

SESTRAN CONTRACT STANDING ORDERS

1. SESTRAN makes the following standing orders in relation to the procurement of Supplies, Services and the execution of Works on its behalf. They are the Contract Standing Orders referred to in Standing Order 42 of the Standing Orders of SESTRAN.
2. These Contract Standing Orders must be applied in accordance with the following principles:
 - 2.1 Any procurement must be conducted in accordance with the principles of transparency, equality, non-discrimination, and proportionality;
 - 2.2 Except as otherwise provided for, all contracts to which these orders apply should be made as a result of competition; and
 - 2.3 Any procurement must be conducted so as to ensure delivery of Best Value in terms of the Local Government in Scotland Act 2003.
 - 2.4 These Contract Standing Orders are subject to the over-riding provisions of European Union, United Kingdom, or Scottish legislation; including the Regulations. They are also subject to any EU Commission, UK Government or Scottish Government guidance on public procurement that may be issued from time to time.
3. No employee of SESTRAN who has an actual, or potential, conflict of interest or a direct or indirect pecuniary interest in a tender should be involved in the tendering process.
4. The Partnership Director may nominate a delegated representative to exercise the powers delegated to him by these Contract Standing Orders.
5. The following contracts shall be exempted from the provisions of these Contract Standing Orders with the exception of the duty to ensure the delivery of Best Value as set out in 2.3 of these Orders:
 - 5.1 Any contract of employment, but not including contracts for the employment of staff on an agency basis;
 - 5.2 Any contract or type of contract which is declared by the Partnership to be exempt because it is satisfied the exemption is justified by special circumstances;
 - 5.3 Any contract or framework agreement entered into by a consortium, partnership, collaboration, company or similar body:

- 5.3.1 of which the Partnership is a member, registered user or otherwise is entitled to use the said contract or framework agreement; and
 - 5.3.2 which body exists for the purpose of joint purchasing arrangements; and
 - 5.3.3 provided such body has invited tenders in accordance with the principle contained in 2.4 and the use of that contract or framework agreement complies with the principle in 2.3 .
- 5.4 Any contract relating to the disposal or lease of land and/or buildings;
- 5.5 Where the Partnership Director is satisfied that the requirement is not readily obtainable from more than one supplier, service provider, or contractor, and it can be demonstrated that no equivalent is available; provided any contract awarded in accordance with this exemption is reported to the Partnership at its next meeting.
- 5.6 Where the estimated cost of a contract does not exceed £25,000, the Partnership Director or appropriate officer may invite and place tenders for consultancy services, without seeking competitive tenders, provided that, in the Partnership Director's or appropriate officer's opinion, best value would not be secured by competition.

Procedures for Awarding Contracts

6. The procedure for the award of any contract shall be determined upon the estimated value of that contract. The relevant values and the associated tendering procedure that must be applied are detailed in Table below. These values are exclusive of VAT and relate to the full potential life of the contract (i.e. including possible extension periods).

Tender Procedure	Works	Services	Supplies
EU Procedure – Standing Order 7	£4,000,001 and above	£150,001 and above	£150,001 and above
Below OJEU but with mandatory advertising – Standing Order 8	Between £50,001 and £4 million	Between £25,001 and £150,000	Between £25,001 and £150,000
Advertising not mandatory – Standing Order 9	£50,000 or less	£25,000 or less	£25,000 or less

- 6.2 The estimated value of a contract shall be assessed in accordance with Regulation 8 of the Regulations.

6.3 The disaggregation of a single requirement to circumvent or avoid the requirements of these contract Standing Orders or any legal requirement is expressly prohibited.

7. EU Procedure: Works contracts of £4,000,001 and above and Services/supplies Contracts of £150,001 and above.

7.1 This Contract Standing Order shall, together with the procedures detailed in the **General Tender Procedures section** below, apply to Works contracts with an estimated value of £4,000,001 and above and Services and Supplies Contracts with a value of £150,001 or above.

7.2 All contracts to which this Standing Order applies shall be conducted in accordance with the EU Commission Open, Restricted, Negotiated or Competitive Dialogue Procedures as detailed in the Regulations.

7.3 The tender opening procedure specified in Appendix 1 of these Contract Standing Orders shall be followed for hard copy tenders.

8. Works Contracts between £50,001 and £4 million and Services and Supplies Contracts between £25,001 and £150,000

8.1 This Contract Standing Order shall, together with the procedures detailed in the **General Tender Procedures section** below, apply to Works Contracts between £50,001 and £4 million and Services and Supplies Contracts between £25,001 and £150,000.

8.2 All contracts to which this Standing Order applies shall be advertised in a manner that is sufficient to enable open competition and to meet the requirements of the principles detailed in 2.1.

8.3 Timescales for the return of tenders shall take account of the complexity of the requirement and allow adequate time for tenderers to respond.

8.4 The tender opening procedure specified in Appendix 2 of these Contract Standing Orders shall be followed for hard copy tenders.

9. Works Contracts below £50,000; Services and Supplies Contracts below £25,000

9.1 **Contracts with a value below £2,000** - Tenders or Quotations need not be invited in respect of contracts which have a value below £2,000.

9.2 **Contracts with a value between £2,001 and £50,000 (Works) and £25,000(Services/Supplies)** – Advertising shall not be mandatory and a contract may be awarded after obtaining three quotations from suitable suppliers identified by market research.

General Tender Procedures

10. Electronic Tendering

10.1 Any electronic method to be used to invite and receive tenders shall comply with the following:

- 10.1.1 It shall have safeguards to ensure that either:
- (a) tenders cannot be uploaded after the tender deadline; and/
 - or
 - (b) the date and time that a tender is uploaded is recorded.
- 10.1.2 It shall ensure that the substantive content of a tender cannot be accessed by any SESTRAN personnel until after the tender deadline.
- 10.1.3 It shall record the identity of any person who accesses the tenders as well as the time and date that took place.
- 10.1.4 All records must be of a sufficient standard to be used as evidence in Court.
- 10.1.5 All records must be kept for at least twelve months from the date of the contract award.
- 10.1.6 It shall ensure that economic operators can submit queries regarding the tender on an anonymous basis and that the answers to such queries are made available to all interested economic operators.
- 10.1.7 It shall ensure that SESTRAN shall be able to publish clarifications, or additional information, to the tender documentation so that it is available to all interested economic operators.

10.2 The procedures detailed in Appendices 1 and 2 shall not apply to a tender process conducted in accordance with 10.1.

11.1 The Partnership Director or appropriate Officer of the Partnership will prepare the contract documents setting out:

- The scope;
- The quality;
- The quantity of the works, the goods and services or The consultancy services;
- The proposed method of evaluation to be used. Where the proposed method is “Most Economically Advantageous Tender” (MEAT), the criteria for the evaluation of tenders shall also be specified in the tender documents.

11.2 The Contract Documents shall state that the Partnership is not bound to accept the lowest tender or any tender.

12 Contract Security

12.1 If the estimated cost of carrying out work under any one contract is more than £1 million, the contractor will normally require to provide appropriate contract security to the Partnership. The Partnership Director or appropriate officer shall consider what contract security may be appropriate, which may take the form of a performance bond and/or a parent company guarantee.

12.2 The Partnership may ask for any contract security considered appropriate on other contracts.

13. Tender acceptance

13.1 The Partnership Director shall issue letters of acceptance provided:

13.1.1 The award is to the tender that represents either:

- The lowest cost; or
- The Most Economically Advantageous tender.

13.1.2 He is satisfied that the award represents Best value.

13.2 For contracts subject to the full rigours of the OJEU procedures the Partnership Director shall approve and issue Pre Standstill Successful Letters at the start of the standstill period.

13.3 For contracts subject to the full rigours of the OJEU procedures the Partnership Director shall approve and issue Post Standstill Award Letters to the successful Tenderer(s) at the end of the standstill period if there has been no form of judicial interruption.

14. Post Tender Communications

14.1 If, during the evaluation process, any post tender communication with Tenderers is necessary prior to contract award in order to clarify or supplement any aspect of their Tender, such communication shall be conducted in accordance with this Contract Standing Order and a record of any such communication must be maintained for audit purposes.

14..2 In order to ensure that there is no distortion of competition, post tender communications undertaken prior to contract award shall be carried out in a restricted and carefully handled manner.

14.3 Any amendment to Tenders or contract documents made as a result of post tender communications must not go beyond clarifying or

supplementing a Tender. It is essential to consider, prior to commencing communications whether the amendments that may be achieved are such that a Tenderer excluded from the process (whether on the list of Tenderers or not) could allege that they had been unfairly treated and/or could have submitted a better Tender.

- 14.4 In conducting post tender communications prior to contract award, Procuring Officers shall comply with the following additional rules:
- 14.4.1 All Tenderers must be treated equally and in an open and fair manner;
 - 14.4.2 Tenderers must not be permitted to amend their bids in a manner that allows them to improve their offer;
 - 14.4.3 Post tender communications must not be carried out in such a manner as to leave the Partnership open to charges of acting anti-competitively;
 - 14.4.4 Where any factor giving rise to post tender communications is not specific to one Tenderer, all Tenderers must be invited to participate in such communications;
 - 14.4.5 There must be no material change to the specification(s) and/or criteria on which tenders are to be assessed;
 - 14.4.6 If it becomes apparent that a material change is required, the tendering process must be recommenced with a revised specification or award criteria;
- 14.5 The Procuring Officer must keep written records of all discussions with Tenderers and these must include the following details:
- Who was involved in the discussion from the Partnership and from the tendering organisation;
 - The date, time and location of any meeting; and
 - The nature of the discussion and the outcome (it would be advantageous if both parties can confirm agreement of the accuracy of this record);

15. Qualified Tenders

A Tenderer who submits a qualified Tender should be given the opportunity to withdraw the qualification. If the Tenderer fails to do so, the whole Tender shall be rejected if it is considered that such qualification affords the Tenderer an unfair advantage over other Tenderers.

16 Confidentiality of Tenders

- 16.1 Between the last date and time for the receipt of Tenders and the date on which a decision is taken as to which, if any, is to be accepted, Tenderers may be contacted in cases where it is necessary to confirm or clarify the terms of the Tender or to effect any necessary adjustments. No information concerning any Tender other than their own will be disclosed to the Tenderer so contacted. A full written record shall be kept of all such contacts and shall be retained with the original Tender.
- 16.2 During the period between the opening of the Tenders and the stage where the content of them is required to be publicly known an absolute obligation of preserving confidentiality will rest on Members and officers of the Partnership.

17. Contract Conditions

- 17.1 Except as detailed below, the Partnership's standard contract terms and conditions must be applied to contracts entered into on behalf of the Partnership.
- 17.2 It is permissible in relation to Works contracts to use widely recognised, construction industry standard contracts -e.g. I.C.E., J.C.T., N.E.C

18. Definitions

"Best Value" - means the provisions contained in Part 1 of the Local Government in Scotland Act 2003.

"OJEU" – means the Official Journal of the European Union

"the Regulations" –means the Public Contracts(Scotland) Regulations 2012 or any amendment or re-enactment thereof.

"SESTRAN" - the South-East of Scotland Transport Partnership

Services - means Services as defined in the EU Consolidated Public Procurement Directive.

Supplies - means Supplies as defined in the EU Consolidated Public Procurement Directive.

"Works" - means Works as defined in the EU Consolidated Public Procurement Directive.

Appendix 1 – Tender Opening Procedures – Standing order 7

EU TENDER PROCEDURES CONTRACTS FOR WORKS £4,000,001 AND OVER; CONTRACTS FOR SERVICES AND SUPPLIES £150,001

1. Notification of Closing Date

- 1.1 At least fourteen days before the closing date, the Programme Manager shall arrange with the Secretary and a Member of the Partnership for their attendance on the tender opening date.
- 1.2 At least three days prior to the closing date, the Programme Manager will send a Tender Return Form to the Office Manager providing the following information:-
 - Title of Contract and Reference Number
 - Closing Date
 - Number of firms invited to tender
 - Contact name and extension number for queries
- 1.3 The Tender Return Form will be passed to the Clerical Assistant responsible for the receipt of tenders who will schedule the receiving of the tenders into his/her work programme.
- 1.4 The Office Manager will schedule the opening arrangements into his/her work programme: this will normally be done each Friday for contracts where the closing date is the following week.
- 1.5 The Clerical Assistant responsible for the receipt of tenders will place a copy of all Tender Return Forms in a folder in the Chairman's office.

2. Receipt of Tenders

- 2.1 Tenderers shall be instructed to return their tender by post or hand-delivery to: The SESTRAN Secretary, Claremont House, 130 East Claremont Street, Edinburgh EH7 4LB .
- 2.2 Tenders will be instructed to return their tender in the pre-printed envelope which will be supplied to them.
- 2.3 On receipt, the date and time of receipt will be stamped/written on the tender envelope. The words "late tender" will be written on any tenders received after the specified time.
- 2.4 Tenders received after the closing date and time will not be opened or considered under any circumstances.

- 2.5 Tenders will be held in a locked filing cabinet by the Clerical Assistant responsible for the receipt of tenders prior to the opening time. Each time a tender is received, the Clerical Assistant responsible for the receipt of tenders will mark a copy of the Tender Return Form to indicate that a tender has been received. The tenders for each contract will be held separately and secured together [eg by an elastic band] within the filing cabinet.
- 2.6 At 11.45 on a tender closing day, the Clerical Assistant responsible for the receipt of tenders will go to the Claremont House Reception and check the time on the speaking clock. He/she will check that the Reception clock is at the correct time and arrange for the Receptionist to adjust it, if required. He/she will ensure that his watch is also at the correct time and ask the Receptionist to do likewise.
- 2.7 A person delivering a tender may choose to retain it if s/he is advised that it is late. SESTRAN will not refuse to accept a tender even if it is delivered after the return date and time. If a late tender is delivered, it should be received in the normal way.
- 2.8 After the closing date and time, the Clerical Assistant responsible for the receipt of tenders will enter in the Tender Return Form in the column headed Date/Time of Receipt:-
- Date and time tender received, **or**
 - NVT [in all cases where a tender has not been returned by the closing date and time: this will include all Late Tenders]
- 2.6 The Clerical Assistant responsible for the receipt of tenders will check his/her copy of the Tender Return form to ensure that he/she has gathered together all the tenders received for the contract.

3. Opening of Tenders

- 3.1 The opening of tenders shall take place in the presence of a Member of the Partnership.
- 3.2 The Office Manager will collect the tenders from the Clerical Assistant responsible for the receipt of tenders and will arrange to open them in the presence of the Programme Manager, the Secretary, and the Member of the Partnership. Prior to opening the tenders, the Office Manager will check that dates and times of receipt for all the tenders recorded on the tender return notification are the same as those written on the tender envelope and that all tenders were received prior to the closing date and time.
- 3.2 Late tenders will be retained by the Clerical Assistant responsible for the receipt of tenders.

- 3.3 The Programme Manager , the Secretary, and the Member of the Partnership will sign the relevant page of each tender opened and the date of opening will also be inserted. In addition, the tender return notification form should be completed and signed by the Programme Manager and by the Office Manager, the Secretary, and the Member of the Partnership.
- 3.4 After the tenders have been opened and signed and the tender return notification form has been completed and signed by those present at the tender opening, the Office Manager will ensure that 4 photocopies of each tender return notification form are made . The Office Manager will arrange for the Programme Manager to uplift the opened tenders. The Programme Manager should take a copy of the tender return notification form with the tenders. The original tender return notification form will be retained by the Office Manager. The second copy of the tender return notification form will be placed in the appropriate file. The Secretary and the Member of the Partnership who attended the opening shall each be provided with copies.
- 3.5 Where the value of the tender is not expressed as a fixed amount and cannot be recorded in the column headed "Amount", the Office Manager will ensure **either** that a photocopy is made of each opened tender and the photocopy of the tender forwarded to the Programme Manager with the tender return notification form, **or** that all the pages of each tender are punched with a unique coloured stamp kept for that purpose **or** that each page is stamped with a unique coloured stamp kept for that purpose.
- 3.6 The stamp will be held in a secure location.

4. Late Tenders

- 4.1 Tenders which were not received in Claremont House [either by post or delivered to the Claremont House Main Reception] by the closing date and time [normally 12 noon] will be deemed to be late tenders.
- 4.2 Late Tenders will be returned to the company which submitted the tender as soon as possible [where possible within 48 hours of the closing date]
- 4.3 The Clerical Assistant responsible for the receipt of tenders will e-mail or telephone the Manager who invited the tenders. He/she will advise that person of the Contract Title and Reference Number of the late tender and will ask for the name and address of the company which submitted the late tender to be e-mailed or faxed to him/her. He/she will specify that the e-mail or fax must include the quoted reference number as well as the name and address of the company.

4.4 The Clerical Assistant responsible for the receipt of tenders will return the late tender to the company with the standard letter for the return of Late Tenders.

Appendix 2 - Tender Opening Procedures – Standing order 8

Works Contracts between £50,001 and £4 million; and Services and Supplies Contracts between £25,001 and £150,000.

1. Notification of Closing Date

- 1.1 At least three days prior to the closing date, the Programme Manager will send a Tender Return Form to the Office Manager providing the following information:-
- Title of Contract and Reference Number
 - Closing Date
 - Number of firms invited to tender
 - Contact name and extension number for queries
- 1.2 The Tender Return Form will be passed to the Clerical Assistant responsible for the receipt of tenders who will schedule the receiving of the tenders into his/her work programme.
- 1.3 The Office Manager will schedule the opening arrangements into his/her work programme: this will normally be done each Friday for contracts where the closing date is the following week.
- 1.4 The Clerical Assistant responsible for the receipt of tenders will place a copy of all Tender Return Forms in a folder in the Chairman's office.

2. Receipt of Tenders

- 2.1 Tenderers shall be instructed to return their tender by post or hand-delivery to: The SESTRAN Partnership Director, Claremont House, 130 East Claremont Street, Edinburgh EH7 4LB .
- 2.2 Tenders will be instructed to return their tender in the pre-printed envelope which will be supplied to them.
- 2.3 On receipt, the date and time of receipt will be stamped/written on the tender envelope. The words "late tender" will be written on any tenders received after the specified time.
- 2.4 Tenders received after the closing date and time will not be opened or considered under any circumstances.
- 2.5 Tenders will be held in a locked filing cabinet by the Clerical Assistant responsible for the receipt of tenders prior to the opening time. Each time a tender is received, the Clerical Assistant responsible for the receipt of tenders will mark a copy of the Tender Return Form to indicate that a tender has been received. The tenders for each contract

will be held separately and secured together [eg by an elastic band] within the filing cabinet.

- 2.6 At 11.45 on a tender closing day, the Clerical Assistant responsible for the receipt of tenders will go to the Claremont House Reception and check the time on the speaking clock. He/she will check that the Reception clock is at the correct time and arrange for the Receptionist to adjust it, if required. He/she will ensure that his watch is also at the correct time and ask the Receptionist to do likewise.
- 2.7 A person delivering a tender may choose to retain it if s/he is advised that it is late. SESTRAN will not refuse to accept a tender even if it is delivered after the return date and time. If a late tender is delivered, it should be received in the normal way.
- 2.8 After the closing date and time, the Clerical Assistant responsible for the receipt of tenders will enter in the Tender Return Form in the column headed Date/Time of Receipt:-
 - Date and time tender received, **or**
 - NVT [in all cases where a tender has not been returned by the closing date and time: this will include all Late Tenders]
- 2.9 The Clerical Assistant responsible for the receipt of tenders will check his/her copy of the Tender Return form to ensure that he/she has gathered together all the tenders received for the contract.

3. Opening of Tenders

- 3.1 The Office Manager will collect the tenders from the Clerical Assistant responsible for the receipt of tenders and will arrange to open them in the presence of the Programme Manager. Prior to opening the tenders, the Office Manager will check that dates and times of receipt for all the tenders recorded on the tender return notification are the same as those written on the tender envelope and that all tenders were received prior to the closing date and time.
- 3.2 Late tenders will be retained by the Clerical Assistant responsible for the receipt of tenders.
- 3.3 The Programme Manager will sign the relevant page of each tender opened and the date of opening will also be inserted. In addition, the tender return notification form should be completed and signed by the Programme Manager and by the Office Manager.
- 3.4 After the tenders have been opened and signed and the tender return notification form has been completed and signed by those present at the tender opening, the Office Manager will ensure that 2 photocopies of each tender return notification form are made . The Office Manager

will arrange for the Programme Manager to uplift the opened tenders. The Programme Manager should take a copy of the tender return notification form with the tenders. The original tender return notification form will be retained by the Office Manager. The second copy of the tender return notification form will be placed in the appropriate file.

- 3.5 Where the value of the tender is not expressed as a fixed amount and cannot be recorded in the column headed "Amount", the Office Manager will ensure **either** that a photocopy is made of each opened tender and the photocopy of the tender forwarded to the Programme Manager with the tender return notification form, **or** that all the pages of each tender are punched with a unique coloured stamp kept for that purpose **or** that each page is stamped with a unique coloured stamp kept for that purpose.
- 3.6 The stamp will be held in a secure location.

4. Late Tenders

- 4.1 Tenders which were not received in Claremont House [either by post or delivered to the Claremont House Main Reception] by the closing date and time [normally 12 noon] will be deemed to be late tenders.
- 4.2 Late Tenders will be returned to the company which submitted the tender as soon as possible [where possible within 48 hours of the closing date]
- 4.3 The Clerical Assistant responsible for the receipt of tenders will e-mail or telephone the Manager who invited the tenders. He/she will advise that person of the Contract Title and Reference Number of the late tender and will ask for the name and address of the company which submitted the late tender to be e-mailed or faxed to him/her. He/she will specify that the e-mail or fax must include the quoted reference number as well as the name and address of the company.
- 4.4 The Clerical Assistant responsible for the receipt of tenders will return the late tender to the company with the standard letter for the return of Late Tenders.