



# **CODE OF PRACTICE**

**for**

# **THE PROCUREMENT OF WORKS, SUPPLIES AND SERVICES**

**26<sup>th</sup> January 2021**

## CONTENTS

1.	INTRODUCTION	1
2.	APPLICATION OF THE CODE	2
3.	ETHICS AND INTERESTS	3
4.	PREPARATIONS FOR TENDERING	4
5.	CONTRACT DOCUMENTATION AND INSTRUCTIONS	6
6.	REQUIREMENTS FOR QUOTATIONS AND TENDERS	9
7.	USE OF CONSTRUCTIONLINE AND FRAMEWORKS	11
8.	MAINTAINING APPROVED LISTS	12
9.	INVITATION TO TENDER AND QUOTE	12
10.	RECEIPT AND OPENING OF TENDERS AND QUOTATIONS	13
11.	REJECTION AND NON-CONSIDERATION OF TENDERS AND QUOTATIONS	15
12.	TENDER EVALUATION	16
13.	CONTRACT AWARD	19
14.	SUB-LETTING AND ADDITIONAL SPENDING	21
	APPENDIX - Definitions and Interpretations	22

## 1. INTRODUCTION

- 1.1 This Code of Practice for the Procurement of Works, Supplies and Services (“**the Code**”) sets down the contract commissioning rules for achieving the Authority's procurement objective of obtaining value for money which is defined as “the best mix of quality and effectiveness for the least outlay over the period of use of the goods or services bought”. This should be achieved through competition, unless there are compelling reasons to the contrary. The Code shall be followed before any order is placed or contract entered into. The Authority is also under a general Duty of Best Value to “make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.”
- 1.2 In dealing with any matter related directly or indirectly to any contract to be entered into by or on behalf of the Authority, those concerned must at all times act in the best interests of the Authority and in accordance with the Code and relevant national law (including Best Value regulations) and statutory Government guidance. This requirement applies to Members and employees of the Authority and to consultants and agents (including their employees) appointed by the Authority. In particular:
- (a) contract strategies, specifications and other tender documents must have regard to what is reasonable and necessary in the particular circumstances;
  - (b) the over-riding procurement policy requirement for the Authority is that procurement must be based on value for money and be in conformity with wider Authority policies;
  - (c) no company or service provider offering a quotation or expressing an interest in tendering, or having been invited to tender or quote shall be given an opportunity to obtain an unfair advantage over its competitors; and
  - (d) those concerned must act, and must be seen to act, in a proper manner.
- 1.3 Definitions and interpretations are included as an Appendix.

## **2. APPLICATION OF THE CODE**

### **General application**

- 2.1 All contracts for works, supplies and services shall be made in accordance with the Code. For the avoidance of doubt the engagement of specialist and management consultants shall be in accordance with this Code. Where it considers it necessary, the Authority may in relation to specific contracts which present unusual features agree contract procurement arrangements not subject to this Code.
- 2.2 The Authority's officers shall put in place effective systems of internal control which shall include provision for the maintenance of proper records throughout the procurement processes and for the retention and safe custody of documents and records.
- 2.3 The Clerk may arrange for the preparation and circulation of practice notes within the provisions of the Code and accompanying guidelines:-
  - (a) to ensure that the provisions of the Code and their spirit and intent are brought to the attention of staff and other persons responsible for contracts;
  - (b) to set down any detailed administrative or other arrangements which may be made arising from the provisions of the Code; and
  - (c) to ensure that the relevant provisions of UK procurement legislation, Government guidance and locally approved procedures are brought to the attention of staff and other persons responsible for contracts.
- 2.4 The Clerk and Treasurer are authorised under Standing Order No. 38 to take action on behalf of the Authority with respect to any matter that either does not admit of delay or is routine, including matters relating to the award of contracts.
- 2.5 The application is subject to any contract award procedures laid down in UK legislation.

### **3. ETHICS AND INTERESTS**

#### **Conduct of Members**

- 3.1 With respect to the matters referred to in this Code, Members of the Authority shall conduct themselves in accordance with the Member Code of Conduct of their own constituent council.
- 3.2 Members of the Authority shall at all times conduct themselves in a manner which:
- (a) preserves, and does not call into question the reputation of the Authority;
  - (b) does not prevent the Authority from dealing fairly and openly with regard to matters on which a Member has a personal or private interest; and
  - (c) does not cause the public at large, or those with a personal interest in a matter being dealt with, to lose confidence in the integrity of the Authority's decision-making procedures.

#### **Conduct of employees**

- 3.3 Staff must at all times comply strictly with the Authority's Code of Conduct for Employees. In particular, but without limitation, employees shall comply with the requirements relating to:
- (i) confidentiality;
  - (ii) relationships, conflicts of interest, related party transactions, equality and separation of client and contractor roles; and
  - (iii) hospitality, gift, sponsorship and corruption.

#### **Conduct of consultants and agents**

- 3.4 Consultants and agents appointed by the Authority shall at all times conduct themselves in accordance with standards equivalent to those expected of Members of the Authority and its employees. All such consultants and agents shall, prior to appointment, produce to the satisfaction of the General Manager reasonable evidence that they and their employees are furnished

with appropriate codes of conduct and that they are required to follow published standards of conduct appropriate to their trade or profession.

#### **4. PREPARING FOR THE TENDER PROCESS.**

##### **Application of competition**

- 4.1 Clear decisions will be required on the extent of works, supplies and services to be procured and with clear and rational reasons for determining the scope of core, strategic and other functions that will not be exposed to competition.
- 4.2 For those services where a mature market is not yet in place the procurement process shall seek to stimulate and strengthen the market by encouraging the diversity, innovation and the competitiveness of the supply base and hereby achieve the Authority 's corporate procurement objective.

##### **Contract period**

- 4.3. All contracts shall be time-limited either directly via contract period or by project completion criteria. Contract periods will be influenced by individual service requirements, by the total of set-up costs to be recouped and the complexity of hand-over arrangements. Tenders based on specified alternative contract periods should be considered for major services contracts.

##### **Criteria for contract award**

- 4.4 The contract award shall be based on the most economically advantageous tender to the Authority. The economically most advantageous tender will be determined via the following criteria:
  - (a) eligibility;
  - (b) financial standing;
  - (c) ability and technical capacity;
  - (d) the tendered price or rates, having regard to indicative volumes, where appropriate, and consequential costs or savings that it would be proper for the Authority to take into account; and,
  - (e) the appropriateness and effectiveness of the proposed systems and working methods (including delivery dates if not specified within the

contract documents) for providing the required works, supplies or services in accordance with the contract.

### **Tender process**

- 4.5 Tenders shall be invited, subject to UK legislation, from firms on approved lists, or selected by the General Manager in consultation with the Clerk and Treasurer, or invited on an open or restricted basis as a result of public advertisement.
- 4.6 Term contracts or approved lists shall be used up to specified limits where there are repeated requirements for particular works, supplies or services.

### **Timetabling**

- 4.7 Periods for expressions of interest and tender submissions, shall be set so as to maximise the number, accuracy and competitiveness of tenders and quotations received. The reasonableness of tender and quotation periods shall be determined by:
- (a) the size, nature and complexity of the requirements;
  - (b) the anticipated need for firms to visit and inspect premises, systems and documents, etc.;
  - (c) the anticipated need for firms to obtain prices from proposed subcontractors and suppliers; and,
  - (d) the anticipated need for firms to obtain complex legal advice.
- 4.8 There shall be sufficient time for firms to seek admission to approved lists and for successful tenderers to complete such transitional arrangements as are required in order to commence contracts on time and to the contract standard. Appropriate periods shall be allowed for shortlisting, evaluation and award.

### **Publication of Contract Opportunities**

- 4.9 In accordance with the Public Contracts Regulations 2015, the Clerk shall ensure that all tenders over £25,000 in value are advertised on 'Contracts Finder' and additionally, if the Tender value is over £189,330, on 'Find a Tender' in accordance with UK Public Procurement requirements.

## **5. CONTRACT DOCUMENTATION AND INSTRUCTIONS**

### **Contract documents**

- 5.1 Tender and quotation documents shall comprise those considered to be necessary by the General Manager in consultation with the Clerk and Treasurer, having regard to the custom of the trade, profession or industry concerned.
- 5.2 Specifications shall be explicit, accurate and comprehensive and shall specify the required works, supplies or services including the required quality standards and the measurable levels of outputs/targets to be achieved. Appropriate modification provisions shall be included to allow the Authority appropriate flexibility to alter the contract to take account of changes in requirements. Output or outcome based specifications shall be used except where it is necessary to specify processes in order to obtain the Authority's requirements in a particular way. As appropriate, contract documents shall incorporate arrangements for securing continuous improvement in the economy, efficiency and effectiveness of the Authority's services and including where appropriate explicit incremental targets for improved performance in addition to any general requirement for improvement.
- 5.3 Where supplied, specifications or descriptions of materials in tender or quotation documents shall require as a minimum compliance with UK Standards and relevant codes of practice current at the date of tender or quotation. Where appropriate the tender or quotation documents shall also provide for the submission of alternatives that satisfy the functional requirements.
- 5.4 The specification of works, supplies or services shall be of proprietary type or supplied by a particular firm or that the work shall be executed by a particular firm except where the General Manager in consultation with the Clerk and Treasurer is satisfied that;
  - (i) there is no acceptable alternative; or
  - (ii) it is desirable to set a standard, in which case a choice shall be given and wherever practicable a statement made to the effect that other approved substitutes will be considered.



## **Contract conditions**

- 5.5 Conditions of a contract shall be based on the relevant standard form (if any) that has been issued by the trade, industry or profession concerned, except where the Authority decides otherwise or, in the absence of any such decision by the Authority, where the Clerk decides it would not be in the interests of the Authority to use such a standard form.

## **Failure to perform**

- 5.6 The conditions shall include the Authority's rights to take action where the contractor fails to perform to the contract standard. These rights shall include rectification procedures, the ability to reduce payments and deduct defaults, suspension provisions for part or all of the contract and termination where appropriate. The contract documents shall include all necessary details to enable the Authority to exercise these rights including explicit provision for appropriately calculated default deductions and/or liquidated damages.

## **Transfer of Undertakings (Protection of Employment) Regulations (TUPE)**

- 5.7 Officers should have regard as to whether contracts may be subject to TUPE and act accordingly. Where it is thought possible that TUPE may apply contractors must be provided with appropriate workforce information in a suitably anonymous form and in accordance with legislative requirements.

## **Pricing mechanisms and fluctuations**

- 5.8 Pricing mechanisms shall be appropriate to the likely level of variation in the demand for the works, supplies or services specified. Where the level of demand under the contract can be predicted accurately or is unlikely to vary significantly during the contract period, the contract shall be priced as a lump sum (based on a bill of quantities as appropriate). Where the demand is unpredictable or will vary through the contract period, the pricing mechanism shall be via a schedule of rates containing the best available estimate of the likely demand. If the total workload under the prospective contract is likely to vary significantly, consideration shall be given to the use of pricing bands so that tenderers are encouraged to offer their best unit prices for high or low level of demand.
- 5.9 Review clauses or price fluctuation clauses may be included in contracts when the contract period is estimated at greater than one year (or fifty-two weeks) where the General Manager in consultation with the Clerk and Treasurer considers that it is in the Authority's interests to do so. The index for price

fluctuations should be either Gross Domestic Product (GDP) deflator or Retail Price Index (RPI) (excluding interest), unless the Treasurer has approved more specific indexing.

### **Terms of payment and retention money**

- 5.10 When a form of contract, other than a standard form, is used, the terms of payment shall be decided by the General Manager in consultation with the Clerk and Treasurer having regard to the general practice in the trade or industry concerned. Terms of payment shall provide for the intervals at which payments will be made, the amounts to be paid, the amounts (if any) to be retained and the conditions for the release of the retention money.
- 5.11 If a standard form provides for the deduction of retention money but does not specify the amount to be retained, the amount shall be decided by the General Manager in consultation with the Treasurer.

### **Instructions for tendering and quoting**

- 5.12 Instructions to prospective tenderers for tendering and quoting shall be in accordance with the relevant corporate practice note. Instructions shall include details of the contract award criteria.

### **Performance bonds and parent company guarantees**

- 5.13 Contract documents for works and services of £250,000 and above shall incorporate any necessary requirements for the appointed contractor to provide the Authority with security for the due performance of such contracts. The requirements shall be in accordance with the results of risk assessments carried out by the General Manager in consultation with the Clerk and Treasurer, on a case-by-case basis and the security shall be either in the form of an acceptable parent company guarantee or a bond of a bank or approved insurance company. The required bond shall be at the specified value as determined by the relevant risk assessment.

### **Approval of procurement programme and tender documents**

- 5.14 The selection and packaging of work, the tender documents including the method of pricing, the award criteria and the competition programme shall be subject to Authority approval for all services contracts of £189,330 p.a. and above.

## **6. REQUIREMENTS FOR QUOTATIONS AND TENDERS**

### **Estimate of cost**

- 6.1 The General Manager shall prepare a properly calculated written estimate of the cost prior to inviting tenders and quotations for works, supplies or services and shall calculate, where appropriate, the estimated aggregate value in accordance with UK public procurement aggregation rules. The General Manager shall make secure arrangements for recording this written estimate and the supporting data, assumptions, and calculations.
- 6.2 The General Manager's estimate shall form the basis for determining the appropriate procedures for competitive tenders and quotations to be obtained under this Code and shall also be used for subsequent evaluation purposes.

### **Thresholds and numbers of tenders and quotations to be invited**

- 6.3 The following minimum number of invitations to tender or quote shall apply, and the exemptions within paragraphs 6.4 to 6.6 before any order for works, supplies or services is placed:

<b>Type of procurement and thresholds</b>	<b>Minimum number of invitations to tender or quote</b>
(a) works, supplies and services estimated to cost less than £1,500	no requirement
(b) supplies and services estimated to cost £1,500 and above, but less than £5,000	3 oral quotations
(c) supplies and services estimated to cost £5,000 and above, but less than £25,000	3 written quotations
(d) works estimated to cost £1,500 and above but less than £25,000 }	3 written quotations
(e) works, supplies and services estimated to cost more than £25,000.	minimum of 4 tenders

## Exemptions

- 6.4 The General Manager in consultation with the Clerk and Treasurer may place orders of less than £25,000 without obtaining competitive quotations or tenders where the works, supplies or services are urgent and necessary:
- (a) for the protection of life, health or property; or
  - (b) to maintain the functioning of a public service for which the Authority is responsible.
- 6.5 The General Manager, in consultation with the Clerk or Treasurer may also place orders of less than £25,000 for works, supplies or services without obtaining competitive quotations or tenders where:
- (a) the works, supplies or services must normally be entrusted to a utility undertaking, statutory undertaking, local authority or similar public body; or
  - (b) the works, supplies or services are available from only one firm; or
  - (c) the Authority has decided to extend the scope of an existing contract to include further works, supplies or services or to extend the duration of a term contract; or
  - (d) the Authority has decided that special circumstances make it appropriate and desirable that a contract should be negotiated with a single firm.
- 6.6 The General Manager may place orders for works, supplies or services for which the Authority has a term contract up to any value provided that expenditure does not exceed any limit per order either stated in the contract documentation or set by the Authority, any ceiling that has been placed on the contract sum, or the provision in the budget, whichever is the lowest.
- 6.7 Paragraphs 6.4 to 6.6 are subject to:
- (a) the directions of the Authority being sought in any case which presents unusual features; and
  - (b) an estimate of the cost being obtained (where tenders or quotations have not been invited), unless it is impractical to do so, from the firm concerned before any written or oral order is issued.

## **7. USE OF & FRAMEWORKS**

- 7.1 Frameworks of suppliers may be used where these have been established by an appropriate contracting authority and the Authority is permitted to be a participant in the framework.
- 7.2 Chief officers may establish their own frameworks in order to streamline the process of ordering commonly bought goods, works or services. Any such framework must be established in accordance with the requirements of the Public Contracts Regulations 2015.
- 7.3 The duration of a Framework shall not exceed 5 years except in exceptional circumstances.
- 7.4 When establishing a Framework, a clearly defined process shall be included outlining how suppliers are to be selected.

## **8. MAINTAINING APPROVED LISTS**

- 8.1 The General Manager shall maintain approved lists of contractors for various works, supplies or services, in accordance with any procedures laid down by the Authority or, in the absence of such procedures, in accordance with any corporate practice notes.

## **9. INVITATION TO TENDER AND QUOTE**

### **Timetable and fees**

- 9.1 Periods for expressions of interest and tender submissions shall be set in accordance with any UK legislative rules and any other relevant provisions of this Code.
- 9.2 No fee or consideration of any kind shall be required for any invitation to tender or quote unless the documentation contains significant non-standard material likely to be of value to others. Where a fee is appropriate this shall be no more than the marginal cost of producing the documentation.

### **Public advertisements and notices**

- 9.3 All Tenders will be advertised via the Authority's e-tendering portal and tenders in excess of £25,000 shall be advertised on 'Contracts Finder' and also on 'Find a Tender' if over £189,330.
- 9.4 Advertisements will also be placed as appropriate in local publications (hardcopy and/or electronic) and relevant principal trade journal(s) circulating among such firms as undertake such contracts.

### **Selection by General Manager**

- 9.5 Where the estimated cost of the works, supplies or services is below the thresholds for public advertisements, the General Manager, in consultation with the Clerk and Treasurer, shall decide which firms capable of performing the contract shall be invited to tender or quote. In reaching a decision, the General Manager shall use such methods to compile the list of firms as he shall consider necessary or reasonable in the particular circumstances of the case with the aims of (a) taking account of information regarding the firms' known record of quality and price, and (b) developing competition by offering opportunities to firms not previously employed by the Authority.

- 9.6 Any additional information or clarifications, whether or not unsolicited, requested in writing by a firm(s) or arising from a site visit, shall be supplied in writing to all potential tenderers at the same time.

### **Authority approval for selection of firms invited to tender**

- 9.7 Authority approval shall be sought for any shortlist of firms prior to inviting such firms to tender for services contracts estimated at £189,330 p.a. and above.

## **10. RECEIPT AND OPENING OF TENDERS AND QUOTATIONS**

### **Arrangements**

- 10.1 The Clerk shall make arrangements in accordance with this Code for the receipt, custody and opening of competitive tenders and quotations. The General Manager shall ensure that the principles of these arrangements are observed in all respects.
- 10.2 Every tender must be received by a secure method using the Authority's e-tendering portal or other approved e-sourcing system.
- 10.3 The relevant officer must notify all suppliers of the correct tender return instructions, including the date, time and place (details of the e-sourcing system).
- 10.4 In exceptional circumstances, the deadline for receipt of tenders may be extended, but only with the agreement of the Clerk and only if such extension of time will not disadvantage a tenderer. No extension to the deadline can be given once the original deadline has passed and the seal has been broken on the e-tendering portal.
- 10.5 The relevant officer must arrange for all tenders for any one Contract to be opened at the same time. All tenders received via the Authority's e-tendering portal should be opened by an officer not involved in the tender exercise:
- 10.6 Any tender that does not comply with the Authority's requirement as set out in the tender invitation e.g. arrives late, should normally be excluded from consideration, with the circumstances recorded on the Authority's e-tendering portal. Officers may, however, seek the agreement of the Clerk to amend these requirements in appropriate circumstances. Any such relaxation shall be

identified when seeking any necessary authorities required before the acceptance of a tender.

10.7 The Clerk must ensure, for audit and information purposes that for all tenders received via the Authority's e-tendering portal:

a) an electronic record is retained of the date and time of opening and the name of the officer involved; and

b) an electronic record of all tenders received is retained.

10.8 The General Manager shall inform the Clerk, in writing, of the number of firms invited to tender or quote, the latest date and time stipulated for their receipt and whether or not separate bills of quantities are to be completed and submitted.

#### **Action on tenders and bills of quantities**

10.9 As soon as possible after tenders are opened and recorded they, and a copy of the record, shall be placed in the General Manager's custody (except where the Clerk may decide otherwise). Any Member or officer who obtains knowledge of the contents of tenders shall not reveal that knowledge to any person who is not authorised to receive such information.

#### **Late tenders**

10.10 Tenders received after the stipulated time shall not be opened and shall be clearly marked with the date and time of receipt and the signature of the officer receiving them and shall be handed forthwith to the Clerk or General Manager as appropriate. A record shall be kept of tenders received after the stipulated time including the name of the tenderer, the date and time of receipt as marked on the envelope and, if legible, the date and time of the postmark. If the tenderer cannot be identified without opening the tender, then the tender may be opened.

10.11 The Clerk shall promptly return the late tender to the firm unopened (unless opened to identify the firm as provided for in paragraph 10.10 together with a letter of explanation.



## **11. REJECTION AND NON-CONSIDERATION OF TENDERS AND QUOTATIONS**

### **Rejection of tenders and quotations**

- 11.1 Any tenders or quotations submitted by any firm shall be rejected by the Authority where the firm:
- (a) fixes or adjusts prices or rates shown within or underlying its tender or quotation by, or in accordance with, any agreement or arrangement with any other person, or by reference to any firm's tender or quotation, or communicates to any person or firm other than the Authority the amount or approximate amount of the prices or rates shown in its tender or quotation, except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of the tender or quotation, or for the purposes of financing or insurance; or
  - (b) enters into any agreement with any other person that such other person shall refrain from submitting a tender or quotation, or shall limit or restrict the prices to be shown by any other firm in its tender or quotation; or
  - (c) offers, or agrees, to pay or give, or does pay or give, any sum of money, inducement 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 firm, or any other person's proposed tender or quotation, any act or omission of the sort described in paragraph 11.1 (a) and (b) above; or
  - (d) in connection with the award of the contract(s) commits an offence under the Prevention of Corruption Acts 1889 to 1916, or gives any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972; or
  - (e) has directly or indirectly canvassed any Member or officer of the Authority concerning the acceptance of any tender or quotation, or has directly or indirectly obtained, or attempted to obtain, information from any such Member or officer concerning any other firm, tender or quotation.
- 11.2 Such rejection shall be without prejudice to any other civil remedies available to the Authority or any criminal liability which such conduct by a firm may attract.

## **Non-consideration of tenders and quotations**

- 11.3 The Authority may, at its absolute discretion, refrain from considering any tender or quotation if:
- (a) it does not include provision for the whole specification(s); or
  - (b) it is not in accordance with the Authority's instructions to tenderers and all other provisions of the invitation to tender. For the avoidance of doubt this includes the failure to provide a method statement where requested and failure to provide priced bills of quantities where requested by the specified date; or
  - (c) it is otherwise incomplete or incorrectly completed; or
  - (cl) the firm makes, or attempts to make, any variation or alteration to the terms or conditions of the contract documentation including the form of tender, the certificate, the conditions, the specification(s), or the schedule(s), except where such a variation or alteration is expressly invited or permitted by the Authority in writing.

## **12. TENDER EVALUATION**

### **Custody of documents**

- 12.1 The General Manager (or such other officer as the Clerk shall direct) shall keep all tender documents in safe custody and shall maintain records of the officers, consultants and agents to whom and from whom tender documents are passed.

### **Evaluation process**

- 12.2 Tenders and quotations shall be scrutinised in order to evaluate the available evidence against the stated award criteria. All communications with tenderers and referees shall be confidential and properly recorded and firms shall be required to provide any necessary confirmations or explanations in writing.

### **Amendment of tenders or quotations submitted in competition**

- 12.3 Obvious errors on the face of the submitted tender or quotation documents in

calculations, extensions or totalling, whether found by the firm concerned or by the Authority, shall be dealt with as follows:

- (a) in the case of tenders or quotations based on schedules of items or provisional quantities, obvious errors in totalling, extensions or calculations shall be corrected; and
- (b) in the case of tenders or quotations based on priced bills of quantities where obvious errors in totalling, extensions or calculations are in such bills of quantities:
  - (i) where the firm concerned does not wish to amend its tender or quotation the errors shall be corrected in full within the bill of quantities including the necessary percentage pro rata adjustment to all detailed rates (excluding provisional and prime cost sums and provided that such pro rata percentage adjustment exceeds 0.25%) in order to make the total of the bill of quantities equal the tendered price or quotation and provided that such amended rates and prices would apply to variations and any indexation throughout the contract; or
  - (ii) if the firm concerned wishes to adjust its tender or quotation such adjustment shall be regarded as valid provided that the chief officer is satisfied that it was a bona fide mistake and that the adjustment is for the full amount of the error(s).

12.4 When a firm seeks to amend its tender or quotation for reasons other than in paragraph 12.3 the following rules shall apply:

- (a) If a firm seeks to amend its prices upwards within the period of validity of the tender or quotation it shall be told that it must stand by its original offer or withdraw it. Requests to amend prices upwards after the period of validity has expired shall be dealt with on their merits, within effective arrangements for ensuring probity and accountability.
- (b) If a firm seeks to reduce its prices the decision on the award of the contract shall be made on the original prices tendered or quoted, but if a contract is thereby awarded to the firm which amended its tender or quotation the amended price shall be accepted.

12.5 If the lowest tender or quotation is unacceptably high the firm which submitted the lowest tender or quotation may, at the discretion of the General Manager, in consultation with the Clerk and Treasurer, be asked

whether it will reduce its tender or quotation without varying the specifications, If it agrees to do so, its tender or quotation shall be amended accordingly.

### **Alternative specifications and conditions**

12.6 Where alternative specifications or conditions of contract are submitted, either in addition to, or in lieu of, those set out in the invitation to tender or quote, the General Manager shall conduct any necessary investigations in order to establish, so far as is possible, common criteria between tenders or quotations for ascertaining the most advantageous offer. In so doing, he shall have regard to the following:

- (a) a tender or quotation may be considered even though it does not comply with the specification or conditions of contract provided that it is nevertheless advantageous, or if the firm concerned is prepared to amend it to make it advantageous, either by complying strictly with the specification and conditions of contract or otherwise;
- (b) alternative specifications submitted shall not normally be disclosed to other firms invited to tender or quote but, where acceptance of modifications to contract conditions proposed by a firm is contemplated, any other firm whose offer is potentially advantageous shall be given the opportunity to tender or quote on the conditions as modified; and
- (c) where investigations result in an adjustment to a tender or quotation, the chief officer must be satisfied that it is commensurate with the modification of specification or conditions, and shall consult the Treasurer where an adjustment in price is large in relation to the gap between the original offer and the next most advantageous offer.

12.7 Corrections or amendments carried out in accordance with paragraphs 12.3 to 12.6 shall be recorded, signed and dated by both the General Manager and the tenderer's representative and shall be attached to the tender.

### **Eligibility, Financial Standing and Technical Ability or Capacity**

12.8 The eligibility, financial standing and technical ability or capacity of tenderers shall be reviewed in the light of tenders received.

## **Financial evaluation of price(s) and rates**

- 12.9 The tendered price and individual detailed rates within tenders and quotations shall be evaluated including their application to any of the indicative volumes disclosed within the invitation to tender where applicable. Pricing schedules shall be subject to testing for sensitivity to volume changes and to discounts where more than one contract may be awarded to a single firm. Other costs and savings will be considered which may properly be taken into account within the evaluation process.

## **Results of evaluation**

- 12.10 The contract documents shall dictate the required quality and levels of provision and therefore the lowest tender or quotation from a firm that has not been excluded under other elements of the award criteria shall normally be accepted. However, other factors within the award criteria may make it more economically advantageous for a higher tender or quotation to be accepted and the economic weight and justification for including such factors shall be documented as part of the evaluation.

## **13. CONTRACT AWARD**

### **Acceptance of competitive tenders and quotations**

- 13.1 Subject to the provisions of national law and this Code the General Manager in consultation with the Clerk and Treasurer may accept tenders or quotations for works, supplies or services of less than £25,000 save that the directions of the Authority shall be sought in any case which presents unusual features.
- 13.2 In respect of contracts in excess of £25,000 approval of the Authority must be sought, except where reasons of urgency make the use of the Standing Order No. 38 procedure appropriate or where the Authority has already instructed that the procedure may be used or has delegated power to officers to accept a tender.
- 13.3 No tender or quotation shall be accepted or recommended for acceptance until the General Manager's prior written estimate has been taken into consideration, and reasonable explanation has been obtained and recorded for any excess.

13.4 Tenders or quotations shall be accepted by formal letter of acceptance headed subject to contract or official Authority order signed by or on behalf of the General Manager or such other officer as the Clerk may appoint.

#### **Award notifications and statement of reasons**

13.5 After a tender has been accepted all tenderers shall be promptly notified of the result and, where possible, of the amount of each tender.

13.6 If no tender is accepted, the tenderers shall be informed and given the reason for the Authority's decision (for example - the Authority has decided not to proceed with the contract, or the amount of the lowest tender is unacceptably high) but the details of tenders received shall not be disclosed.

13.7 Unsuccessful firms may request reasons for their rejection and a written statement of reasons shall be provided by the chief officer within 15 days of the receipt of such request.

#### **Contract formalities**

13.8 With respect to contracts costing between £5,000 and £25,000, the General Manager shall ensure that a formal contract document is prepared. With respect to contracts costing in excess of £25,000, this shall be the responsibility of the Clerk.

#### **Custody and retention of contracts, tenders and quotations**

13.9 Contract documents shall be retained in a secure place for such period as shall be determined by the Clerk. Other accepted tenders and quotations are to be retained in safe custody by the General Manager in accordance with arrangements agreed with the Clerk.

13.10 As soon as possible after a tender has been accepted any bills of quantities still held other than those relating to the accepted tender shall be returned to the firm(s) who submitted them.

13.11 The General Manager shall retain all unsuccessful tenders and quotations in safe custody until the financial year in which the tender or quotation was rejected has been subject to audit after which time they may be destroyed at the General Manager's discretion.

## **14. SUBLETTING AND ADDITIONAL SPENDING**

### **Sub-letting**

14.1 The General Manager, in consultation with the Clerk and Treasurer, is authorised to approve the sub-letting of a contract or any part thereof by an Authority contractor in accordance with the contract conditions and provided that such arrangements are not contrary to the Authority's interests.

### **Additional spending**

14.2 The Authority's officers shall keep under review all contracts and inform the Authority of any contract where the total of additional spending on modifications, works instructions, claims or delays are forecast to result in material extra expenses to the Authority,

**DEFINITIONS AND INTERPRETATION**

**approved list** - a list, which has been approved by the Authority, of the names of firms who may be invited to tender for prospective contracts within the scope of the list concerned.

**Authority** - Western Riverside Waste Authority or, where that Authority has formally delegated its power, a committee or sub-committee of the Authority.

**Code** - this Code of Practice.

**contract** - an agreement in writing made by or on behalf of the Authority for works, supplies or services on specified terms and conditions.

**contractor** - a firm with which the Authority has entered into a contract.

**firm** - includes a person or persons and any body corporate or incorporate (and may include a charity, company limited by guarantee or shares, consortium, co-operative, industrial and provident society, joint venture, partnership, private company, public company, trust, or voluntary body).

**services** - includes activities and functions performed by providers but excludes works and supplies,

**supplies** - contracts to supply goods, parts, materials, provisions, and items to meet the needs of the Authority,

**term contract** - a contract for the procurement of works, supplies or services for a fixed term, normally based on a schedule of prices and awarded as a result of the invitation of competitive tenders in accordance with this Code.

**works** - building and civil engineering maintenance, repair and construction works.

All financial limits referred to in this Code are to be considered as being exclusive of Value Added Tax.

Words importing the masculine gender only include the female gender and words importing the singular only include the plural number and vice versa.