



MERSEYSIDE WASTE DISPOSAL AUTHORITY

## **CONTRACT PROCEDURAL RULES**

## 1. INTRODUCTION

### (i) Scope

These rules relate to the supply of services, the purchase, leasing and hiring of goods and the execution of works.

### (ii) Interpretation

Unless the context otherwise requires, in these Contract Procedural Rules, the following terms have the following meaning:-

“Clerk” means the Clerk to the Authority or his/her duly authorised representative.

“Contract” means any agreement for:-

- (a) the supply of services to or for the Authority including the use of consultants but excluding the use of Counsel instructed by the Monitoring Officer.
- (b) The purchase, leasing or hiring of goods by the Authority PROVIDING THAT arrangements involving hire purchase, finance leases or operating leases shall only be entered into in accordance with arrangements approved by the Treasurer; and
- (c) The execution of works for the Authority.

“Chief Executive” means the Chief Executive of the Authority or his/her duly authorised representative.

“Monitoring Officer” means the officer appointed in accordance with section 5 of the Local Government and Housing Act 1989 and responsible for the provision of legal services to the Authority or his/her duly authorised representative.

“Treasurer” means the Officer the officer appointed under section 73 of the Local Government Act 1985, responsible for the proper administration of the financial affairs of the Authority or his/her duly authorised representative.

“Consultant” means an external service provider appointed to advise and act for the Authority.

(iii) Grouping of Contracts

A contract may include a series of transactions for the purchase of goods and services or execution of works which are of the same type so that the estimated value of the sum total of this series of transactions should be taken as estimated contract price for the purpose of these Rules. Where relevant, the total annual value of goods and services or work executed of the same nature and required within the contract period shall be taken as the estimated contract price.

Officers shall have regard to the most appropriate packaging of contracts to achieve the greatest value for money and the most effective arrangements. A contract must not be divided into smaller contracts with the aim of avoiding the application of these Contract Procedure Rules in full and the application of UK public contracts regulations or EU public procurement directives.

(iv) Adequate Budget Provision

Contracts shall not be entered into unless there is adequate provision in the appropriate budget, or approval has been obtained to use balances.

(v) Appointment of Consultants

In cases where a Consultant is employed to act on behalf of the Authority in the tendering and letting of contracts the requirement to comply with these Rules shall be included in the Consultant’s Terms of Appointment.

## **2. COMPLIANCE WITH CONTRACTS PROCEDURE RULES**

Every contract entered into by and on behalf of the Authority, shall be made in compliance with these Rules.

## **3. EXTERNAL CONTROLS**

Wherever mandatory legislation or directives conflict with these Rules, the legislation or directives will prevail.

## **4. METHODS OF LETTING CONTRACTS**

### General Provisions

- i) Contracts where the estimated value or amount is £20,000 or more shall be tendered and let by the Chief Executive.
  
- ii) Where the Authority maintains an Approved List or Lists in accordance with Rule 7, all reasonable efforts shall be made to invite tenders from persons contained therein.
  
- iii) Where the estimated value or amount of the contract or sub-contract for the supply of goods or materials or services or the execution of work is:-
  - a) less than £5000, the Chief Executive shall ensure that value for money is obtained and, in consultation with the Treasurer, shall establish staff instructions for the letting of contracts and placing of orders;
  - b) £5000 or more but less than £20,000 and alternative prices are available, a minimum number of three separate written quotations or tenders shall be invited. The Chief Executive, in consultation with the Treasurer, shall establish staff instructions for the letting of contracts and placing of orders;

- c) £20,000 or more but less than £100,000 and alternative prices are available, competitive tenders shall be invited and the procedures referred to in Rule 5 and Rule 11 adopted;
  - d) £100,000 or more, the contract or sub-contract shall be let in accordance with Rules 6, 9 and 11 except to the extent that where such Rules conflict with relevant provisions contained in U.K Public Contract Regulations or E.U Public Procurement Directives, the provisions of the Regulations or Directives shall apply.
- iv) Where tenders or quotations are requested for the supply of goods, materials or services or for the execution of works estimated to be less than £20,000 and where the lowest tender or quotation received or accepted is £20,000 or more, the Treasurer shall be advised of the tenderers and tender or quotation sums for record purposes.
- v) Where the value or amount is estimated to be less than £100,000 the Chief Executive shall ensure that value for money in terms of economy, efficiency and effectiveness is obtained, that where appropriate the Authority's approved contractors or suppliers are used and that the expenditure is incurred in accordance with the Authority's established procedures.
- vi) Where a sub-contractor or supplier is to be nominated to a main contractor, the terms of the invitation to tender shall require an undertaking by the tenderer that if it is selected it will be willing to enter into a contract with the main contractor on terms which indemnify the main contractor against its own obligations under the main contract in relation to the work or goods included in the sub-contract.
- vii) Nominated sub-contracts where the estimated value is estimated to be £5000 or more but less than £20,000 shall be awarded in accordance with the

procedure outlined in Rule 4(iii)(b) unless the Chief Executive decides it is not reasonably practicable to obtain competitive quotations or tenders.

viii) Nominated sub-contracts where the estimated value is likely to be £20,000 or more but less than £100,000 shall be awarded in accordance with the procedure outlined in Rule 5 unless the Chief Executive decides it is not reasonably practicable to obtain competitive tenders.

ix) Nominated sub-contracts where the estimated value is likely to be £100,000 or more shall be awarded in accordance with the procedure outlined in Rule 6 unless the Chief Executive, in consultation with the Treasurer, determines that in respect of any particular nomination it is not reasonably practicable to obtain competitive tenders.

**5. TENDERING PROCEDURE FOR CONTRACTS OF £20,000 OR MORE BUT LESS THAN £100,000**

- i) In respect of the letting of contracts for the supply of goods, materials or services or for the execution of works where the estimated value or amount is £20,000 or more but less than £100,000, the following procedures shall apply:-
- a) where sufficient competitive prices are available contracts shall be subject to the invitation of a minimum of four tenders, which so far as is practicable should be obtained from persons who, or firms which are, on the approved list;
  - b) letters inviting tenders shall indicate the last day and time of their return;
  - c) a label addressed to the Chief Executive, followed by the last date and time of return and bearing the word "TENDER....." followed by the subject to which it refers shall be enclosed with all letters inviting tenders; envelopes shall bear no other distinguishing mark;

- d) all envelopes shall be kept by the Chief Executive until the last day of return when the envelopes will be opened by him in the presence of the Clerk. The tenders will be dated and initialled by the two officers present;
  - e) a record will be kept by the Chief Executive of all such tenders received by him;
  - f) late tenders may be opened only if no other tender for that item has been opened and the Chief Executive is satisfied that there is an acceptable explanation for late delivery of the tender;
  - g) late tenders which are not considered shall be returned to the sender;
  - h) Where the lowest tender received or where the tender offer accepted under these procedures is £100,000 or more, the Treasurer shall be advised for record purposes of the estimated price, the suppliers or contractors invited to tender and the prices submitted.
- ii) In respect of contracts for the supply of goods, materials or services or for the execution of works the Chief Executive shall, following the opening of the tenders, be authorised to scrutinise the tenders and communicate with the tenderers in order to obtain information on technical and contractual matters which may be necessary for tender evaluation.
- iii) Negotiations with any potential supplier or contractor on prices and/or specification, after the tenders have been opened, must be conducted in accordance with the Authority's agreed procedure on post-tender negotiation and on a formal and confidential basis in the presence of at least two officers of the Authority. A formal record must be kept and retained of all such discussions and decisions. No information as to the contents of any tender shall be communicated to the said potential supplier or contractor.

- iv) The Chief Executive may authorise in writing exceptions to Rule 5 (i) in cases of urgency or other specific circumstances. It is the responsibility of the Chief Executive to ensure that the reasons for any exceptions are properly stated and reported to the Clerk.

## **6. TENDERS FOR CONTRACTS OF £100,000 OR ABOVE**

A contract for the supply of goods, materials or services or for the execution of works where the estimated value is £100,000 or more shall be let by tender in one of the following ways:-

- i) (a) Approved List in accordance with Rule 7; or  
(b) Public Notice in accordance with Rule 8; or  
(c) For purposes for which there are no approved list, and where in the opinion of the Chief Executive public notice is not appropriate, tenders may be invited from selected firms known by the Chief Executive to be suitable, after consultation with the Monitoring Officer and Treasurer; or
- ii) Any combination of (a), (b) and (c) above as the Chief Executive shall determine in accordance with the Scheme of Delegation.

Prospective tenderers in 6(i) and 6(ii) above shall not be invited to tender unless the satisfactory financial standing of the tenderers is confirmed by the Treasurer.

- iii) A contract for the supply of goods, materials or services or for the execution of works where the estimated value exceeds the thresholds set out in U.K Public Contract Regulations or E.U Public Procurement Directives shall be let in accordance with the provisions of the Regulations or Directives.

## **7. THE APPROVED LIST**

- i) The Chief Executive may determine that a list or lists shall be kept of persons who, or firms which, may be invited to tender for contracts for the supply of



goods, materials or services or the execution of work of specified categories, values or amounts.

ii) The said list shall:-

- (a) contain the names of all persons who wish to be included in it and are approved by the Chief Executive and Treasurer;
- (b) indicate whether the person or firm named in it is approved for contracts for all or only some of the specified values, amounts or categories.

iii) At least four weeks before a list is first compiled, notices inviting applications for inclusion in it, shall be published in one or more local newspapers circulating in the district and in one or more newspapers or journals circulating among such persons who undertake contracts of the specified values, amounts or categories.

iv) The Approved List may be amended from time to time by the Chief Executive, in consultation with the relevant Portfolio Member by the addition or deletion of names or firms.

v) Where invitation to tender for a contract of £100,000 or more is limited to persons whose name appears on the list maintained under this Rule, an invitation to tender for that contract shall be sent to at least four of those persons as selected.

vi) The Chief Executive shall be responsible for selecting tenderers from a Select List which has been drawn from the Approved List in accordance with agreed procedures.

**8. PUBLIC NOTICE TO TENDER**

- i) This rule shall have effect where the estimated value is likely to be £100,000 or more and where there is no approved list, and where invitation to tender may be limited to persons who reply to a public notice except it shall not apply where contracts are subject to U.K Public Contract Regulations or E.U Public Procurement Directives.
  
- ii) At least 10 days notice shall be given seeking applications for invitation to tender and setting out the particulars of the proposed contract. Such notice to be publicised by an appropriate means locally in the Merseyside or relevant district area, and within appropriate media accessible to such persons as undertake such contracts.
  
- iii) The Chief Executive shall select, in consultation with the Treasurer, not less than four persons to be invited to tender or where less than four have applied who are suitable shall indicate that all those who are suitable shall be invited to tender.
  
- iv) Invitation to tender may be limited to those persons who have responded to a public notice or may be extended in accordance with Rule 6 (ii) above.

**9. TENDERING PROCEDURE FOR CONTRACTS OF £100,000 OR ABOVE**

Where tenders are invited in accordance with Rule 6 the following procedures shall apply:-

- i) Letters inviting tenders or quotations shall indicate the last day and time of their return, a label addressed to the clerk followed by the last date of return and bearing the word "TENDER....." followed by the subject to which it refers shall be enclosed with all letters inviting tenders or quotations; envelopes shall bear no other distinguishing mark;

- ii) Envelopes shall be returned to and remain in the custody of the Clerk until the appointed time for their opening. A record shall be kept by him of all tenders received and the date and time of their receipt;
- iii) The tenders shall be opened in the presence of the Clerk, the Treasurer, the Chief Executive and the Chairman (or their respective nominees);
- iv) The Clerk shall keep a record of tenders opened listing the names of tenderers and their quoted prices. The Clerk shall authorise the Chief Executive to scrutinise the documents and communicate with the tenderers in same manner outlined in Rule 5(ii) or 5(iii);
  - a) Late tenders may be considered at the discretion of the Clerk, in consultation with the persons present and referred to in Rule (iii) above, and only if no other tender for that item has been opened and the Clerk is satisfied that there is an acceptable explanation for late delivery of the tender;

**10. EXCEPTIONS TO CONTRACT PROCEDURE RULES**

- i) The tendering procedures will not apply to:-
  - a) The acquisition or disposal of any interest in land or property and stocks and equipment incidental thereto.
  - b) The supply of goods, materials or services which are only obtainable from one contractor where the Chief Executive is satisfied there is no reasonably satisfactory alternative.
  - c) The supply of goods, materials or services by a central or local government purchasing organisation or by or on behalf of any consortium, association or similar body of which the Authority is a member provided that in the latter situation the supply is in accordance with the method prescribed by that body.

- d) The execution of works of a specialised nature which are carried out only by one contractor and where the Chief Executive is satisfied that there is no reasonably satisfactory alternative.
  - e) The execution of work or the supply of services which must be carried out by a particular public utility undertaking, statutory undertaker, local authority or similar body.
- ii) All exceptions other than those listed in 10 i) shall be authorised:-
- a) for contracts where the estimated value or amount is less than £100,000, by an Administrative Decision taken by the Chief Executive in accordance with the Scheme of Delegation;
  - b) For contracts where the estimated value or amount is £100,000 or more, by an Executive Decision or Key Decision in accordance with the Scheme of Delegation.
- iii) The Chief Executive shall keep a record justifying any exceptions under 10. i) b) and d).

## **11. ACCEPTANCE OF QUOTATIONS AND TENDERS**

- i) The appropriate tender for all values of contracts, to be accepted in accordance with this Contract Procedure Rule, will normally be the lowest tender if payment is to be made by the Authority, or the highest tender if payment is to be received by the Authority, or the most economically advantageous tender established in accordance with agreed procedures and taking into account the Authority's Sustainable Procurement Policy.
- ii) Where the estimated value or amount is less than £20,000, acceptance of an appropriate quotation or tender will be in writing by the Chief Executive.
- iii) Where the estimated value is £20,000 or more but less than £100,000, acceptance of an appropriate tender will be by the Chief Executive in

accordance with agreed procedures. Where any other tender is recommended for acceptance, the reasons for doing so will be reported in writing to the Clerk.

- iv) Where the estimated value is £100,000 or more, acceptance of an appropriate tender will be by the Chief Executive only where it satisfies para 11 i) above and in accordance with agreed procedures. Where any other tender is recommended for acceptance, it will be by way of an Executive Decision taken by the Chief Executive in accordance with the Scheme of Delegation.

## **12. DISQUALIFICATIONS OF TENDERS**

At the discretion of the Chief Executive, in consultation with the Monitoring Officer, tenders may not be considered if they are in any way uncertain or if the tender documents have been altered or amended. The relevant reasons for such decisions shall be recorded in the Register of Tenders.

## **13. WITHDRAWAL OF TENDER**

In the event of any person or firm withdrawing a tender or declining to execute a formal contract on being called upon to do so after his or its tender has been accepted (whether accepted subject to the Authority's approval or not), no further tender from such person or firm shall be considered for a period of two years unless the Clerk so determines.

## **14. FORM OF CONTRACT**

- i) Subject to this Rule, the form of contract for the execution of works or the supply of goods, materials or services will be decided by the Chief Executive. Details will be supplied to tenderers in the tender documents.
- ii) All contracts must be in writing with the exception of:-

- a) contracts for the supply of goods, services and materials, and works contracts below £20,000 in value;
- b) contracts where the Chief Executive is satisfied that there is an urgent need for the execution of the works or the supply of goods, materials or services which does not permit time for the execution of a written contract but, in this case, a contract must (if otherwise required) be put into writing as soon as practicable;

All contracts in writing which are £20,000 and above shall, with the exception of those under seal be signed by at least two officers of the Authority.

- iii) All contracts of £100,000 or more shall be under seal unless:-
  - a) the Monitoring Officer so agrees: or
  - b) Rule 14 (ii) (b) applies: or
  - c) The contract is for the supply of goods or services on an annual basis.
- iv) Every contract in writing or under seal shall specify:-
  - a) The work, materials, matters or things to be furnished had or done;
  - b) The price to be paid with a statement of discounts or other reductions;
  - c) The time or times within which the contract is to be performed and, where appropriate, the amount of liquidated damages which may otherwise become due;
  - d) The conditions of the contract which are applicable.
- v) Where a certificate under the Local Government (Contracts) Act 1997 must be issued, the Treasurer shall be the duly authorised certifying officer and will need to be satisfied that the Authority has the powers to enter into the contract and that it is exercising its powers properly.
- vi) Where a contract is not in writing or, where appropriate, is not under seal the reasons for the exception shall be recorded and be available for inspection by members of the Authority.

- vii) Where appropriate, the Chief Executive, in consultation with the Treasurer, shall determine whether sufficient security should be taken for the due performance of every such contract.
  
- viii) It shall be a condition of any contract between the Authority and any person (not being an officer of the Authority) who is required to supervise a contract on the Authority's behalf that, in relation to such contract, he or she shall comply with the requirements of these Rules, and with the Authority's Financial Procedure Rules, as if he or she was an Officer of the Authority.
  
- ix) Where appropriate, the Chief Executive, in consultation with the Data Protection Administrator, if necessary, shall ensure the inclusion of clauses to meet the requirements of Data Protection legislation.

#### **15. CLAUSES COMMON TO ALL CONTRACTS**

In every contract in writing or under seal for the execution of work or the supply of goods, materials or services clauses to cover the following matters will be included:-

- i) a clause to prevent a contractor from transferring or assigning directly or indirectly the contract without the written consent of the Authority and to prevent the sub-let of the contract without the Authority's written consent except insofar as it relates to the supply of patent or proprietary articles, raw materials or material products;
  
- ii) a clause to secure that the Authority shall be entitled 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 other contract with the Authority or for 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 it or acting on its 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 it or acting on its behalf shall have committed any offence under the Bribery Act 2010 or any superseding legislation, or shall have given any fee or reward the receipt of which is an offence under the sub-section (2) or (3) of Section 117 of the Local Government Act 1972;

- iii) a clause to require that where an appropriate British Standard specification or British Code of Practice issued by the British Standards Institute Eurostandard or similar national standards of other EC member states provided that they meet the British equivalent is current at the date of tender, unless there is good sufficient reason to the contrary, all goods and materials supplied or used and all workmanship shall be in accordance with that standard or such higher standard as may be specified;
- iv) a clause to require a contractor to take all such precautions as are necessary to protect the health and safety of all persons employed by it and others to comply with the requirements of all Health and Safety Legislation and of any other Acts, Regulations, Orders or Codes of Guidance pertaining to the health and safety of employed persons or members of the public who may be affected by the contract;
- v) a clause to require a contractor to take into account, where considered applicable by the Authority, the requirements of the European Acquired Rights Directive and/or Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014;



- vi) a clause or clauses to ensure adequate protection is afforded to personal information under the control of the Authority as Data Controller to which a contractor may have access in the course of fulfilling the terms of a contract and specifically that a contractor must agree to abide by specific terms in relation to its handling of such personal information in performance of the contract;
  
- vii) a clause requiring the contractor to provide information to the Authority in order for the Authority to fulfil its obligations under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 and a clause requiring the contractor to pass to the Authority any requests for information it receives for information held on behalf of the Authority;
  
- viii) such other clauses as the Monitoring Officer shall determine, whether generally or in relation to a specific contract.