- 19.1.4. before varying or extending any existing tender;
- 19.1.5. before awarding any de-minimis contract.
- 19.1.6. where the value of the contract, extension or variation exceeds the Category C threshold.

**20. Tender Procedures for Local and Education Transport Services**

- 20.1. Tendering may be at the discretion of the Head of Transport Operations be carried out:-
  - 20.1.1. via the electronic tender management system; or
  - 20.1.2. by written invitation; or
  - 20.1.3. via e-mail
- 20.2. Provided that Standing Order 18.4 shall apply in each case (and that all tendering shall be carried out in conjunction with the Purchasing Officer who shall be the Officer that receives all tenders on behalf of the Authority).
- 20.3. Notwithstanding Standing Order 19.1 in relation to local and education transport services where the value of the contract does not exceed £50,000 invitations to submit quotations for services may be made by the Head of Transport Operations in writing, via e-mail or orally.

**21. Receipt of Tenders for Local and Education Transport Services**

- 21.1. Where the electronic tender management system was used receipt of tenders shall be in conjunction with the Purchasing Officer.
- 21.2. Where tenders were invited in writing or via e-mail Standing Order 22 shall apply to the receipt of tenders for local and education transport services.

**22. Opening and Registration of Tenders for Local and Education Transport Services**

- 22.1. The Purchasing Officer or their respective nominee shall maintain all tenders securely and unopened until after the closing date and time has elapsed.
- 22.2. Where an electronic tender management system is not used, the following Standing Orders 22.3-22.8 shall apply.
- 22.3. Tenders must not be opened unless at least two persons are present being the Head of Transport Operations and any of the following:
  - 22.3.1. the Head of Legal and Governance Services or their nominee, being a solicitor;

- 22.3.2. the Purchasing Officer or their nominee;
- 22.3.3. an Officer from fares and pricing.
- 22.4. The Head of Transport Operations or their nominee shall in respect of each written tender opened record the name of the tenderer, the services tendered for, the price tendered and any variations or options offered by the tenderer in a register kept for that purpose by the Head of Transport Operations. When all such details have been entered in the register the tender shall be initialled by the Head of Transport Operations and the other person then present and shall be date stamped.
- 22.5. No tender received after the latest date and time indicated in the invitation for receipt thereof shall be accepted. When all bona fide tenders have been opened and dealt with, any late tenders shall then be opened for the purpose of ascertaining the name and address of the tenderer and shall forthwith be returned to them.
- 22.6. No tender shall be considered unless it states the tenderer's name and has been signed.
- 22.7. When all tenders have been dealt with in accordance with Standing Order 22.4 the Head of Transport Operations and the other person then present shall all sign the register.
- 22.8. The Head of Transport Operations shall then take custody of the tender documents and ensure that they are kept in a secure cabinet pending assessment and evaluation.

**23. Tender Criteria and Weighting**

- 23.1. In all cases where tenders are invited, the relevant evaluation criteria and weightings shall be clearly set out in the tender materials. A tender shall not be evaluated on criteria that are not set out in the tender materials.
- 23.2. Tender evaluation criteria shall be set so that, as far as possible, the criteria may be scored on a numerical basis with the intention that the party with the highest score taking all criteria into account will be awarded the tender.
- 23.3. A contract above the Category B threshold should not be evaluated solely on the basis of price unless otherwise approved by Head of Transport Operations and the Purchasing Officer, and the Head of Transport Operations must set the evaluation criteria in conjunction with the Purchasing Officer.
- 23.4. The Head of Transport Operations shall ensure that in scoring tenders the evaluation criteria are properly applied and that scores are clearly recorded.

## **24. Acceptance of Tenders**

- 24.1. The Head of Transport Operations may accept any tender on behalf of the Authority subject to any approval of the Authority that may be required for that particular contract under these Standing Orders.
- 24.2. Where a third party is funding the contract the Head of Transport Operations may accept that contract on behalf of the third party without the approval of the Authority, irrespective of the price.
- 24.3. Where the contract price does not exceed the Category B threshold the Head of Transport Operations may delegate authority to accept tenders or quotations to an Officer at an appropriate level.
- 24.4. Acceptances of all tenders shall be in writing incorporating by reference the Authority's Form of Agreement, General Contract, Terms and Conditions, services specification, and any schedules, provided within the tender materials, and signed by the Head of Transport Operations.

## **25. Equality of Tenders for Local and Education Transport Services etc**

Standing Order 16 shall apply where two or more tenders achieve an equal score or equal price quotation.

## **26. Records and Notifications**

- 26.1. The Head of Transport Operations shall be responsible for:
  - 26.1.1. maintaining a full record of all tenders bids quotations and awards in respect of any contract for local and education transport services which shall be in accordance with the Authority's approved tendered services policy from time to time;
  - 26.1.2. ensuring that a summary of all tender awards, re-tenders, extensions and contract variations be reported to the Director, Transport Services periodically.
  - 26.1.3. Ensuring that the extent of commitment to de-minimis contracts is monitored regularly and in any event so as to ensure that no such contract may be awarded in excess of the levels permitted under Regulations.

## **27. Preparation and Signature of Contracts – Category A**

No particular formalities are required for contracts in this Category, but they must be supported by an official order signed by the Purchasing Officer.

**28. Preparation and Signature of Contracts – Category B**

Contracts in this Category must be in writing and may be signed by the relevant Budget Holder provided that the Purchasing Officer and the Budget Holder consider in each case whether the contract is of such value or complexity that it should be referred to the Head of Legal and Governance Services or their nominee (being a Solicitor) to determine the form of contract.

**29. Preparation and Signature of Contracts – Category C**

Contracts in this Category must be in writing and must be signed by the Head of Legal and Governance Services or their nominee, being a Solicitor, unless that person determines that the contract shall be executed under the Common Seal of the Authority.

**30. Preparation and Signature of Contracts – Categories D And E**

Contracts in these Categories must be in writing and executed under the Common Seal of the Authority unless the Head of Legal and Governance Services determines otherwise.

**31. Preparation and Signature of Contracts – Local and Education Services**

Contracts for local services and education transport must be in writing incorporating by reference the Authority's Agreement, General Contract, Terms and Conditions, services specification, and any schedules, provided within the tender materials, and signed by Head of Transport Operations. Where for a period in excess of six years, they must be executed under the Common Seal of the Authority unless the Head of Legal and Governance Services determines otherwise.

**32. Contents of Contracts**

32.1. Every contract in writing shall specify:

32.1.1. the work, materials, matter or things to be done or furnished;

32.1.2. the price to be paid, with a statement of discounts or other deductions;

32.1.3. the time or times within which the contract is to be performed;

32.1.4. such of the matters referred to in Standing Orders 32.3 to 32.4 as are required by those Standing Orders to be included.

32.2. Unless the Head of Legal and Governance Services and the Chief Finance Officer having regard to all the circumstances, consider it to be unnecessary:

32.2.1. contracts for the execution of work shall provide for liquidated damages to be paid by the contractor in case of delays; and



32.2.2. the Authority shall require, and take sufficient security for, the due performance of any contract in excess of the upper limit for contracts within Category C in amount or value, except for local transport services contracts.

32.3. In every written contract for the supply of goods or materials a clause shall be inserted to secure that, should the contractor fail to deliver the goods or materials, 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 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 or materials remaining to be delivered. The clause shall further secure that the amount by which the cost of so purchasing other goods or materials exceeds the amount which have been payable to the contractor in respect of the goods or materials, as the case may be, replaced by such purchase, if they had been delivered in accordance with the contract, shall be recoverable from the contractor. This Standing Order shall be drawn to the attention of all persons tendering or submitting a quotation for a contract with the Authority.

32.4. Unless the Head of Legal and Governance Services determines otherwise, every contract for works entered into in writing by the Authority shall include the right of the Authority to have access to the site of works and documents of the contractor. This right shall entitle the Authority to nominate such Officer as they shall deem appropriate to undertake any inspection at the site or of any documents including the right to nominate persons not in the employment of the Authority.

### **33. Use of E-Mail in Contracts and Awards**

33.1. Where these Standing Orders require that a contract shall be in writing, this will not normally be satisfied by the use of e-mails.

33.2. Except where express provision is otherwise made in these Standing Orders, e-mail should only be used exceptionally in a contractual situation (including those circumstances where a contract is to be varied or extended) and then only with the prior approval of the Head of Legal and Governance Services or Chief Finance Officer.

33.3. The award of all contracts within Category A and B only may be confirmed by e-mail.

### **34. Issue of Final Certificate**

Unless the terms of the contract do not permit this or otherwise make it impracticable, any person who has the authority to issue a final certificate shall not

issue such final certificate until sufficient time has been given to the Internal Auditor of the Authority to complete an examination of the final account of such contract where the Auditor deems this to be necessary.

**35. Variations to Contracts**

- 35.1. Where during the course of any contract it is necessary to issue a variation order in respect of that contract, such variation order as it is proposed to issue shall be sent to the Director for approval prior to issue where required under the terms of these Standing Orders and Financial Regulations, PROVIDED THAT this requirement shall not be construed as limiting the authority of any person authorised under a civil engineering or building contract to issue a variation order to the contractor concerned.
- 35.2. Subject to Standing Order 35.1, variations to existing contracts may be made provided they are made in compliance with the Public Contracts Regulations 2015 Article 72.
- 35.3. Where any variation is authorised a copy shall be supplied to the Head of Legal and Governance Services who shall annex it to the contract to which it relates or logged within PROACTIS against the relevant purchase order.

**36. British Standards**

Where an appropriate British, EU or International Standard specification or code of practice issued by any such Standards Institution is current at the date of the tender then, unless there is in the opinion of the Director concerned good and sufficient reason to the contrary, every written 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 PROVIDED THAT in all cases due consideration will be given to a tender which purports to offer equivalent functionality or performance even though it does not conform to the standard stipulated.

**37. Cancellation of Contracts in Cases of Corruption etc**

There shall be inserted in every written contract a clause empowering the Authority to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation, if the contractor 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 any action in relation to the obtaining or execution of the contract or any contract with the Authority, or showing or forbearing to show any 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 them or acting on their behalf (whether with or without the knowledge of the contractor) or if, in relation to any contract with the Authority, the contractor or any person employed by them or acting on their behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916, the Bribery Act 2010 or shall have given any fee or

reward the receipt of which is an offence under Section 117(2) and (3) of the Local Government Act 1972.

**38. Assignment and Underletting of Contracts**

38.1 In every contract the contractor shall be prohibited from assigning or underletting or sub-contracting the contract, or any part of it, except with the consent of a Director and upon such conditions as they think fit.

38.2 In the case of tender for services which provides for the possibility of subcontracting some or all of the services, appraisal of the tender must include appropriate appraisal of both the main and any sub contractor's proposals to ensure that the sub-contractor is capable of delivering the services and complying with the contract and all relevant legislation. The principal contractor shall be expressly responsible for all work done by the sub-contractor and for it being carried out under the same conditions as the main contract, so far as reasonably possible.

**39. Restrictions on Contracts with Certain Persons**

No Director or Officer of the Authority, nor any Company, Partnership or Firm in which any Director or Officer is interested, nor any employee, nominee or relative of a Director or Officer, shall undertake the execution of work on behalf of the Authority or shall accept an order for the supply of goods or materials to the Authority unless such work or order for goods or materials has been offered or secured by competitive tender or quotation. The Director or Officer shall provide the Head of Legal and Governance Services and the Chief Finance Officer with details of any such interest or relationship prior to any tender or quotation being invited.

**40. Work by Authority's Departments**

These Standing Orders shall apply to the letting of sub-contract work or the obtaining of goods or materials when such letting or obtaining is done in the course of the execution of any work by the Authority's own departments.

**41. Acquisition and Disposal of Interests in Land**

41.1. Where the Authority is acquiring or disposing of an interest in land, the procedures to be followed in each case shall be the responsibility of the Head of Legal and Governance Services in accordance with any current policy of the Authority and the Officer Delegation Scheme.

41.2. Where any disposal of an interest in land falls outside the criteria approved by the Authority for delegation then the Head of Legal and Governance Services shall ensure that all such disposals shall first obtain the approval of the Authority pursuant to s10(1) Transport Act 1968 or otherwise.

## **PART 2 – Legal Proceedings**

### **42. Legal Proceedings**

- 42.1. Where any document is a necessary step in legal proceedings it shall be signed by the Head of Legal and Governance Services or by any other Solicitor employed by the Authority, unless otherwise required or authorised by law, or where the Authority give authority, to some other person for the purpose of such proceedings.
- 42.2. Where there is a likelihood of the Authority being involved in any legal proceedings or where the Police investigate any matter involving the Authority or any of its personnel, the Head of Legal and Governance Services shall immediately be informed by the officer concerned or their line manager.