

# Defence and Security Public Contracts Regulations 2011

## Chapter 17 - Standstill Period, Contract Award and Voluntary Transparency Notices

### Purpose

1. This guidance explains what procurers need to consider once you have made the contract award decision in order to award the contract under the Defence and Security Public Contracts Regulations (DSPCR) 2011.
2. Specifically, the guidance covers:
  - a. Award Decision Notices, i.e. notices you use to inform tenderers and candidates of the procurer's decision to award the contract or conclude a framework agreement (often referred to as the "standstill notice");
  - b. Standstill period, i.e. what procurers need to do in applying the mandatory standstill period within the DSPCR, especially the correct calculation of the 10 day period;
  - c. [Contract Award Notices](#), i.e. notices used once the contract or framework agreement has been entered into to notify the details of the contract awarded by publication in the Official Journal of the European Union (OJEU);
  - d. [Voluntary Ex-Ante Transparency Notice](#) (VEAT), also known in the Ministry of Defence (MOD) as a Voluntary Transparency Notice (VTN), and the principle of standstill for procurements where you did not publish a contract notice.

### What are standstill period, contract award and voluntary transparency?

3. By "standstill period and contract award", we mean the process where procurers inform the participants in the procurement procedure of its result, allow a pause in the procedure for participants to consider (i.e. the standstill period), and, if there is no legal challenge, award the contract.
4. By "voluntary transparency", we mean the process where procurers send a "VEAT" (VTN) to the OJEU that announces an intention to enter into a contract where you did not publish a contract notice in the OJEU.

### What is the legal framework?

5. Regulation 32 of the DSPCR details the specific rules relating to contract award notices, Regulation 33 details the specific rules relating to Award Decision Notices and related information, Regulation 34 details the specific rules relating to the standstill period and its effects.

6. The specific rules setting out what a VEAT (VTN) is and in what circumstances you may use one are set out in Regulations 60(3) and (4) of the DSPCR.

## **When do you use an Award Decision Notice?**

7. Procurers must use an Award Decision Notice (or “standstill notice”) for all procurement procedures except:

- a. where there is no obligation to advertise the contract in the OJEU (e.g. the requirement is below threshold, or a Part B services contract or when using the non-competitive negotiated procedure). However, in these circumstances in order to avoid the possibility of a finding of ineffectiveness if you use the procedure incorrectly procurers should consider publishing a VEAT (VTN);
- b. where there is only one tenderer and there are no other candidates, for example;
  - (1) you received only one request to participate from a supplier following the publication of the contract notice in the OJEU, and this supplier became the only tenderer;
  - (2) you received several requests to participate from suppliers following the publication of the contract notice in the OJEU, but you only selected one supplier to tender and you properly notified the other suppliers of the reasons for their rejection at the supplier selection phase;
- c. in above-threshold orders or tasks (contracts) under a framework agreement, but see the VEAT (VTN) guidance (paragraph 48) on the use of voluntary standstill periods for orders or tasks subject to mini-competition.

## **The Award Decision Notice**

8. You must inform tenderers or candidates of your decision to award a contract or conclude a framework agreement, as soon as possible after making your decision. You must inform them by notice in writing, by the quickest practicable method. This notice is an Award Decision Notice. The definitions of “candidate” and “tenderer” are:

- a. A “candidate” is a supplier (other than a tenderer) who applied to participate in the procurement procedure but the procurer did not:
  - (1) select the supplier to tender or negotiate the contract; and
  - (2) inform the supplier of its rejection and the reasons for it.
- b. A “tenderer” is a supplier who submitted an offer and has not been “definitively excluded” by the procurer from the procurement procedure. A supplier is “definitively excluded” from the procurement procedure when:
  - (1) the procurer excludes the supplier’s offer from further consideration in the procurement procedure; and

- (2) the procurer informs the supplier of the exclusion; and either
  - (i) the exclusion was held to be lawful proceeding under Part 9; or
  - (ii) the time limit for starting proceedings has expired, i.e. the 30 day period from the date when the economic operator was informed of his exclusion.

9. For MOD procurers, you must send the [“Contract Award Decision Notice – Winning Tenderer” \(DEFFORM 158A\)](#), to the winning tenderer(s). Other procurers are free to use the text of the form which is included in Annex A without the various references to the MOD and its DEFFORMs.

10. For MOD procurers, you must send the [“Contract Award Decision Notice – Unsuccessful Tenderers” \(DEFFORM 158B\)](#), to the unsuccessful tenderer(s). Other procurers are free to use the text of the form which is included in Annex B without the various references to the MOD and its DEFFORMs. In all cases the unsuccessful tenderers notice must include:

- a. the criteria for the award of the contract;
- b. the reasons for your decision, including the characteristics and relative advantages of the successful tender, the scores (if any) obtained by the tenderer and the successful tenderer(s) and any reason that the tenderer did not meet the technical specifications or security of information or security of supply requirements;
- c. the name of the winning tenderer(s); and
- d. a precise statement of either:
  - (1) when, in accordance with Regulation 34, the standstill period is expected to end and, if relevant, how the timing of its ending might be affected by any, and what, contingencies; or
  - (2) the date before which the procurer will not, in accordance with Regulation 34, enter into the contract or conclude the framework agreement.

11. For MOD procurers, where the notice is to a candidate, you must send the [“Contract Award Decision Notice – Candidates” \(DEFFORM 158C\)](#), to the candidate. Other procurers are free to use the text of the form which is included in Annex C without the various references to the MOD and its DEFFORMs. In all cases the candidates notice must include:

- a. the reasons why the candidate was unsuccessful; and
- b. all the same information that would be sent to unsuccessful tenderers except for the “relative advantages” of the successful tenderer(s).

## **What do you need to tell suppliers?**

12. You must give tenderers and candidates the full reasons for the award decision. The information you provide should detail the characteristics and relative strengths of:

- a. the successful tender against the award criteria (and sub criteria if applicable); and
- b. other than for candidates, the unsuccessful tender of the tenderer to whom the notice is being sent.

13. You could meet this requirement for unsuccessful tenderers by providing the scores (of the winning tenderer and the unsuccessful tenderer to whom you are sending the notice) against each criteria and a supporting narrative that explains The reasons for the score obtained by the recipient of the notice and by the winning tenderer against each criteria.

14. The information you give the unsuccessful tenderer must be sufficient in detail to ensure it has enough detail to determine whether your decision to award the contract to the winning tenderer is in accordance with the published evaluation criteria.

15. In providing this information, you should take care to protect the confidential and commercially sensitive aspects of the winning tender (e.g. the supplier's intellectual property, line item or unit costs).

## **Debriefing unsuccessful tenderers**

16. If, subsequent to the Award Decision Notice in paragraph 8, you receive a request in writing from an unsuccessful supplier for further information on the reasons why they were unsuccessful, you must respond at the earliest opportunity and at least within 15 days. You must provide the following information:

- a. The reasons why the supplier was unsuccessful, including:
  - (1) any reason how the supplier did not meet the technical specifications;
  - (2) any reason how the supplier did not meet the security of information and security of supply requirements.
- b. If the supplier submitted an admissible tender, you must also inform them of the characteristics and relative advantages of the successful tender, and:
  - (1) the name of the tenderer to be awarded the contract; or
  - (2) the names of the parties to the framework agreement.

17. Ordinarily, you should give this information in the Award Decision Notice so it is likely that the unsuccessful supplier is looking for clarification or more details of the decision. However, the unsuccessful supplier is only entitled to the information referred to in paragraphs 12 – 15 above. If the request highlights that your original Award Decision Notice did not comply with the DSPCR (e.g. it

did not contain the full reasons) then you should restart the standstill period, this time providing the full reasons.

18. Not providing the full information could result in legal challenge as this is an essential precondition of starting the standstill period.

## **Grounds for withholding information**

19. You may withhold any information to be provided in the Award Decision Notice or which you are obliged to provide under a request in writing referred to in paragraph 12, if to disclose it:

- a. would impede law enforcement;
- b. would otherwise be contrary to the public interest, in particular defence or security interests or both;
- c. would prejudice the legitimate commercial interest of any person (whether the procurer, the tenderer or a candidate); or
- d. might prejudice fair competition between suppliers.

20. You may withhold certain information including for the protection of defence or security interests. In particular, procurers should take care to protect the confidential and commercially sensitive aspects of the winning tender (e.g. the supplier's intellectual property, line item or unit costs).

## **The standstill period**

21. The standstill period is a period of at least 10 calendar days, during which the contract award process is suspended, i.e. you must not enter into the contract. Procurers must apply a standstill period where you issue an Award Decision Notice. As a matter of policy, procurers in the MOD are required to apply a standstill period to all awards of contracts or framework agreements under the DSPCR, including the procurement of Part B services, where there is any form of doubt as to whether the procurement is categorised as Part A or Part B, as detailed in paragraph 36. For procurements run under the non-competitive negotiated procedure, you must wait at least 10 calendar days from the date of publication of the VTN, before awarding the contract.

22. The standstill periods are detailed below. You must take particular care in calculating the last day of the of the standstill period, as a miscalculation is a breach of the DSPCR.

## **Where you send a notice electronically**

23. Where the procurer sends an Award Decision Notice to all the relevant suppliers by facsimile or electronic means, the standstill period ends at midnight at the end of the 10th day after the day you sent the Award Decision Notice to the suppliers. "Sending" electronically, means forwarded from an internal server to the servers of the suppliers, not just when the message enters an internal network of the sender.

## **Where you send a notice by non-electronic means**

24. Where the procurer sends an Award Decision Notice to all the relevant suppliers by other than electronic means (for example, by post) the standstill period ends at whichever of the following occurs first:

- a. midnight at the end of the 15th day after the relevant sending date; or
- b. midnight at the end of the 10th day after the date on which the last of the suppliers to receive the notice receives it.

25. The phrase “relevant sending date” means the date on which you send the Award Decision Notices to the suppliers. If you sent the notices to different suppliers on different dates, the relevant sending date is the date on which you send the last of the notices. By “sending by post”, we mean handing over to the Royal Mail or another postal service provider or courier, and not just putting the postal item into an internal mail system.

## **Where you send a notice by mixed means**

26. Where the procurer sends a notice to one or more of the suppliers electronically but to others by another means (for example by post), the standstill period ends at whichever of the following times occurs latest:

- a. midnight at the end of the 10th day after the date on which the last notice is sent by facsimile or electronic means; or
- b. the time when whichever of the following occurs first:
  - (1) midnight at the end of the 15th day after the date on which the last notice is sent by other means;
  - (2) midnight at the end of the 10th day after the date on which the last of the suppliers to receive a notice sent by any such other means receives it.

## **Where the last day of Standstill is not a working day**

27. Where the last day of the standstill period is not a working day, you must extend the standstill period to midnight at the end of the next working day.

## **Standstill period for framework agreements**

28. The mandatory standstill period applies at the stage at which a framework agreement itself is awarded, but not during subsequent orders or tasks or mini-competitions within framework agreements.

29. The standstill obligation does not apply to above-threshold orders or tasks from a framework agreement. However, where the order or task is subject to the mini-competition rules, ineffectiveness will apply, in principle if you breach those rules.

30. To mitigate the ineffectiveness risk, procurers can apply the standstill period voluntarily, as expressly provided for in Regulation 60(7), in which case ineffectiveness will not apply to breaches of the order or task rules, providing

you apply the standstill period properly. This is unnecessary for below threshold orders or tasks as the standstill period does not apply to such contracts.

31. To achieve the desired protection from ineffectiveness in orders or tasks from framework agreements, a cautious approach would be to send the standstill notice to all suppliers on the framework agreement, to ensure that framework suppliers that you did not invite to the mini-competition (who may be aggrieved by their non-invitation) have the chance to seek pre-contractual remedies.

32. Alternatively, if the procurer identified a clear subset of framework suppliers on the framework agreement that have the necessary capability to perform the contract, for example all the suppliers in the relevant lot in the framework agreement, then the procurer may prefer only to send standstill notices to that subset. This is on the basis that no other framework suppliers could raise a grievance.

33. In multiple-supplier frameworks where you can award the order or task by applying the terms laid down in the framework agreement, i.e. without running a mini-competition, then the standstill and ineffectiveness rules need not apply. However, there is still an element of risk that the procurer may be incorrect in their view that they do not need a mini-competition. Consequently, one of the other framework suppliers might bring proceedings on the grounds that the order or task procedural rules were breached due to the failure to run a mini-competition. If a court agreed, and had there been no standstill period, then the orders or tasks could be at risk of ineffectiveness.

34. Procurers therefore need to have a high level of confidence in the justification for not holding a mini-competition when placing an order or task from multi-supplier frameworks. An alternative protection would be to apply a voluntary standstill period and send the notices to the other framework operators, which would offer the opportunity for pre-contractual remedies and so disengage the ineffectiveness provisions.

35. It may therefore be safer to apply the standstill period to above-threshold orders or tasks where a mini-competition takes place to limit the risks of ineffectiveness as much as possible. However, this may be unattractive in some circumstances, in which case the procurer may prefer to accept the ineffectiveness rules applying, and consider other risk-reducing options. For example, a standstill period may be impracticable where the goods, services or works are:

- a. urgently required (for example, for military operations or civil emergencies);
- b. purchased on a commodity market (for example, oil or agricultural products) where price cannot be held during the standstill; or
- c. procured through brokers (for example air or ship charter) where price or availability cannot be held during the standstill.

36. For above-threshold order or tasks for Part B Services, there are no obligations to apply either the standstill or ineffectiveness rules. However, it may be possible that a Court could rule that you miscategorised a framework as Part B, when it should have been Part A, in which case the standstill or

ineffectiveness rules would apply to the order or task made from it. For that reason, procurers may wish to consider applying the standstill period to above threshold orders or tasks for Part B Services.

37. Procurers placing an order or task from a framework agreement that does not require a mini-competition, for example single supplier frameworks or multi-supplier frameworks where there is only one supplier that is suitable according to the terms of the framework, do not need to make a choice about applying the standstill period; neither standstill nor ineffectiveness apply to these orders or tasks.

## **Standstill period for e-auctions**

38. You must have a standstill period before entering a contract after a stand-alone electronic auction (e-auction) (i.e. an auction run outside of a framework agreement). The general guidance above on applying the standstill period applies here. E-auctions held within framework agreements are for specific orders or tasks and so they should follow the same approach outlined above for above-threshold orders or tasks.

39. For e-auctions that are not part of a framework agreement, you may need to alter the standard terms and conditions to ensure that you do not form the contracts at the same time as acceptance of the final bid, to ensure compliance with the DSPCR.

## **What happens if the award decision is challenged?**

40. If a supplier brings proceedings challenging a contract award decision during the standstill period, then an automatic suspension comes into effect preventing the conclusion of the contract (see Chapter 18 – Legal Review, Remedies and Ineffectiveness for further details about the time limits for starting Court proceedings).

## **What happens at the end of the standstill period?**

41. At the end of the standstill period, if a claim has not been issued, or in Scotland proceedings have not been brought or a claim form has been issued or proceedings have been brought but the procurer is unaware of this, then it is safe to enter into the contract.

42. For MOD procurers, you must send the [standard notice of entry into contract \(DEFFORM 159\)](#), to the winning tenderer(s). Other procurers are free to use the text of the form which is included in Annex D without the various references to the MOD and its processes. You must publish a Contract Award Notice in the OJEU no later than 48 days after contract award.

## **Benefits of following the rules**

43. Situations in which ineffectiveness normally arise, but not always involve failings on behalf of the procurer, include failing to provide for an opportunity for a review of its award decision. The standstill period explicitly provides for this pre-contractual review and so adhering to it can substantially reduce the risks of a future ineffectiveness claim.



## **Contract Award Notice**

44. When you award a contract or conclude a framework agreement, you must publish details of the award or conclusion in the OJEU within 48 days of the award or conclusion in the form of the [Contract Award Notice](#).
45. You may omit from the Contract Award Notice, on a case-by-case basis, any of the information from the Notice, if publication:
- a. would impede law enforcement;
  - b. would otherwise be contrary to the public interest, in particular defence or security interests or both;
  - c. would prejudice the legitimate commercial interest of any person; or
  - d. might prejudice fair competition between suppliers.
46. You do not need to send a contract award notice to the OJEU for orders or tasks that you award under a framework agreement.
47. For the sake of transparency even if you have exempted a Government to Government contract under Regulation 7(1)(h) you are advised to publish a Contract Award Notice in the same manner as you would for exempt contracts. For MOD procurers, this would be in the Defence Contracts Online portal.

## **What about procurements where there has not been a Contract Notice?**

48. The principles of openness and transparency also apply to procurements such as non-competitive negotiated procedure and Part B services. Suppliers also have the option to challenge the award decision for these procurements. You apply the standstill process to these procurements through use of a VEAT (VTN).

## **When should you consider using a VEAT (VTN)?**

49. You should consider using a VEAT (VTN) in the following circumstances:
- a. Where you award a contract using the non-competitive negotiated procedure under the Regulation 16.
  - b. Where you award a Part B services contract as defined by Regulation 3(2)(b), particularly where there is doubt as to whether it should be classified as a Part A or Part B services contract.
  - c. Where a procurer, in good faith, considers that a legal exemption from the need to advertise in the OJEU applies, even if a Court subsequently finds that this is not the case (e.g. the procurer has misinterpreted or misapplied the law).
  - d. Where there has been an OJEU advertisement but there are question marks as to whether the subsequent contract is potentially outside of the scope of the initial contract notice; and

- e. Where an existing contract is subject to an amendment, but you believe the scope and scale of the change does not need a new OJEU procurement procedure.
- f. Where a Government to Government contract is placed under the exclusion at Regulation 7(1)(h) of the DSPCR, you should carry out market analysis in accordance with the guidance in [Chapter 5-General Exclusions in the DSPCR](#). Where a decision to place a contract with another government is borderline, a VEAT (VTN) should be published to reduce the risk of subsequent challenge.

Should you need further guidance on whether a VEAT (VTN) is required for MOD personnel please contact CLS-CL. Where you establish that a VEAT (VTN) is required, the [Advertising user guide-EU Procurement](#) provides a step by step process. For this specific circumstance, you are required to add the following detail into the notice:

- (1) Within section IV Procedure, IV 1.1 Type of procedure, you will select "Award of a contract without prior publication of a contract call for competition in the Official Journal of European Union (in the cases listed in point 2 of Annex D1, D2 or D3."
- (2) Then "Annex D3 – Defence and Security" of the VEAT (VTN) requires the contracting authority to provide a justification for the award of a contract without prior publication of a contract notice. You should choose the option in paragraph 2 "the contract falls outside the scope of the application of the Directive" and provide a short rationale for the decision. Within your rationale, you should explicitly mention that you are finalising the procurement strategy that might lead to the award of a contract to another government or to the launch of a formal procedure under the Directive. You should also mention that you are giving the potential suppliers the opportunity to provide evidence that they are economically and technically capable of meeting the requirements.

50. You must ask CLS-CL to scrutinise the wording of the justification prior to it being published in the VTN.

## **What are the benefits of using a VEAT (VTN)?**

- 51. A VEAT (VTN) offers protection from a finding of ineffectiveness where a procurer has made a decision to award a contract without prior publication of a contract notice in the OJEU and the procurer considers the DSPCR did not require it to publish a contract notice in the OJEU.
- 52. Publishing a VEAT (VTN) is voluntary but we recommend it because it mitigates the risk that the procurer was wrong in thinking that an OJEU contract notice was not needed at the beginning of the process.
- 53. Publishing a VEAT (VTN) also allows interested parties to challenge an award decision within a 10 day (or longer) period before the contract is entered into. A formal challenge, initiated by commencement of proceedings allows the courts to consider whether the contract should be placed.

## **When should you publish a VEAT (VTN)?**

54. If you decide to use a VEAT (VTN), you should publish the VEAT (VTN) in the OJEU once the decision to award a contract is made but before formally entering into the contract, so as to:

- a. give industry an opportunity to raise objections if they consider that the award is unlawful and / or in breach of the DSPCR; and
- b. provide protection for the procurer from a finding of ineffectiveness for failure to advertise in OJEU if the procurer has:
  - (1) a reasonable belief that not advertising was permitted by the DSPCR;
  - (2) published the VEAT (VTN) in the prescribed form expressing its intention to enter into the contract, providing the prescribed information;
  - (3) ensured that at least 10 days elapse between the publication of the VEAT (VTN) and entering into the contract. The period begins on the day after publication, not on the day of publication itself.

55. Early publication of the VEAT (VTN) may flush out objections before the procurer is too entrenched in the procurement as long as the nature and scope of the procurement are not substantively altered during the negotiation phase.

56. As a matter of policy, MOD procurers are therefore required to publish a VEAT (VTN) when you take the procurement strategy decision to award a single source contract under the non-competitive negotiated procedure, and you know all the information you require to compete the VEAT (VTN).

## **What information should you publish in the VEAT (VTN)?**

57. A VEAT (VTN) must contain the following:

- a. the name and contact details of the procurer;
- b. a description of the object of the contract;
- c. a justification of the decision of the procurer to award the contract without the prior publication of a contract notice;
- d. the name and contact details of the supplier to be awarded the contract; and
- e. where appropriate, any other information which the procurer considers it useful to include;

58. Other fields in the VEAT (VTN) are not mandatory.

## **Do you still need to publish a contract award notice?**

59. Yes, after publication of the VEAT (VTN), you must still publish a Contract Award Notice in the OJEU following placement of the contract in all those circumstances where a Contract Award Notice is required.

## **What are the key points to remember?**

1. You must inform tenderers and candidates, in writing, and as soon as possible, of a decision to award a contract or conclude a framework agreement.
2. You must have a standstill period of at least 10 calendar days (as per Annex F) suspending the procurement to allow challenge of the award decision, before you enter into the contract.
3. You must ensure that the Award Decision Notice contains the full reasons for the award decision, while protecting the suppliers' commercially sensitive information, in order to meet your obligations under DSPCR.
4. You must publish a Contract Award Notice in the OJEU for all contracts you award or framework agreements you conclude under the DSPCR within 48 days.
5. You must prepare and keep certain records and information relating to each contract you award or framework agreement you conclude, and report that information to the EU Commission upon request.
6. You must consider placing a VEAT (VTN) for procurements where there has not been a contract notice, in order to give suppliers the opportunity to challenge the award decision and protect the contract awarded from ineffectiveness.

## Annex A

# Standard Notice of Contract Award Decision (Winning Tenderer)

Dear [insert name],

### **Standard Notice of Contract Award Decision Tender Reference [insert] - Winning Tenderer**

1. Thank you for your Tender dated [.....] [as clarified by [.....] dated [.....] for the supply of [.....].
2. This letter notifies you of the Authority's decision to award the [insert either "contract" or "framework agreement" or "[order or task] under [insert name of framework agreement]"] to your company.
3. The criteria used to [insert either "award the contract" or "conclude the framework agreement"] are set out below:  
[List criteria here – see Explanatory Notes paragraph 8 at Annex E]
4. The score you obtained against the criteria for contract award was [insert].
5. The Authority is invoking a standstill period. This period requires at least 10 calendar days to elapse between the announcement of the contract award decision and the date of contract award.
6. The standstill period starts the day after the date of issue of this letter and is expected to end at midnight at the end of [insert date - see Explanatory Notes paragraph 2 at Annex E]. Should the Authority be required to extend the standstill period, you will immediately be notified of when the revised period ends.
7. Your attention is drawn to your obligation to hold your Tender open for acceptance during the period specified in the [ITT].
8. Accordingly the [insert either "contract" or "framework agreement" or "[order or task]"] will not come into existence until the Authority sends you written notification of its entry into the [insert either "contract" or "framework agreement" or "[order or task]"]. The Authority shall therefore not be responsible in any way whatsoever:
  - a. for any work undertaken by you; nor
  - b. for any costs incurred by you prior to the Authority's entry into the [insert either "contract" or "framework agreement" or "[order or task]"].
9. When the Authority enters into the [insert either "contract" or "framework agreement" or "[order or task]"], you should proceed with the performance of the [insert either "contract" or "framework agreement" or "[order or task]"] in accordance with its terms.

Yours sincerely

## Annex B

# Standard Notice of Contract Award Decision (Unsuccessful tenderers)

Dear [insert name],

### Standard Notice of Contract Award Decision - Unsuccessful tenderers

1. Thank you for your Tender dated [insert] [as clarified by [.....] dated [.....] for the supply of [.....].
2. This letter notifies you of the Authority's decision to award the [insert either "contract" or "framework agreement" or "[order or task] under [insert names of framework agreement}"] to [insert name of successful tenderer(s)] (the "Winning Tenderer").
3. The criteria used to [insert either "award the contract" or "conclude the framework agreement"] are set out below:  
[List criteria here – see Explanatory Notes paragraph 11 at Annex E]
4. The score the Winning Tenderer obtained against the criteria for contract award was [insert Winning Tenderer's score here – see Explanatory Notes paragraph 12 at Annex E].
5. The score you obtained against the criteria for contract award was [insert – see Explanatory Notes paragraph 13 at Annex E].
6. The reasons for the decision are set out in [insert reference, as a bare minimum this must include a table with the following column headings: criteria / sub-criteria, score obtained by [insert name of supplier], reasons for award of score, score obtained by successful tenderer, reasons for award of score (showing relative characteristics / advantages compared with the successful tender) for which the notice relates – see Explanatory Notes paragraph 14 at Annex E].
7. The Authority is invoking a standstill period. This period requires at least 10 calendar days to elapse between the announcement of the contract award decision and the date of contract award.
8. The standstill period starts the day after the date of issue of this letter and is expected to end at midnight at the end of [insert date; see Explanatory Notes paragraph 2 at Annex E]. Should the Authority be required to extend the standstill period, you will immediately be notified of when the revised period ends.

Yours sincerely

## Annex C

# Standard Notice of Contract Award Decision (Candidates)

Dear [insert name],

### **Standard Notice of Contract Award Decision Tender Reference [insert] - Candidates**

1. Thank you for the request to participate in response to the Contract Notice dated [.....] for the supply of [.....].
2. This letter notifies you of the Authority's decision to award the [insert either "contract" or "framework agreement" under [insert names of framework agreement]] to [insert name of successful tenderer(s)] (the "Winning Tenderer").
3. The criteria used to [insert either "award the contract" or "conclude the framework agreement"] are set out below:  
[List criteria here – see Explanatory Notes paragraph 16 at Annex E]
4. The score the Winning Tenderer obtained against the criteria for contract award was [insert Winning Tenderer's score here – see Explanatory Notes paragraph 16 at Annex E].
5. The reasons why your request to participate was unsuccessful were [insert a full explanation of why the supplier was not invited to tender – see Explanatory Notes paragraph 17 at Annex E].
6. The reasons for the award decision are [insert an explanation of why it has been decided to award the contract to the Winning Tenderer, including the characteristics of the successful tender and its relative strengths against the award criteria – see Explanatory Notes paragraph 18 at Annex E].
7. The Authority is invoking a standstill period. This period requires at least 10 calendar days to elapse between the announcement of the contract award decision and the date of contract award.
8. The standstill period starts the day after the date of issue of this letter and is expected to end at midnight at the end of [insert date, see Explanatory Notes paragraph 2 at Annex E]. Should the Authority be required to extend the standstill period, you will immediately be notified of when the revised period ends.

Yours sincerely

## Annex D

# Standard Notice of Entry into Contract

Dear [Insert name],

**Contract Number [insert] for the [Supply / Provision] of [insert]**

1. The Authority hereby accepts your Tender / Part of your Tender reference: [insert Reference] dated [insert date] as revised by Reverse Auction on [insert date]. [delete as appropriate]
2. For your convenience, the Terms and Conditions of the Contract which will result from this acceptance are attached.  
[only include this paragraph 3 if your contract is a framework agreement]
3. Instructions will be sent to the authorised demander telling them that they may proceed to place orders for items shown in the Schedule of Requirements with the effect from the date of the acknowledgement below. Instructions have also been sent to the [insert the name of your billing department] to make a one-off payment to your company of £1.00 in order to create a legally enforceable obligation on your part to keep open your offer for the entire duration of the Framework Agreement.]
4. Payment will be made in accordance with [the attached Terms and Conditions].
5. Please acknowledge this by completing Sections B and C in the table overleaf, signing both copies of this letter at Section B and returning one to the address above.

Yours sincerely,

Offer and Acceptance	
<b>Section A) Acceptance</b> Acceptance of Contract <b>[insert reference]</b> constitutes acceptance by the Authority of the Contractor's tender <b>[insert reference]</b> for the supplier to supply the Deliverables.  Signed by:  Name (Block Capitals):  Position:	<b>Section B) Confirmation of Receipt</b> I acknowledge receipt of the Department's contract letter no. <b>[insert]</b> .  Signed by:  Name (Block Capitals):  Position:



For and on behalf of the Authority  Authorised Signatory .....  Date <sup>1</sup> :	For and on behalf of  Authorised Signatory .....  Date:
<b>Section C) Tier 1 Sub-Contractor data:<sup>2</sup></b> Name ..... Value of work (£ ex VAT) ..... Location of work..... SME ...Yes / No Name ..... Value of work (£ ex VAT) ..... Location of work..... SME ...Yes / No Name ..... Value of work (£ ex VAT) ..... Location of work..... SME ...Yes / No Name ..... Value of work (£ ex VAT) ..... Location of work..... SME ...Yes / No Name ..... Value of work (£ ex VAT) ..... Location of work..... SME ...Yes / No	

<sup>1</sup> The date of unqualified acceptance by signature is the effective date of the contract

<sup>2</sup> The Authority is required to report to the Government any spend with Small and Medium-sized Enterprises (SMEs) including sub-contractors (Tier 1). SMEs are defined by the EU on [http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/sme-definition/index\\_en.htm](http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/sme-definition/index_en.htm)

## Annex E

# Explanatory Notes

### Contract Award Decision Letter - Explanatory Notes

1. These letters are issued after the tender evaluation as soon as you have made a decision who to award the contract to. These are often referred to as standstill letters.
2. Standstill Period - You will issue the Contract Award Decision Letters to tenderers (and candidates if applicable) by electronic means (or fax) on the same day. The first day of the standstill period is the day following despatch of all of the letters. The standstill period ends at midnight at the end of the 10th day after all the letters are sent. This means, for example, if you send the award decision letters on 2 February 2015 the standstill period will end at midnight on 12 February 2015. If the standstill period ends on a non-working day, it will automatically be extended to end at midnight on the next working day. Although it is good practice, it is not mandatory to use a standstill period for low value procurements and when using Standardised Contracting Template 1.
3. You must include as much information as possible in the letters, details are covered in the Contract Award and Tender Debrief Commercial Policy Statement.
4. You must send all letters by fax or electronically at the same time and include as much information as possible that was relevant to the contract award decision.
5. The template letters are for MOD use only and MOD procurers must use the [corresponding DEFFORMs on the Commercial Toolkit](#). Other procurers are free to use the text in these templates and may find the guidance below of use.

### Contract Award Decision Letter – Winning Tenderer

6. You should send this letter to the successful tenderer when invoking a standstill period.
7. You must send this letter to the winning tenderer only. There are different letters for unsuccessful tenderers and candidates.
8. Paragraph 3 Contract award criteria - If the contract award is on the basis of the lowest price then insert “lowest price”. If it is on the basis of the “most economically advantageous tender” (MEAT) then insert the specific award criteria. In addition to the award criteria, if you have used a reverse auction insert the criteria used at the reverse auction.

### Contract Award Decision Letter – Unsuccessful Tenderer

9. You should send this letter to the unsuccessful tenderer when you are invoking a standstill period.
10. You must send this letter to the unsuccessful tenderer(s) only. There are different letters for winning tenderers and candidates
11. Paragraph 3 Contract award criteria - Where you used the lowest price as contract award criteria then insert "lowest price". If you used MEAT then you must insert the specific award criteria. In addition to the award criteria, if you have used a reverse auction insert the criteria used at the reverse auction.
12. Paragraph 4 Scores - You can give scores where the contract award is on the basis of MEAT and you have used a scoring evaluation method. Where contract award is on the basis of the lowest price, you should replace the wording in paragraph 4 with "The price submitted by the Winning Tenderer was the lowest price tender which was technically and commercially compliant with the tender documents."
13. Paragraph 5 Score - You must provide each unsuccessful tenderer with the score they obtained against the award criteria and the score of the winning bidder. However, you should not give these scores to the other tenderers or suppliers.
14. Paragraph 6 Reasons for the decision - You must include in the reasons for the decision the characteristics and relative strengths of the successful tender against the award criteria and by comparison to the unsuccessful tender to which this letter applies. You must give the unsuccessful tenderer enough detail to ensure that they are able to determine whether the decision is well founded (e.g. the score awarded to price, compliance with the technical requirements and terms and conditions), while taking care to protect the confidential aspects of the successful tender (e.g. the supplier's intellectual property, line item or unit costs).

### **Contract Award Decision Letter – Candidates**

15. You must send this letter to "candidates" only. For the purposes of this letter a "candidate" is:
  - a. a supplier who did not pass the PQQ and has not been told of the reasons for that failure, though in practice this should not happen; or
  - b. a supplier who was invited to tender or negotiate the contract, or be a party to a framework agreement, but who withdrew from the process prior to submitting a tender;
  - c. any supplier who was invited to tender or negotiate the contract, or be a party to a framework agreement, but who was not invited to provide a final tender in the later stages of the negotiated procedure; or

d. any supplier who was not invited to submit a final tender at the end of the dialogue phase of the competitive dialogue procedure (that is, you rejected their solution during the dialogue phase).

16. Paragraph 3 and 4 Contract Award - You can only give scores in paragraphs 3 and 4 where you base the contract award on MEAT and you used a scoring evaluation method. In this case, you will need to insert the specific award criteria. If you based the contract award on the lowest price, you should replace the wording in paragraph 4 in the letter with "The price submitted by the Winning Tenderer was the lowest price tender which was technically and commercially compliant with the tender documents."

17. Paragraph 5 Reasons request to participate was unsuccessful - You must include the full reasons why the candidate was not invited to tender.

18. Paragraph 6 Reasons for the decision - Include an indication of the characteristics of the winning tender against the award criteria (e.g. the score awarded to price, compliance with the technical requirements and terms and conditions) while taking care to protect its confidential aspects (e.g. the supplier's intellectual property, line item or unit costs).

### **Contract Award Decision Letter – Unsuccessful Tenderer**

19. Paragraph 3 Contract award criteria - Where you used the lowest price as contract award criteria then insert "lowest price". If you used MEAT then you must insert the specific award criteria. In addition to the award criteria, if you have used a reverse auction insert the criteria used at the reverse auction.

20. Paragraph 4 Scores - You can give scores where the contract award is on the basis of MEAT and you have used a scoring evaluation method. Where contract award is on the basis of the lowest price, you should replace the wording in paragraph 4 with "The price submitted by the Winning Tenderer was the lowest price tender which was technically and commercially compliant with the tender documents."

## Annex F

### Standstill Flowchart

