

# West Yorkshire Combined Authority

## Contracts Standing Orders

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## **Section I – Definitions & Principles**

### **1. Introduction**

- 1.1. In the Contracts Standing Orders these definitions shall apply:
  - 1.1.1. “Budget Holder” and “Budget Controller” have the meanings set out in the Financial Regulations of West Yorkshire Combined Authority.
  - 1.1.2. “Combined Authority” means West Yorkshire Combined Authority.
  - 1.1.3. “Chief Finance Officer” means the Director of Resources.
  - 1.1.4. “Director” means Managing Director, Director or the Executive Head of Economic Services of the Combined Authority.
- 1.2. This part of Contracts Standing Orders exists for the following main reasons:
  - 1.2.1. To protect the Combined Authority, its Directors and other Officers involved in the award of contracts;
  - 1.2.2. To demonstrate that the Combined Authority is obtaining value for money in the award of contracts;
  - 1.2.3. To provide the means of securing competition in the award of contracts;
  - 1.2.4. To prevent corruption, or allegations of corruption, in the award of contracts; and
  - 1.2.5. To ensure compliance with legislation and regulations.
- 1.3. A contract is an agreement made between two or more parties that creates legally binding obligations between them. Contracts are covered by contract law. The contract sets out those obligations and the actions that can be taken if they are not met.
- 1.4. These Contracts Standing Orders cover the organisations rules and procedures around the creation and approval of such contracts. It excludes:
  - 1.4.1. Grant Agreements
  - 1.4.2. Secondment Agreements
  - 1.4.3. Funding Agreements

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

**To be approved at the Annual Meeting on 28 June 2018**

- 2.1. Every contract made by or on behalf of the Combined Authority and all procedures relating thereto shall comply with these Contracts 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 Combined Authority shall be required to adopt the provisions of these Contracts 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:
  - 2.3.1. current employee
  - 2.3.2. close relative of any current employee
  - 2.3.3. ex-employee of the Combined Authority within 2 years of leaving without the written approval of the Managing Director.
- 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 and the Declaration of Interest process.
- 2.6. All officers must be prepared to justify to the Combined 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 Combined 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 employee 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 Combined 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 an officer for that purpose or on Proactis.

**To be approved at the Annual Meeting on 28 June 2018**

## **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 Head of Procurement shall notify all Budget Holders and Budget Controllers of any changes in the financial thresholds.  
*NB Financial thresholds set by EU Directives are reviewed every two years and as from 1 Jan 2018 they are:*
- Public Works - £4,551,413
  - Services - £181,302
  - Supplies - £181,302
- 2.10. Contracts, tenders or quotes must never be artificially divided to bring them below the relevant threshold. Such actions will be seen as a breach of Contracts Standing Orders.
- 2.11. As part of the business planning process Budget Holders will with the Head of Procurement identify potential new contracts to be let in the following financial year to enable consideration to be given to the insertion of a Prior Information Notice in the Official Journal of the EU ("OJEU").

## **Frameworks**

- 2.12. Frameworks should be considered before undertaking any OJEU tender process. Only where a suitable framework offering value for money cannot be identified should a full tender process be undertaken. Where a framework is used in accordance with the conditions, this negates the need to undertake further quotations.
- 2.13. Where a framework is utilised tenders must be sought and evaluated, if necessary via mini-competitions, in accordance with regulations and the Procurement Manual. Where a framework offers a direct award option this can be used in accordance with the framework terms where value for money can be demonstrated.

## **British Standards**

- 2.14. 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 Budget Controller 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.

### **Data protection**

2.15. Where a contract involves data processing by the contractor on behalf of the Combined Authority, then sufficient due diligence shall be undertaken to ensure that the Combined Authority only uses contractors who provide guarantees to implement appropriate technical and organisational measures in such a manner so as to meet the requirements of the General Data Protection Regulation and protect the rights of individuals.

### **Work by Combined Authority's Directorate**

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

### **Use of Procurement Cards**

- 2.17. Procurement Cards can be used where there is no suitable supplier available on the Proactis system and the spend value is below £500, unless otherwise agreed in writing by the Head of Procurement.
- 2.18. Procurement Cards can also be used for emergency purchases outside the hours Monday to Friday 9am to 5pm on the approval of a Budget Holder or Budget Controller. Such usage must be reported to the Head of Procurement the next working day.
- 2.19. All spend on a Procurement Card should be undertaken in line with the Procurement Card usage policy and will be issued at the discretion of the Head of Procurement dependent on business need.

## **Section II – Good and Services (Excluding Local Bus Services, Education Transport Bus and Taxi Services)**

### **3. Tendering - Financial Categories**

3.1. This section applies to ALL contracts except:

3.1.1. Local Bus Services, Education Transport Bus and Taxi Services;  
and

3.1.2. Contracts for the acquisition or disposal of interests in land.

3.2. 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) unless a Procurement Framework or Central Purchasing Body is being utilised:

Category A Up to and including £500

Category B Over £500 to and including £25,000

Category C Over £25,000 to and including £75,000

Category D Over £75,000 up to and including the OJEU threshold then in force

Category E Over the OJEU threshold then in force

3.3. 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. Disaggregation is a breach of EU Regulations.

### **4. Category A Procedures**

4.1. No quotations or tenders are required for this category of contract, but the relevant Budget Holder must be satisfied that they are obtaining value for money and keep a written record of this.

### **5. Category B Procedures**

5.1. An authorised representative of the Budget Holder, or the Budget Holder themselves, must invite at least three written quotations for all contracts within this category. Quotations must be submitted via the electronic tender management system unless price lists are held in the purchase ordering system.

## **6. Category C Procedures**

- 6.1. On behalf of the Budget Holder, the Head of Procurement must invite at least three tenders for all contracts within this category using the electronic tender management system.

## **7. Category D Procedures**

- 7.1. On behalf of the Budget Holder, the Head of Procurement must advertise via Contracts Finder [\(the official government portal\)](#) tenders for all contracts within this category using the electronic tender management system.

## **8. Category E Procedures**

- 8.1. All tenders must be issued via the electronic tender management system by the Head of Procurement on behalf of the Budget Holder. Engagement with the market, supervised by the Head of Procurement, must be undertaken before the tender is issued. Opportunities will automatically be advertised via Contracts Finder and OJEU in this category.
- 8.2. Publication of Category E tenders by the Head of Procurement shall be carried out strictly in accordance with OJEU requirements or terms of the Framework and will ensure any Contract Award Notices are submitted in accordance with the relevant EU Directive.

## **9. Issuing Orders & Contracts**

- 9.1. Any orders can only be placed and confirmed by an official Purchase Order on Proactis. Funds must never be committed verbally, or in writing, without a Purchase Order being issued.
- 9.2. In conjunction with the Head of Procurement and Head of Legal and Governance Services a contract should be created for Category D and Category E in all circumstances. Contracts for other Categories should only be considered if terms and conditions above the standard purchase order terms are required.

## **10. Waiving Contracts Standing Orders**

- 10.1. Contracts Standing Orders should only be waived in exceptional circumstances and only when the condition of EU Regulation apply. These are:
  - 10.1.1. Competition is absent for technical reasons.
  - 10.1.2. The protection of exclusive rights applies, including intellectual property rights



- 10.1.3. Extreme urgency brought about by unforeseen events. Insufficient time and lack of planning are not deemed to be valid reasons.
- 10.2. All requests to waive Contracts Standing Orders must be logged with the Head of Procurement and be approved before a Purchase Order can be raised. Approvals must be obtained as below and only when value for money can be demonstrated:
  - 10.2.1. Category B: Budget Holder and Head of Procurement
  - 10.2.2. Category C: Budget Holder and Head of Procurement
  - 10.2.3. Category D: Director and Head of Procurement
  - 10.2.4. Category E: Managing Director

## **11. Tender Criteria and Weighting**

- 11.1. In all cases where tenders are invited, the relevant selection and evaluation criteria and weightings shall be agreed between the Budget Holder and the Head of Procurement, and in all cases be clear in the Invitation to Tender.
- 11.2. Social value criteria with a weighting of at least 10% must be included in all Category D and Category E tenders. 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, social value, aesthetic and functional characteristics, technical assistance, after-sales service delivery date, delivery period and completion date).
- 11.3. Tender evaluation criteria shall be set so that 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. Contracts should be awarded on the basis of a Most Economically Advantageous Tender (MEAT) basis, taking account of price, quality and social value scoring criteria's.

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

- 12.1. This Standing Order shall have effect where a sub-contractor or supplier is to be nominated to a main contractor.
- 12.2. The requirements of Contracts Standing Orders Section II shall apply to the procurement of sub-contractors and suppliers who are to be nominated to a main contractor by the Combined Authority.
- 12.3. 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

**To be approved at the Annual Meeting on 28 June 2018**

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.

### **13. Duties of Agents**

- 13.1. It shall be a condition of the engagement by the Combined Authority of any person (not being an officer of the Combined 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 Combined Authority, and also with all other requirements of the officer concerned.

### **14. Exceptions**

- 14.1. This section of Contracts Standing Orders (section II) shall not apply to:

14.1.1. 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.

14.1.2. Where spend is dictated by the terms of a preceding contract or agreement.

- 14.2. Expenditure incurred shall be recorded and reported in accordance with the requirements for contracts of the relevant category within the Procurement Manual with Purchase Orders being raised as required.

### **15. Tendering Procedure**

- 15.1. All tendering must be carried out via a secure electronic tender management system operated and managed by the Head of Procurement.

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

15.2.1. the information required from the tenderers;

15.2.2. the evaluation criteria and weightings;

15.2.3. a closing date and time;

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

- 15.2.5. a statement that a tender which is submitted late **will** not be considered; and
- 15.2.6. a statement that there is no obligation to accept the lowest price or any tender.
- 15.3. Any tender which is submitted late or submitted outside the electronic tender management system will only be accepted in exceptional circumstances with the approval in writing of the Head of Procurement and the Head of Legal and Governance Services.

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

- 16.1. Acceptance of quotations and tenders and approvals on contracts must be made by the following:
  - 16.1.1. Category A: Budget Holder or Budget Controller
  - 16.1.2. Category B: Budget Holder or Budget Controller
  - 16.1.3. Category C: Budget Holder and Head of Procurement
  - 16.1.4. Category D: Budget Controller and Head of Procurement
  - 16.1.5. Category E: Managing Director
- 16.2. Tenders shall be awarded to the party that achieves the highest score.
- 16.3. Where the amount of a tender or a quotation exceeds the expected Category the approvals for the higher Category shall apply.
- 16.4. The acceptance or rejection of a tender by or on behalf of the Combined Authority shall be notified in writing to the organisation submitting the tender or quotation by the Head of Procurement, 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.

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

- 17.1. 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.
- 17.2. 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 Head of Procurement 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 Contracts Standing Orders.

## **18. Records and Notifications**

- 18.1. 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 shall be in accordance with the policy approved by the Combined Authority, the Chief Finance Officer, Head of Procurement and the Head of Legal and Governance Services from time to time.
- 18.2. This policy shall form part of the Procurement Manual and shall be implemented by the Head of Procurement in conjunction with the Chief Finance Officer and Budget Holders as appropriate.

## **19. Compliance**

- 19.1. Compliance to these Contracts Standing Orders is a mandatory requirement. Any non-compliance identified will be reported to the Managing Director and to the Head of Internal Audit. Non-compliance may be treated as a disciplinary matter.

## **Section III - Local Bus Services, Education Transport Bus and Taxi Services**

### **20. Contracts for Local Bus Services, Education Transport Bus and Taxi Services**

- 20.1. 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 Combined Authority pursuant to its statutory powers and duties.
- 20.2. All procurement of services in accordance with the Combined Authority's said policies shall be in accordance with the procedures set out in the Combined Authority's local and education transport services policy from time to time in force. Copies of these policies of the Combined Authority shall be maintained by the Director, Transport Services and Head of Transport Operations.
- 20.3. 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. Minimum subsidy local bus contracts are deemed Concession Contracts and therefore subject to Concession Contracts Regulations 2016.
- 20.4. 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.
- 20.5. Invitations to tender shall contain the following documents, information and requirements in every case:-
  - 20.5.1. the identity of the party requesting the invitation;
  - 20.5.2. the Combined Authority's Instructions to tenderers including a closing date and time;
  - 20.5.3. the Service Specification setting out the full details of the services being tendered for;
  - 20.5.4. the Combined Authority's General Conditions of Contract for the relevant service, together with any schedules of special requirements;
  - 20.5.5. the Combined Authority's Form of Tender and Form of Agreement;
  - 20.5.6. clear and unambiguous scoring criteria and weightings;
  - 20.5.7. a statement that the Combined Authority is not obliged to accept the cheapest or any tender;

**To be approved at the Annual Meeting on 28 June 2018**

- 20.5.8. a statement that, provided it is accompanied by a fully compliant bid, a tenderer **may** propose an alternative approach to meeting the transport requirement set out in the tender;
  - 20.5.9. a statement that a tender submitted late **will** not be considered;
  - 20.5.10. a statement to the effect that when deciding whether or not to accept a tender the Combined Authority has a statutory duty to consider the effect on competition in the local market, and a combination of economy efficiency and effectiveness.
- 20.6. 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 Combined Authority.
- 20.7. Notwithstanding the above, emergency contracts may be awarded without tender subject to the provisions of s91 Transport Act 1985.

## **21. Approval of Local Bus Services, Education Transport Bus and Taxi Services Tenders by the Authority**

- 21.1. The Head of Transport Operations shall approve all issue of tenders, award or variations of contract however approval of the Director, Transport Services shall be required where the annual value of the contract exceeds Category C threshold:-
- 21.1.1. before tendering for any new bus services or for any services previously provided on a commercial basis;
  - 21.1.2. before re-tendering any batches of contracts where the annual value of the contract exceeds Category C threshold;
  - 21.1.3. before awarding any contract for any new services or for any services previously provided on a commercial basis;
  - 21.1.4. before awarding any contract where the annual value of the contract exceeds Category C threshold;
  - 21.1.5. before awarding any contract issued without tendering using the statutory de-minimis provisions;
  - 21.1.6. where the value of any contract, extension or variation exceeds the Category C threshold;

## **22. Tender Procedures for Local Bus Services, Education Transport Bus and Taxi Services**

- 22.1. Tendering must be via the electronic tender management system or via e-mail at the discretion of the Head of Transport Operations.

## **23. Receipt of Tenders for Local Bus Services, Education Transport Bus and Taxi Services**

- 23.1. Where the electronic tender management system was used receipt of tenders shall be in conjunction with the Head of Procurement.
- 23.2. Where tenders were invited via e-mail Standing Order 25 shall still apply to the acceptance of tenders for local and education transport services.

## **24. Tender Criteria and Weighting**

- 24.1. 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.
- 24.2. 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.
- 24.3. 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.
- 24.4. The Head of Transport Operations shall determine the criteria under which tenders are evaluated in consultation with the relevant District Council

## **25. Acceptance of Tenders**

- 25.1. Where the value of a contract exceeds £500,000 or the combined value of contracts for which tenders are awarded on a batch basis exceeds £500,000, approval to award contracts must be made by the Managing Director.
- 25.2. Contracts or batches of contracts shall be awarded or varied in accordance with paragraph 21 provided that the Head of Transport Operations supplies to the Managing Director a schedule of all such contract awards or variations each calendar month.

- 25.3. Where a third party is funding the contract, the Head of Transport Services must obtain and maintain a record of approval by the third party to the award of the contract
- 25.4. Where the annual contract price does not exceed the Category B threshold the Head of Transport Services may delegate the authority to award or vary contracts under paragraph 21 to an appropriate Budget Holder.
- 25.5. Acceptances of all tenders shall be in writing incorporating by reference the Combined 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.

## **26. Equality of Tenders for Local Bus Services, Education Transport Bus and Taxi Services**

- 26.1. Standing Order 17 shall apply where two or more tenders achieve an equal score or equal price quotation.

## **27. Records and Notifications**

- 27.1. The Head of Transport Operations shall be responsible for:
  - 27.1.1. 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 Combined Authority's approved tendered services policy from time to time;
  - 27.1.2. ensuring that a summary of all tender awards, re-tenders, extensions and contract variations be reported to the Director, Transport Services periodically.
  - 27.1.3. 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.



## **Section IV – Issuing Contracts**

### **28. Preparation and Signature of Contracts - Non Local and Education Services**

- 28.1. A Contract can be entered into via the generation of a Purchase Order on standard terms and conditions or via a “formal contract in writing” via the legal section.
- 28.2. Contracts covered by Section II should be prepared as follows:
  - 28.2.1. Category A: No formal contract required.
  - 28.2.2. Category B: No formal contract required. A formal contract in writing can be considered if terms and conditions above the standard purchase order terms are required.
  - 28.2.3. Category C: No formal contract required. A formal contract in writing can be considered if terms and conditions above the standard purchase order terms are required.
  - 28.2.4. Category D: A formal contract in writing should be prepared in all cases unless otherwise agreed in writing by the Head of Legal and Governance Services.
  - 28.2.5. Category E: A formal contract in writing should be prepared in all cases unless otherwise agreed in writing by the Head of Legal and Governance Services.
- 28.3. Formal contracts in writing 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 Combined Authority.
- 28.4. All formal contracts in writing should contain the relevant transparency clauses to allow for the Combined Authority to meet its transparency obligations. If redactions are required to the contract these should be made by the supplier and agreed by the Combined Authority.

### **29. Preparation and Signature of Contracts – Local and Education Services**

- 29.1. Contracts for local services and education transport must be in writing incorporating by reference the Combined Authority’s Agreement, General Contract, Terms and Conditions, services specification, and any schedules, provided within the tender materials as appropriate and signed by Head of Transport Operations.

- 29.2. Where the total value of a contract over its full term exceeds £500,000 or the combined value of contracts for which tenders are awarded on a batch basis exceeds £500,000, approval to award contracts must be made by the Managing Director.
- 29.3. Where for a period in excess of eight years, they must be executed under the Common Seal of the Combined Authority unless the Head of Legal and Governance Services determines otherwise.

### **30. Contents of Contracts**

- 30.1. Every contract in writing shall specify:
  - 30.1.1. the work, materials, matter or things to be done or furnished;
  - 30.1.2. the price to be paid, with a statement of discounts or other deductions;
  - 30.1.3. the time or times within which the contract is to be performed;
  - 30.1.4. such of the matters referred to in Standing Orders 30.3 to 30.4 as are required by those Standing Orders to be included.
- 30.2. Unless the Head of Legal and Governance Services and the Chief Finance Officer having regard to all the circumstances, consider it to be unnecessary:
  - 30.2.1. contracts for the execution of work shall provide for liquidated damages to be paid by the contractor in case of delays; and
  - 30.2.2. the Combined 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.
- 30.3. 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 Combined 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 Contracts Standing Order shall be drawn to the attention of all persons tendering or submitting a quotation for a contract with the Combined Authority.

- 30.4. Unless the Head of Legal and Governance Services determines otherwise, every contract for works entered into in writing by the Combined Authority shall include the right of the Combined Authority to have access to the site of works and documents of the contractor. This right shall entitle the Combined 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 Combined Authority.

30.5. Every written contract that involves the processing of personal data by a contractor on behalf of the Combined Authority shall set out the subject matter and duration of the processing, the nature and purpose of the processing, the type or personal data and categories of data subjects and the obligations and rights of the Combined Authority. In particular the contract shall contain clauses that meet the requirements of Article 28(3) of the General Data Protection Regulation.

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

- 31.1. Where these Contracts Standing Orders require that a contract shall be in writing, this will not normally be satisfied by the use of e-mails.
- 31.2. Except where express provision is otherwise made in these Contracts 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.

### **32. Issue of Final Certificate**

- 32.1. 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 Combined Authority to complete an examination of the final account of such contract where the Auditor deems this to be necessary.

### **33. Variations to Contracts**

- 33.1. During the term of a contract it may be necessary to vary the terms. This could include amending the requirements, costs and/or dates. Variations to existing contracts may be made provided they are made in compliance with the Public Contracts Regulations 2015 Article 72.

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33.2. Contracts can be varied as follows:

<b>Variation Type</b>	<b>Value Limits</b>	<b>Approval Required</b>
Variation is provided for in the original contract.	None	Budget Holder or Budget Controller
Novation to a new provider who takes on the obligations of the original contractor.	None	Budget Holder or Budget Controller
Increase in the original contract value up to and including 10% where there is no change to the overall nature of the contract.	None	Budget Holder or Budget Controller
Increase in the original contract value over 10% and up to and including 50% where there is no change to the overall nature of the contract, and which is <ul style="list-style-type: none"> <li>• due to circumstances which as a diligent contracting authority the Combined Authority could not have foreseen, or</li> <li>• for technical reasons where significant inconvenience or cost would otherwise be incurred.</li> </ul>	Up to and including £75,000.	Managing Director or Head of Procurement in writing.
	Over £75,000	Managing Director in writing.

33.3. Contract variations should be treated as cumulative with values baselined from the original value.

33.4. Any variation should 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.

**To be approved at the Annual Meeting on 28 June 2018**

- 33.5. The Head of Procurement and Head of Legal and Governance Services should be informed of all contract variations with the exception of 33.6. A copy of the variation shall be supplied to the Head of Legal and Governance Services who shall annex it to the contract to which it relates. A copy should also be logged within PROACTIS against the relevant purchase order.
- 33.6. Contract variations for Special Educational Needs transportation contracts must be confirmed in writing by the Head of Transport Operations with a copy being stored locally by the Special Educational Needs team.

#### **34. Cancellation of Contracts in Cases of Corruption**

- 34.1. There shall be inserted in every written contract a clause empowering the Combined 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 Combined 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 Combined 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 Combined 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.

#### **35. Assignment and Underletting of Contracts**

- 35.1. 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 the Budget Holder and upon such conditions as they think fit.
- 35.2. 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.

## **Section V – Land**

### **36. Acquisition and Disposal of Interests in Land**

36.1. Where the Combined 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 Combined Authority.

36.2. Before acquiring or disposing of an interest in land, the Head of Legal and Governance Services must obtain approval for the acquisition or disposal from:

- the Transport Committee, in respect of any acquisition or disposal within the Committee's terms of reference, or
- any relevant officer to whom authority has been delegated for such an acquisition or disposal, or
- the Combined Authority.

## **Section VI – Legal**

### **37. Legal Proceedings**

- 37.1. 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 Combined Authority, unless otherwise required or authorised by law, or where the Combined Authority give authority, to some other person for the purpose of such proceedings.
- 37.2. Where there is a likelihood of the Combined Authority being involved in any legal proceedings or where the Police investigate any matter involving the Combined 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.

### **38. Sealing of Documents**

- 38.1. A resolution of the Combined Authority, a committee of the Combined 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 Combined Authority shall be affixed to any document only when:
  - 38.1.1 sealing has been authorised by a resolution of the Combined Authority or of a Committee or officer to which the Combined Authority has delegated its powers in this behalf, or
  - 38.1.2 the Head of Legal and Governance Services has delegated authority to enter into the contract or agreement.
- 38.2. The application of the Combined Authority's Seal shall be authenticated by the signature of the Head of Legal and Governance Services or the Managing Director.
- 38.3. 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 Combined 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.
- 38.4. 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 Combined Authority shall be authorised to sign any such documents other than cheques and other negotiable instruments.