

RULES FOR CONTRACTS

1. Objectives

- 1.1. The Rules for Contracts exist to assist and protect the interests of the National Federation of ALMOs (NFA) and individual ALMOs or officers, and to ensure that Value for Money is obtained in all procurement activities.**
- 1.2. Followed properly, they provide protection for officers and member organisations against criticism. Officers and member organisations must be able to demonstrate that they have followed these rules or had obtained the necessary authority for not doing so from the NFA Board.**

2. Interpretation

- 2.1. An 'Officer' means any person acting on behalf of the NFA, or any employee of an external contractor engaged in the provision of services on behalf of the NFA, where compliance with these rules is incorporated within the terms of their contract.**

3. Officer Responsibility

- 3.1. Officers MUST be able to demonstrate that all reasonable efforts have been made to ensure that any purchase or contract provides Value for Money (VFM). VFM is a judgement based on the best combination of the cost of a produce or service, spread over its whole lifetime, and the products or services ability to meet, but not necessarily exceed the end-users requirements.**
- 3.2. Officers must ensure that suitable records are maintained of each and every purchase made (or contract awarded), to support the decision-making process, and to demonstrate that the relevant procedures have been complied with.**
- 3.3. Any Officer involved in letting a contract with any material personal interest in the contract or sub-contract should declare that interest in accordance with Standing Orders.**
- 3.4. All Officers and Board Members are required to conduct business in accordance with the NFA's Codes of Conduct. Every purchasing agreement or written contract shall contain a clause empowering the NFA to cancel the purchasing agreement or the contract if the contractor shall offer any inducement or reward of an illegal or corrupt nature in relation to the contract.**

4. Delegations

4.1. Officers of the NFA have no authority in their own right to enter into any contract on behalf of the NFA. They may only enter into a contract if authority is delegated to them under the scheme of delegations shown below or by specific decision by the NFA Board.

4.2. For the purposes of these Rules for Contracts the following delegations have been authorised:

Decision Maker	Individuals	Delegated Responsibility
Board	The appointed Board of NFA	To authorise entering into contracts and the outcome of negotiations above £15,001. To authorise any exception to the Rules for Contracts above £15,001.
A Director	The Chief Executive of the managing agent	To authorise entering into contracts and the outcome of negotiations up to £15,000.00. To authorise any exception to the Rules for Contracts up to £15,000.00. (refer to Rule 6.2).

5. Scope of the Rules for Contracts

5.1. All purchases and contracts made by or for any part of the NFA must comply with these Rules for Contracts. Any arrangement where the NFA pays or receives money or equivalent value.

6. Compliance with the Rules

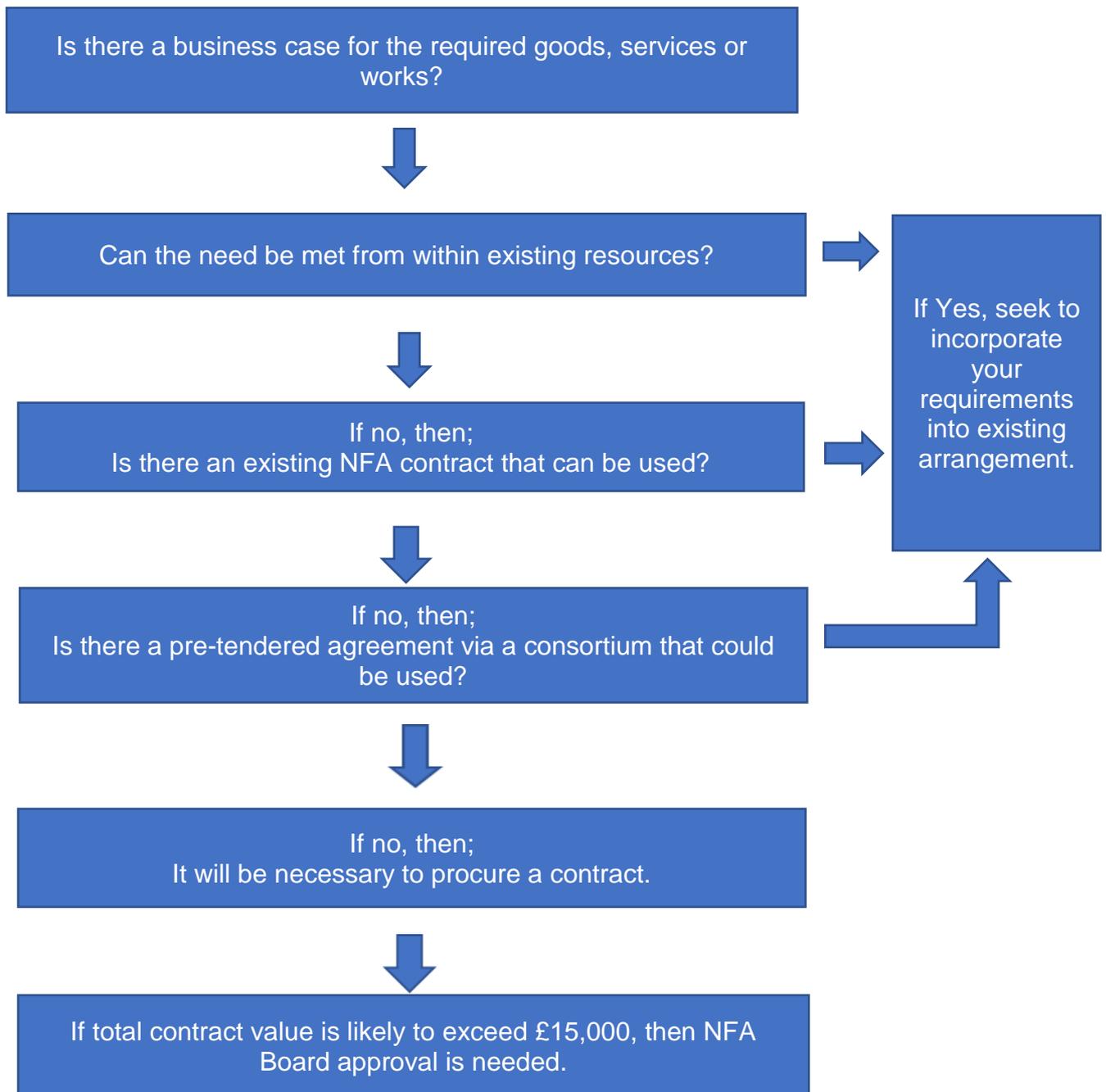
6.1. Every purchase or contract must comply with these rules, and no exception shall be made unless approved by the NFA Board or the Chief Executive of the managing agent who has delegated powers. 6.2 Any request to let a contract without complying with one or more of the Rules, may be granted only if there is a cogent reason, and where it can be demonstrated that the price obtained is not in excess of the market price, and that the contract represents the best value for money. 6.3 A lack of time caused by inadequate forward planning is not a cogent reason and will not permit an exception to the Rules for Contracts.

6.2. The Chief Executive of the managing agent will keep a register of all exceptions to the Rules for Contracts, which will be available for inspection by Members of the NFA Board. 6.5 The extension of an existing contract, (where there is provision to do so within the terms and conditions), does not constitute an exception to the Rules for Contracts, but approval must be

obtained from the NFA Board, and be supported by a business case (i.e. performance is good and VFM is being achieved).

7. Justification of Need

7.1. Before any purchase is made or any procurement exercise commenced, an evaluation on whether or not there is a “real” need should first be carried out. If there is clearly a need, then this should be supported by a business case and/or a cost benefit analysis. Once the “need” has been justified consideration must be given to the following:



7.2 Before commencing any procurement, it is essential to establish a clear concise scope of the works (or specification) to identify what is required by the end user.

7.3 All works, goods and services shall be specified by reference to European or national standards as appropriate.

7.4 Specifications should incorporate measurable outputs, and so far as is possible objective quality and performance criteria to enable the contract to be monitored effectively.

8. Choice of Procurement Route

8.1. Contracts must not be deliberately split-up in an attempt to avoid exceeding a tender threshold.

8.2. Dependent upon the estimated value of the entire contract, the appropriate procurement route must be observed. The various procurement routes are set out below:

Total Estimated Value of Contract	Procurement Route to be Followed
Up to £15,000	1 quote should be obtained
£15,001 to £100,000	A minimum of 3 written quotes should be obtained
£100,000+	Formal tendering procedure

8.3. The total contract value is calculated by taking account of the maximum number of years that the contract may run for, including any possible extensions allowed for within the terms of the contract, and multiplying this by the estimated annual value.

8.4. Contracts above £50,000 will normally require a formal contract between the parties. Refer to rule 14 for further details.

9. Pre-Qualification Procedures

9.1. Prior to seeking quotations or tenders it should be established whether there is a contract already in place for the type of work in question, or if a contract is already in the process of being procured. For any work/goods/services that are likely to cost less than £15,000, then a quotation should be sought. For contracts with a value above £15,000, but less than £100k, 3 written quotations are required.

9.2. Before a tender is sought it is necessary to ensure that any potential contractor/supplier has a minimum level of financial stability, organisational proficiency and technical competency. The minimum level of proficiency and competency is typically established by using a Pre-Qualification Questionnaire, which is issued to potential tenderers.

9.3. With any potential tenderer it must be demonstrated that:

- **The contractor is sufficiently experienced and qualified (and licensed if applicable) in the various aspects of the work to be carried out.**
- **The contractor has a satisfactory financial and legal status i.e. is solvent, and appropriately registered and does not present an adverse risk to NFA.**
- **The contractor has provided satisfactory health and safety method statements and risk assessments for the various aspects of the work to be carried out.**
- **The contractor has in place and has provided evidence that has been physically verified, of valid insurance covering public and employees liability, and where required contractors all-risks and public indemnity insurance.**
- **The contractor has in place a valid CIS taxation certificate and evidence has been provided and physically verified (only applicable if the work in question is deemed as a construction activity).**

9.4. If the EU Public Procurement Directives apply to a contract, then the selection of tenderers must be carried out in accordance with the requirements stipulated in the appropriate Directive.

10. Invitation to Tender

10.1. Potential tenderers must be formally invited, in writing, to tender for the work specified, at least 7 days in advance of the closing date for the tender. Consideration must be given to the complexity of the contract, and the time required by the tendering contractors to prepare their submission. It is commonplace to allow at least 21 days, but for contracts that are subject to the EU Procurement legislation, a minimum of 40 calendar days must be allowed.

10.2. An Invitation to Tender (ITT) should be issued. The ITT is a formal document asking suppliers/contractors to submit a sealed bid by a specific date, detailing their price, method of delivery etc., and to carry out work to the NFA's specification and terms and conditions.

11. Evaluating Bids

11.1. A contract may be awarded on the basis of lowest price, or on the basis of 'the most economically advantageous tender' (commonly known as MEAT).

11.2. The criteria and a suitable marking system must have been agreed before the tenders are opened. The tenderers should be advised of the criteria that will be used to evaluate their submissions, and these criteria should form

the basis for scoring, and, if appropriate, individual criterion may be weighted to indicate their relative importance.

- 11.3. All tenders submitted by the deadline are to be opened and the details of each bid duly recorded.
- 11.4. Where the examination of tenders or quotations reveals errors or discrepancies, then the supplier should be given the opportunity to 'stand-by' or 'withdraw' the bid. The correction of an obvious arithmetical error may be allowed, provided that no other revisions, adjustments or qualifications are permitted.
- 11.5. It is perfectly acceptable to seek clarity on matters relating to the delivery of the works/service or the construction of the price before the contract is awarded.
- 11.6. The NFA Board shall determine which tender is accepted. The Board shall not be bound to accept the lowest tender if payment is to be made by the NFA or the highest if payment is to be received. The Board shall accept the bid that provides the best value to NFA over the term of that contract, or the life of the asset.
- 11.7. In extreme urgency a decision to award a contract in excess of £15,000 may be obtained by the Chair or Vice-Chair of the Board. Any such action pursuant to this rule is to be reported to the next Board meeting.

12. Negotiation and Post-Tender Negotiation

- 12.1. The use of post-tender negotiations are not allowed by EU Public Procurement legislation, so an officer must not negotiate any changes to the tender or quotation price after the close of the time allowed for the submission of bids.
- 12.2. Negotiation is allowed, if fully compliant with the appropriate EU rules and will normally result in one or more Best and Final Offers, being submitted as a result of negotiation with the selected bidders.
- 12.3. Negotiation in exceptional circumstances is a procedure in place of tendering, and there must be justifiable reasons for the use of such negotiations, which are subject to the approvals stipulated by Rule 6.2; Exceptions to the Rules for Contracts.

13. Bonds and Parent Company Guarantees

- 13.1. For every contract, the officer undertaking the procurement must undertake a risk assessment to determine if a Bond or a Parent Company Guarantee is required. A Bond will not normally be required for contracts below £100,000.
- 13.2. The risk assessment must take into account the financial strength and track record of the contractor.

13.3. The value of any Bond or Parent Company Guarantee, should be of sufficient value to cover the costs to NFA in the event of the contractor defaulting on the contract, and should include:

- **The costs of re-tendering**
- **Consequential losses of income**
- **Costs of continuing the service during the re-tender period.**

The value of the Bond should not be less than 10% of the contract value.

13.4. The purpose of a Bond or Parent Company Guarantee is to enable the NFA to complete a Contract if the contractor becomes insolvent or is in serious breach, leading to the termination of the contract. Where it is determined by the officer that a Bond or Parent Company Guarantee is required, then the cost of arranging the Bond with the surety (usually a bank or insurance company) will need to be shown upon the Form of Tender, separate to the Contract sum.

14. Execution of Contracts

14.1. Once the Contract has been awarded it is necessary to prepare two copies of the formal Agreement (known as “the Exhibits”). Typically this will consist of the Invitation to Tender, the Contractor’s written proposal and any modifications that may have been agreed. The Agreement should be issued in duplicate and signed by both parties, with each party retaining an original copy of the Agreement.

14.2. For all contracts above £50,000 in total value, a standard form of contract should be used (where appropriate) a sample of which would normally be included as part of the Invitation to Tender.

14.3. Consideration should be given to whether a contract should be executed under hand as a simple contract (signed by the Chief Executive of the managing agent), or executed as a deed under the Company’s seal. As a general rule all works contracts above £100,000 should be executed under seal.

14.4. The Chief Executive of the managing agent must sign for and on behalf of the NFA all contracts that are not under the Company seal.

15. Assignment and Sub-Letting

15.1. Contractors shall be prohibited from transferring or assigning directly or indirectly the contract or any portion thereof without the written permission of the NFA.

15.2. All contracts made by or for any part of the managing agent that are exclusively for the benefit of the NFA must include a clause enabling its

assignment to the NFA at such time that the contract with the managing agent should come to an end.

- 15.3. A contractor shall not sub-let the contract or any portion thereof without the written permission of the NFA. Consent shall not be unreasonably delayed or withheld.**