



## **TENDERING POLICY & PROCEDURES**

Date of Meeting: 3<sup>rd</sup> November 2020

Next Review Date: November 2023

## **CONTENTS**

## **PAGE NO**

1.	Introduction	3
2.	Aims and Objectives	3
3.	Delegation of Authority to Instruct Works	4
4.	Allocation of Works Under Threshold	4
5.	Tendering Information for Works Above Threshold	5
6.	Receipt of Tenders	6
7.	Tender Opening	7
8.	Acceptance of Tenders	8
9.	Insurance Claims	9
10.	Reports to Committee	9
11.	Inspections	9
12.	Complaints	10
13.	Confidentiality and Data Protection	10
14.	Review	10
	<u>Cross Reference to Other Policies</u>	10
	<u>Appendices</u>	
	Appendix 1 - Delegation of Authority to Instruct Works (Day to day Repairs & Maintenance Contracts Expenditure)	11
	Appendix 2 - Contractor's Receipt of Tender Documents	12
	Appendix 3 - Tender List Receipt	13

## **1. INTRODUCTION**

- 1.1 The Association recognises the need for an open and accountable system when inviting and accepting tenders for maintenance work. It is therefore the intention of this policy and related procedures to clarify staff and committee responsibilities in this area across all forms of tender.
- 1.2 The legislative framework in which RSL's must procure works, supplies and services has come about as a result of the EU procurement directives being introduced into Scots Law. The main procurement regulations under which RSL's now operate are the Public Contracts (Scotland) Regulations 2015, the Procurement (Scotland reform Act 2014 and the Procurement (Scotland) regulations 2016.
- 1.3 The public procurement rules vary depending on the type and value of the contract. When contracts are above a certain value (known as "above-threshold" contracts) more detailed rules apply. Above-threshold contracts must be advertised on Public Contracts Scotland and /or in the Official Journal of the European Union (OJEU). At the time of review the threshold values relating to RSL's are;
- Scottish Regulated contracts- £50,000 for Goods and Services and £2,000,000 for Works
  - OJEU contracts- £189,330 for Goods and Services and £4,733,252 for Works (from 01/01/20), although the EU threshold values are updated every 2 years.
- 1.4 Contracts which are worth less than these amounts (known as "below-threshold" contracts) are subject to fewer rules, but must still be appropriately publicised. Where the tender value is likely to be "below-threshold" but above £50,000, the Association will comply with the Scottish Procurement Directorate's Guidance and advertise the contract opportunities on the Public Contracts (Scotland) website, which is seen to satisfy the requirement for 'adequate publicity'.
- 1.5 The Association will determine the form and means of publication proportionately, taking into account the value of the contract and the extent to which it is likely to be of interest to contractors.

## **2. AIMS AND OBJECTIVES**

- 2.1 To ensure openness, efficiency, effectiveness and accountability in inviting, accepting and recording all tenders.
- 2.2 To ensure that committee and staff act in the best interests of the Association and that no benefit or inducement is ever sought or accepted from a contractor involved in tendering procedures. It is the duty of all Committee members and staff to declare any actual or reasonably construed conflict of interest.

- 2.3 To impress upon committee members and staff that confidentiality is paramount in dealing with tender documents. No disclosures to third parties are to be made without the express written prior consent of the management committee unless compliance with statute, regulation or best practice requires it.
- 2.4 To comply with legislation and best practice, including Health and Safety Regulations and the SHR's (Scottish Housing Regulator) Regulatory Framework.
- 2.5 To ensure equality of opportunity in all tendering procedures, all approved contractors will be required to accept the Association's Equal Opportunities Policy or to have developed policies of their own that are acceptable to the Association. The Association will have regard to its Equal Opportunities policy in all aspects of the tendering policy and procedures.

### **3. DELEGATION OF AUTHORITY TO INSTRUCT WORKS**

- 3.1 Works estimated up to an agreed value can be instructed by appropriate staff. At the time of review, all work with an estimated value of over £20,000 must be subject to competitive tender to achieve best value and a minimum of 3 contractors will be required to complete the tender exercise. However, the agreed values of delegated authority to instruct works will be reviewed annually (i.e. Standing Orders) and reported by the Director, for approval of the Management Committee. *(See Appendix 1 – Extract Standing Orders)*

### **4. ALLOCATION OF WORKS UNDER THRESHOLD**

- 4.1 When a contract is under the £20,000 threshold, it will be the Property Services Manager's responsibility to identify the appropriate contractors.
- 4.2 Minor works may be inspected by the Property Services (PS) Assistants or PS Officers (Housing Management). More technical works will be inspected by the PS Officer (Maintenance) and in regard to more specialist works, a dedicated consultant or surveyor may also be called upon. If costs are likely to be above the cost limits of the day to day system, the tendering process will be employed.
- 4.3 Cyclical and major works will generally be subject to suitable estimates by at least 3 contractors, unless the work is for a one-off replacement or specialist works of a minor or low cost value or there is a lower level of interest for advertised contracts. Examples of this may be where a replacement boiler, or kitchen or bathroom is required for one property; or when carrying out annual roof anchor testing, where contractors would already have won a gas maintenance tender, or be taken from the reactive maintenance contractors framework for which they would already have been reviewed and their prices vetted.
- 4.4 Where appropriate and whenever possible for works below the £20,000 threshold, contractors invited to provide estimates should be drawn from the

Association's current framework and the selection of others will be in accordance with the Association's Contractors' Selection Policy.

- 4.5 Any contractor selected will be expected to demonstrate all of the following attributes:-
- (i) technical knowledge and skills for the task
  - (ii) competence in Health and Safety Management
  - (iii) appropriate labour resources
  - (iv) previous experience and references
  - (v) financial viability
- 4.6 Where the contract involves specialist work for which the Association has no approved contractor, recommendations will be sought from other RSL's, consultants and press adverts. A report on all non-approved contractors will be presented to the Operations Sub-Committee for consideration and ultimate approval for the specific exercise only. However, where such specialist work is likely to be required on an ongoing ad hoc basis, the successful contractor may be invited to make a full application to be included in the reactive maintenance contractors' framework.
- 4.7 When identifying appropriate contractors, staff must ensure that no one contractor is asked to quote or instructed to carry out works significantly more often than any other appropriate contractors.
- 4.8 Clearly, the extent of the estimates sought or tendering process will be determined by the contract value and anticipated level of interest it will generate.

## **5. TENDERING INFORMATION FOR WORKS ABOVE THRESHOLD**

- 5.1 Where works are to be advertised on the Public Contracts (Scotland) website, the following information will be included in the Contract Notice and/ or posted on the Public contracts (Scotland) website:-
- (i) instructions regarding tendering procedure
  - (ii) full description of works
  - (iii) standard specification for material and products
  - (iv) pricing document (if applicable)
  - (v) conditions of contract
  - (vi) the period within which the works are to be completed
  - (vii) arrangements for the prior inspection of the works, if required
  - (viii) conditions of payment
- 5.2 If for any reason the tender document has to be amended, all tenderers must be notified in writing and if necessary, an extension to the tender period granted.
- 5.3 Where possible and practical, the Association may develop partnering or best value in the selection process whereby the lowest tender may be rejected in favour of another which can be shown to represent best value, or to select a preferred contractor with whom to negotiate the tender. Possible examples are:-

- (i) where a kitchen replacement contract is planned and a preferred supplier is identified, prior to tendering for the installation works,
  - (ii) or where one or more organisations within the EHRA (Easterhouse Housing and Regeneration Alliance) group agree to a joint tender to achieve economies of scale.
- 5.4 However, the Association will generally award the contract on the basis of the offer which is either (for above threshold contracts) the most economically advantageous, or (for below threshold) offers the lowest price. The contract notice will clearly state which basis is to be used.
- 5.5 In determining whether an offer is the most economically advantageous, the Association will make reference to the criteria set out in the ESPD (European Single Procurement Document) including quality, price, technical merit, references, etc. and the respective weighting of such criteria. The Association may also conduct individual interviews with each contractor involved in the tendering process, to assist with the weighting of quality and price, prior to the opening of the tender documents.
- 5.6 Where maintenance contracts are involved in a tendering process, the PS Manager will present a full report to the Operations Sub-committee. Any selection panel required in regard to the above interviews or procedures will include at least one committee member, one staff member and a consultant (if necessary). Contractors will also be advised of this, before the process begins.
- 5.7 Where the contract is over the relevant threshold and requires to be advertised on the OJEU and/or the Public Contracts (Scotland) website, the Association will be bound by whatever requirements, timescales and award criteria are contained in the contract notice and tender documentation, as this is the basis of all dealings with tenderers going forward.

## **6. RECEIPT OF TENDERS**

- 6.1 The PS Manager / PS Officer (Maintenance) will agree the tender return date and time, together with the consultant, (where one is appointed). Depending on the contract award procedure used, the timescales for submission of tenders will differ and these are set down in the regulations.
- 6.2 The PS Manager / PS Officer (Maintenance) will ensure the office diary is clearly marked and appropriate reception staff aware of the tender return date, to reduce the possibility of tender envelopes being opened prematurely.
- 6.3 Upon receipt of tender envelopes (where used) -
  - i) The envelope will be date and time stamped over the flap seal and initialled by the recipient.
  - ii) A receipt will be completed and given (if hand delivered), or posted to the contractor, where the contractor is known. (See Appendix 2 - Receipt)

- iii) The date and time received will be noted on the Tender Receipt List, against that contractor's name and filed with the tenders (See Appendix 3 – Tender Receipt List).
  - iv) The tender envelopes and Tender Receipt List will be held in a locked cabinet until the appointed time for opening them.
  - v) Late tenders will be date and time stamped over the flap seal as above and the details added to the Tender Receipt List. The tender envelope will be returned to the contractor unopened, together with a covering letter confirming that the tender has not been accepted due to its late arrival.
  - vi) Where a contractor has failed to return a tender or has pre-advised of their intention not to return, this will be noted on the Tender Receipt List and any relevant comments added. It will also be confirmed to the contractor in writing that their tender has not been returned and cannot therefore be considered.
  - vii) Where there is any evidence of tampering with the tender return envelope, this will be subject to committee review and possible rejection and the relevant contractor advised accordingly.
- 6.4 The Association notes that under the regulations, above threshold tenders are to be submitted electronically and the standard conditions of submission will apply.

## **7. TENDER OPENING**

- 7.1 The PS Manager / PS Officer (Maintenance) will arrange for appropriate committee members to be present for the formal tender opening ceremony which will normally take place in the Association's offices.
- 7.2 The panel will include an office bearer of the Association, at least two other committee members, a member of staff and the lead consultant if appropriate.
- 7.3 Regardless of the method used, the staff member will record the tender return date, time of opening and type of contract in the Tender Register. All who attend will sign and state their designation in the Tender Register and any declaration of interest must be recorded.
- 7.4 The tender envelopes (where appropriate) will be passed unopened to the office bearer who will open each envelope and read aloud the name of each contractor and the tender sum provided. The staff member will record each bid figure received against each contractor in the Tender Register and whether inclusive or exclusive of VAT, together with any qualification accompanying the tender. Details of any discrepancies in the documentation received will also be noted, together with the names of any contractors who failed to return their tender.
- 7.5 Contractors names will be numbered and a line drawn under the last entry.

7.6 The Association notes that under the regulations, above threshold tenders are to be submitted electronically, in which case the consultant will generally open the tenders electronically in the presence of committee and staff, however the Association's other procedures will still apply.

## **8. ACCEPTANCE OF TENDERS**

8.1 Following the tender opening, it will generally be necessary to check the information returned with tenders and carry out arithmetical checks to ensure the calculations and final bid prices are accurate. This will be done by the Consultant, together with the PS Manager where appropriate.

8.2 Where any minor inconsistencies are identified, the PS Manager, or lead consultant if appropriate, will clarify the position and invite the contractor(s) to agree to any necessary amendment or correction.

8.3 In the event of more substantial mistakes or inconsistencies being identified, this will be reported to the Operations Sub-committee for decision as to whether:-

- i) the defaulting contractor should be approached and given the opportunity to amend the submission.
- ii) all contractors should be advised and be given the opportunity to reconsider and amend their submissions.
- iii) the defaulting contractor's submission should be omitted and the original selection confirmed, or another contractor selected if the previously lowest bid was the defaulting contractor.
- iv) The tender exercise should be repeated, either with all existing invited contractors or with an amended list.

8.4 The Association will generally accept the most competitive tender received for below threshold contracts, unless a price/quality scoring system has previously been agreed to ensure best value and the contractor has formally been advised of this, prior to submitting their tender. There may also be extenuating circumstances, as noted above or where e.g. increased work load of the successful tender prevents their accepting the contract, or information regarding the suitability of the tenderer subsequently becomes known, in which case the lowest tender may not be accepted.

8.5 A decision to accept a tender, other than the lowest one, can only be made by the Operations Sub-Committee or by the Director.

8.6 All information received on tender documentation will remain private and confidential and will not be divulged to any third party without their permission.

8.7 Once the preferred contractor has been agreed and the results notified, the Association must allow a standstill period of 10 or 15 days to elapse before entering into the contract.



- 8.8 All other tenderers will be advised, in writing that they have been unsuccessful. They may also be advised of the successful tender price and/or of all tender prices received if requested, although the contractors responsible for providing each price will not be divulged.
- 8.9 In the event that an unsuccessful tenderer requires further information as to the reasons why it was not successful, the Association must provide feedback within 15 days for above OJEU threshold contracts, and 30 days for below OJEU threshold contracts
- 8.10 At the end of the standstill period (where appropriate) and assuming no challenges to the tender award decision, the PS Manager (or consultant, if appropriate) will inform the successful contractor of the appointment in writing.

## **9. INSURANCE CLAIMS**

- 9.1 Where repairs are the subject of an insurance claim, any requirements the insurance company may have regarding defects, quotations to be obtained or procedures to be followed, must also be complied with.

## **10. REPORTS TO COMMITTEE**

- 10.1 In all cases, the PS Manager will report to the Operations Sub-Committee, advising of:-
- i) The tendering process that was followed, including whether the contract was advertised or not. (This will depend on the value of the contract)
  - ii) the date the tender was issued, returned and opened.
  - iii) names of all contractors and tender bids received with corrected figures,
  - iv) any other comments, e.g. details of non returns, etc.
  - v) a recommendation giving the preferred choice and relevant reasons, i.e. that it is the most competitive tender and represents best value
  - vi) requirements for further procurement strategy and reports under the regulations, where the aggregate value of above threshold contracts exceeds £5m in any year.

## **11. INSPECTIONS**

- 11.1 During tender contracts, regular inspections will be carried out by the Supervising Officer, as named at the outset of the contract, assisted by other staff or appointed Clerk of Works, if required, to ensure compliance with specifications

and standards. A final inspection and written report on completion must be carried out by the Supervising Officer or Clerk of Works (where appropriate), prior to any payment of the account.

## **12. COMPLAINTS**

- 12.1 Any contractor who is dissatisfied with the operation of this policy and related procedures may make a formal complaint to the Association via the Complaints Policy. A complaint form and copies of the policy are available from the Association's office upon request or via our website. Should the complainant remain dissatisfied, they will be advised they have final recourse to the Public Services Ombudsman details of which can also be provided from the Association's offices.

## **13. CONFIDENTIALITY AND DATA PROTECTION**

- 13.1 The Association will ensure that we meet the requirements of the General Data Protection Regulations 2018. All information provided by contractors in relation to this policy will be treated with the strictest of confidence and will not be disclosed to any third party without the express permission of the contractor concerned.

## **14. REVIEW**

- 14.1 This Policy will be reviewed three years from the date of approval, or earlier should the need arise to reflect changing circumstances or changes in legislation or good practice standards.
- 14.2 Note: The policy wording may have to change after 01/01/21, but this will depend on the deal [or no deal] with which the UK leaves the EU.

### Cross References

Equal Opportunities Policy

Maintenance Policy

Contractor Selection Procedures

Complaints Policy

## APPENDIX 1

### Delegation of Authority to Instruct Works

#### 1. Day to Day Repairs and Maintenance Contracts Expenditure

Financial Limit (based on actual/ estimated cost)	Commitment of expenditure	Approval of Payment Claim/Invoice	Approval of Payment Counter- signed by
<£1000	PSAM/ PSOM	PSAM/PSOM/PS Manager	PSOM/PS Manager
£1000-5,000 ( <b>Note 1</b> ) (at least one written estimate required, or other evidence of value for money)	PSOM	PSAM/PSOM/PS Manager	PSOM, PS Manager
£5,000-20,000 ( <b>Note 1</b> ) (at least one written estimate required, or other evidence of value for money)	PS Manager	PSOM	PS Manager
>£20,000 ( <b>Note 2</b> ) (tenders normally required)	Operations Sub Committee	PS Manager	Director
Additional contract expenditure after tender acceptance (>£50,000) < 10% add on	PS Manager	PS Manager	Director
Additional contract expenditure after tender acceptance > 10% add on	Operations Sub Committee/Mgt Committee	PS Manager	Director

**APPENDIX 2**



**Contractor's Receipt of Tender Documents**

Project Title \_\_\_\_\_

Address \_\_\_\_\_

Contractor Name \_\_\_\_\_

With regard to your invitation to tender for the above project, I hereby confirm receipt of your tender on:-

Date \_\_\_\_\_

Time \_\_\_\_\_

Signed ..... (for Calway Housing Association)

Signed .....(for Tenderer)

Comments.....

.....

.....

.....

## APPENDIX 3



### Tender List Receipt

Project Title \_\_\_\_\_

Address \_\_\_\_\_

Return By \_\_\_\_\_

Tenderer		Date Received	Time Received	Hand Delivery / Posted	Receipt Issued Date
1.					
2.					
3.					
4.					
5.					

N.B. If Tender not returned – please record this in Date Received box.