



## **1. PURPOSE**

1.1 To detail the method for contract award.

## **2. METHOD**

### **2.1 Notification of Successful & Unsuccessful Tenderers**

2.1.1 Tenderers must NOT be advised of the award of contract until formal authorisation has been obtained from either the Translink Executive Team, the NITHCo board or DRD depending on the value of the contract and the necessary approvals process (see TPP 112 Delegated authority).

2.1.2 The successful tender will be issued a holding letter informing them that they are the preferred bidder if the 10 day standstill period under the EU Directives applies and unsuccessful tenders will be issued with a letter which informs them of the outcome (see Annex 1 below).


2.1.3 Where the award of contract is covered by the Utility Sector Procurement Directive 2004/17/EC and therefore The Utilities Contracts Regulations 2006 (in accordance with TPP109 EU Procurement Legislation) all Tenderers will be advised of the outcome simultaneously. No instructions to proceed, verbal or written, may be issued for a period of 10 calendar days after the despatch of the notification of the outcome. It is illegal to disregard this procedure and the stages listed in Annex 1 of this Standard.

2.1.4 The requirements of The Utilities Contracts Regulations 2006 and the Treaty of Rome requires public sector entities to act with Transparency of process keeping Tenderers informed of what stage they are at in the process. The information issued at standstill (see Annex 1) and includes information on the award criteria, the relevant advantages of the winning bid (accepted in the public sector to mean the scores) and the name of the winning Tenderer. Providing this information gives Translink a number of benefits including:

1. A reduction in the number of unsuccessful Tenderers requiring formal debrief as we are telling them the information that they would only ask about later.
2. Ensuring any issues are dealt with during a period when we can take corrective action if required.
3. Satisfying the unsuccessful Tenderers requirements to obtain a debrief without inconveniencing both them and us.
4. Ensuring that Translink provide adequate debriefing processes and material which is in accordance with the rest of the public sector in Northern Ireland.
5. Ensure that Translink maintain a reputation of being an organisation which has integrity.

### **2.2 Contract Preparation**

2.2.1 An allocated Purchasing lead (if available) will prepare the contract documentation in conjunction with the Project Manager and Sponsor, together with any other assistance necessary. Where required, legal advice will be sought.

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## **2.3 Award of Contract**

- 2.3.1 Contracts may as a minimum be awarded by means of an Offer/Acceptance of contract letter with Translink's standard terms of contract attached or this may be a contract with tailored or construction terms and conditions authorised by the Project Manager. The letter will also usually request that the supplier accepts and acknowledges the letter. Translink standard Terms and Conditions for Supplies and Services are held on the Translink Website.
- 2.3.2 On no account should verbal contracts be created. It is the policy of Translink that all contracts placed must be formally written and authorised.
- 2.3.3 Contracting strategies can vary depending on what is required. The contracting strategy must always be discussed and agreed with the Purchasing Department at the outset of a tendering cycle and the terms and conditions to be used must be established at this early point, it puts Translink at a disadvantage if this is not agreed with Tenderers early in the Tendering process. When awarding a contract it is important that the final contract including the terms and conditions are issued correctly and reflect the activities that took place during the Tendering process.

## **2.4 Signing a letter of offer to contract or signing a contract**

- 2.4.1 Group Board Meeting 11<sup>th</sup> June 2003 Board Minute No 673(i):  
 “Delegated Authority to sign agreements

Following representations by the Acting Chief Executive, the Board approved revised arrangements for the delegation of powers to sign agreements and bind the company. It was agreed that contracts and legal agreements may be signed, on behalf of the Board, by a Board member (ordinarily the Chief Executive of Translink) and one other member of the Translink Executive Group, except in cases requiring the use of the Company Seal, where the present requirements for signing a Deed (two Directors or one Director and Secretary) would remain unchanged. “

It is hoped that in future this is likely to change to be more practical and a request for change to this has been made by the Purchasing Department.

## **2.5 Purchase Orders**

- 2.5.1 The process to be followed in relation to raising of requisitions and purchase orders is detailed in TPP102 Purchasing however a purchase order needs to be raised for all contracts and care must be taken that when raising a purchase order it is highlighted on the order what it is for and what terms are applicable.

## **2.6 Letter of Offer of Contract**

- 2.6.1 A Letter of Offer or Acceptance of Contract will normally be used for the purchase of significant Goods & Services Contracts under Delegated Procurement Authority.
- 2.6.2 The Letter of Offer/Acceptance of contract must include the following information: Reference to quotation/tender and all associated correspondence invoicing and Project Managers contact details.

2.6.3 Contracts must hold certain information and will include but not be limited to the following:

- Contract number
- All relevant terms and conditions of contract including mandatory special requirements of the DRD.
- Delivery address and location of work
- Detailed description of requirement or reference to specification
- Date required, delivery schedule or period of contract
- Price or schedule of rates excluding VAT
- Quality Assurance requirements
- Health & Safety requirements
- Conditions of Contract
- Special instructions (if applicable)
- Signatures
- Requirement for formal acceptance of contract form which requests the contractor's main point of contact.

## **2.7 Distribution; who gets a copy of the contract once it has been signed / accepted?**

2.7.1 The Master Contract once accepted is to be kept securely in the Purchasing Department i.e. in fire proof and confidential secure storage. Copies of the Contract should also be kept by the Project Manager / Contract manager who must also ensure the confidential storage of such.

2.7.2 The supplier must formally acknowledge receipt of the Purchase Order or Letter of Offer/Acceptance. The supplier's acknowledgement of an Offer from Translink must confirm unqualified acceptance of Contract.


2.7.3 Once a contract offer has been accepted by the supplier or Translink in writing and or the contract is signed by both and a record of this is received by the Purchasing Department the contract comes into force.

2.7.4 The Master Contracts and all records relating to the contract or Agreements must be filed in hard and electronic copies please refer to TPP 115 Control of Documents for standards relating to the storage of Contracts and the relating records. It is important to obtain a MS Word version of the contract.


## **2.8 Tender De-briefing**

2.8.1 Unsuccessful Tenderers must be notified and provided with the opportunity of feedback giving them the reasons why they were unsuccessful and strict timeframes must be observed if the requirement is covered by The Utility Contracts Regulations 2006 (see ANNEX 1 below).

2.8.2 Irrespective of whether EU Procurement Legislation applies, all potential suppliers not successful at prequalification stage and Tenderers should be given the opportunity of a verbal debrief after the award of the contract, subject to staff availability and where constructive and without prejudice discussions can take place on tender submissions. Suppliers should not be provided with our evaluation notes or their score sheets unless this is formally requested. At no time must the details of other suppliers be given.

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- 2.8.3 Such tender debriefing should be held in the presence of at least one witness and those individuals involved in the evaluation. If possible a member of the Purchasing Department should Chair the Debrief if they were the allocated Purchasing Lead and proactively involved in the project and its evaluation. If no members of the Purchasing Department are available it is important that debriefs are conducted in accordance with the current guidance on Debriefs and it is recommended that a minimum of 2 members of Translink are present.
- 2.8.4 A debrief should always be offered via a teleconference in the first instance and then if required a face to face debrief at the Translink Belfast Offices.
- 2.8.5 Sufficient information should be given to those unsuccessful Tenderers, whilst always recognising and protecting the commercial confidentiality of other unsuccessful Tenderers, the successful Tenderer and Translink.
- 2.8.6 It is recommended that all staff involved in the evaluation of tenders undergo training on supplier debriefing and those staff involved should seek to obtain this training and refresh it if required every 2 years.
- 2.8.7 What happens if Translink can not answer a question during the debrief? Park the question and inform them that Translink will investigate and get back to the Economic Operator as soon as possible.
- 2.8.8 Please note the guidance and example script in TPF 3055 which is used as a guide by those in the Purchasing Department.
- 2.8.9 Take notes and ensure that any constructive comments and lessons learnt are recorded and brought to the attention of the Purchasing Manager to ensure action is taken in the future to correct them. An example of the sort of lay out and a form that can be used for supplier details is illustrated in TPF3055 Supplier Debriefing Summary.
- 2.9 Guidance to protect against inadvertent disclosure of information provided by CPD**
- 2.9.1 Information about the competition and its participants may be requested by companies at the pre qualification stage of a competition. It is recommended that whilst a competition is in motion the information is 'Commercial in Confidence and Commercially Sensitive' and a suitable response to companies at this point would be: "The information you have requested will be available after award of contract but until then we shall be applying the Commercial Interests exemption under, Section 43, (2) of the FOI Act". Information is exempt information if its disclosure under this Act would, or would be likely to prejudice the commercial interests of any person (including the public authority holding it).
- 2.9.2 Information about the competition and its participants may be requested by companies at the tender stage of a competition and it is recommended that the following phraseology is used: "Translink are in the middle of clarification and evaluation of the remaining proposals and the Tenderers who have tendered do not know who their competitors are and it could have a negative impact upon the

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competition if this information was revealed at this critical stage of the tendering process”.

## 2.10 Debriefing Successful Tenderers

2.10.1 It can be useful to debrief successful suppliers after the award stage in order to confirm good practice in the Tendering process and establish good working relationships.

2.10.2 Care must however be taken when debriefing a successful supplier:

Amongst the factors to be taken into account in deciding whether or not to reveal the Price margin to the successful Tenderer is the size of that margin and the relative strengths/weaknesses of the other Tenderers. Where further competitions for the same or similar goods or services are likely and the successful Tenderer is in a strong position, disclosure of a significant margin might encourage an increase in price.

All other information provided must be supplied with great care. It is important to ensure that Translink’s legal position is not compromised if the selected contractor encounters difficulty in performing the contract.

## 2.11 Need more information on debriefing?

2.11.1 The Office of Government Commerce (OGC) has produced detailed guidance in this area and this can be found at:

[www.ogc.gov.uk/documents/Supplier\\_Debriefing.pdf](http://www.ogc.gov.uk/documents/Supplier_Debriefing.pdf)

## 3. RELATED DOCUMENTS


3.1 Procurement Manual TPM001 Section 5

3.2 Procedure (s)

TPP102	Purchasing
TPP109	EU Procurement Legislation
TPP115	Document Control
TPF3055	Supplier Debriefing Summary

## 4. FURTHER READING

4.1 CPD Information Disclosure Guidance - <http://www.cpdni.gov.uk/>

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## ANNEX 1

### 10 Day standstill how it works & when you must debrief Regulation 33 of The Utility Contracts Regulations 2006

#### Stage 1

- Day 0 Notify all applicants of the tendering process including those who applied at PQQ and any applicant who provided a late submission (at PQQ or Tender) of the decision via the fastest possible method (e-mail): To be legally compliant you must use the example letters held by Purchasing Department.

(This requirement to notify “all” comes from Regulation 33 of The Utilities Contracts Regulations 2006 – “...a utility shall as soon as possible after the decision has been made, inform any economic operator which submitted an offer or applied to be included amongst the economic operators to be selected to tender for or to negotiate the contract, or applied to be a party to a framework agreement, of its decision...”)


#### Stage 2

- Day 1-2 (must be working days) – if a request for additional information is made during this time in writing from an Economic Operator we are bound to provide this information within the 10 day standstill period but we must make every effort to provide the information before day 7 because if we provide the information after day 7 we have to extend the standstill period by 3 working days. It is recommended that the additional information should be provided in writing (e-mail) to avoid any misinterpretation or misunderstanding and an example of the information to be provided is held by the Purchasing Department. The information on this form should be provided at the conclusion of Tender evaluation and completed by the Tender Evaluation Panel prior to the approval of a Tender Report. This form should serve to satisfy all stage 2 requests. The issuing of additional information can be communicated by means of correspondence and does not have to be in the form of a meeting between parties.

#### Stage 3

- If a written request is made after this 2 day period we must debrief within 15 days and there is no need to extend the standstill period. The debrief must state;
  - The reasons why the Tenderer was unsuccessful including any reasons it did not meet the technical specifications, performance or functional requirements and;
  - If the Tenderer submitted an admissible tender the characteristics and relative advantages of the successful tender and where appropriate the names of the economic operators awarded.
- A CoPEs first approach will be to discuss the request by telephone. This further information should reflect the key points covered in the written information already provided and a record kept of additional points covered (if any). If the telephone discussion does not resolve matters, then the economic operator should be offered a meeting, provided the economic operator makes its staff available in a timely manner. Again the discussion should cover the main points previously discussed and a record kept of the meeting. Contracting Authorities should provide as much information as possible without disclosing confidential or commercially sensitive information.

#### Other points to note

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- Day 10 - This should be a working day. Note that if day 10 falls on a non-working day, it is sensible to ensure that the period must be extended to the next working day as Translink must wait to see if the Court orders interim measures before concluding the contract.
- Day 11 - This is point at which we can issue the offer of contract (provided there are not legal challenges) or accept the offer from the Tenderer, no contract exists and work can not start until the 'Winner' has accepted and returned the signed unqualified acceptance form (we will provide them with 7 days or so to do this) or we have accepted the 'Winners' Tender.

**Note:** The mandatory standstill period begins the day after the award decision is issued in writing to all Tenderers. It is not recommended that postal letters are issued in isolation this could potentially mean you may have to extend the standstill period to allow for receipt.

E-mail means no extra allowance should be made if some of the Tenderers are located outside the UK. It is acceptable to send the award decision by e-mail as this one of the faster methods of communication and has the advantage of being time-stamped this then provides clear evidence of when the letter was sent. If the standstill period ends on a non-working day, it must be extended to the end of the next working day.

**Only one Tender received:** If only one tender has been received but economic operators have been ruled out during earlier phases, the standstill period will apply and letters to all those applicants should be issued.

**Further advice:** Advice can be found in relation to this area on Framework Agreements, Dynamic Purchasing Systems, E-auctions and information during protracted procurements in the CPD Information Disclosure Guidance.

**Actions required on notification of a legal challenge:** Regulation 45 of The Utilities Contracts Regulations 2006 states the Economic Operator must advise Translink of its intention to bring proceedings and the proceedings must be brought within 3 months from the date when grounds for bringing the proceedings first arose.

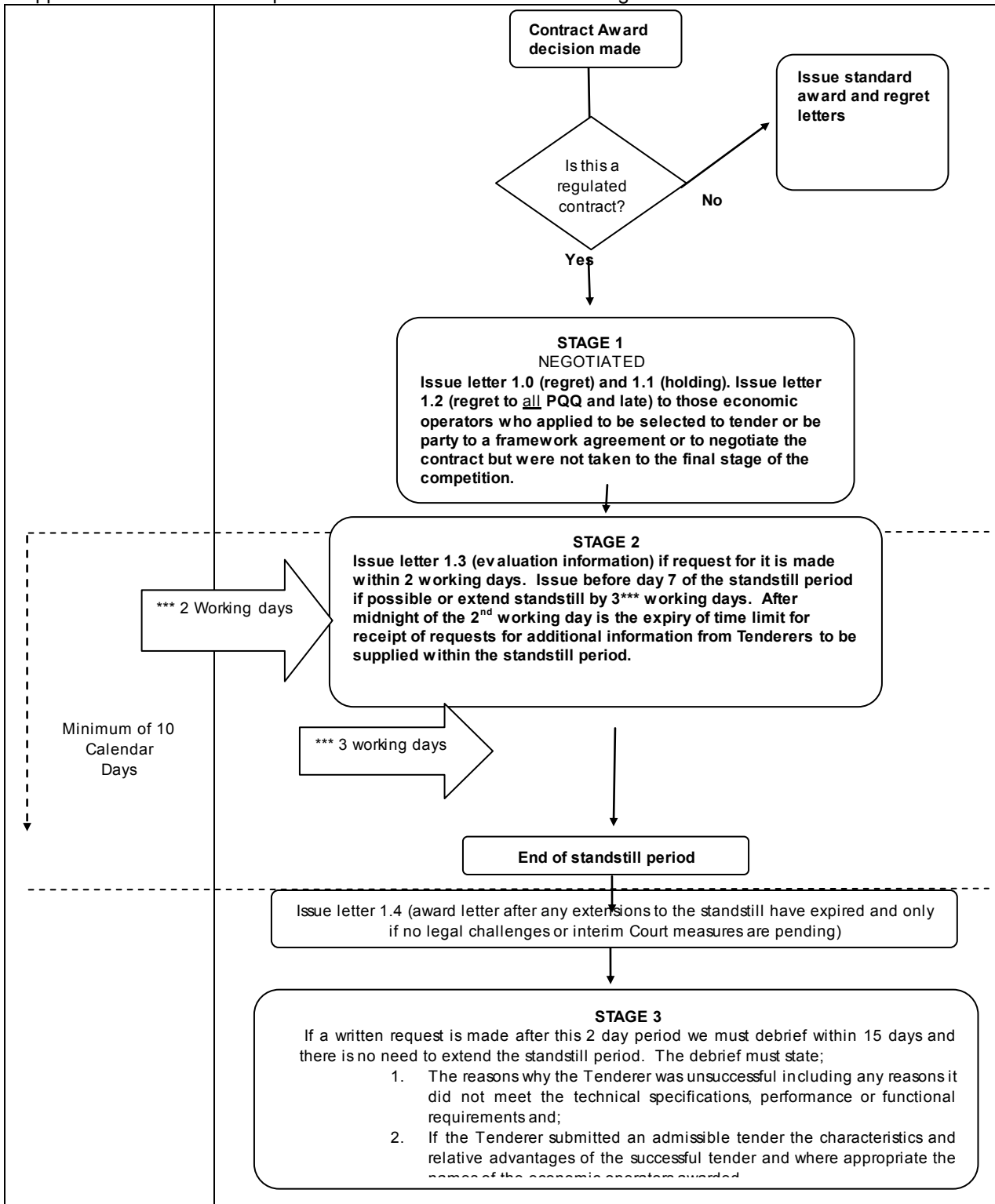
A legal challenge means the issue of a claim or application in a UK Court. It does not include communications to the Contracting Authority from either an unsuccessful Tenderer threatening legal proceedings or from legal advisers of the unsuccessful Tenderer.

If a legal challenge is brought Translink should seek legal advice regarding the conclusion of the contract. If during the standstill period an economic operator seeks a suspension or setting aside of the contract by a legal challenge in Court Translink should wait to see whether the interim measures are granted before awarding any contract and if interim measures are granted Translink should wait for the outcome of legal proceedings before awarding any contract. If however no correspondence from a Court is received before the end of the standstill period the contract can be concluded.

**Further Explanation:** For more information including a diagram of stage 1-3 and the please refer to the CPD Information Disclosure Guidance.

**Reminder of what the Standstill process is:**

Based on the CPD Information Disclosure Guidance and amended to fit Translink a Flow Chart application of the standstill period once the decision to award a regulated contract has been taken\*



\*Regulated normally includes all Goods, Services and Works over the EU Threshold, however exclusions apply and you should consult the regulations for a comprehensive list. It does not include secondary competitions from a Framework including those valued over the threshold.

\*\* MEAT – Most Economically Advantageous Tender

\*\*\* Take into account weekends and public holidays as appropriate





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Note: All timings represent the minimum required under the Regulations. CPD's policy is to allow 14 calendar days from notification of the award decision until the end of the standstill period instead of the statutory 10 days; Translink will apply the 10 calendar days.