

Procurement Guidance Note

Award of Contract

Background

Regulations were introduced to implement the European Court of Justice Judgement following the “Alcatel” case. The Alcatel ruling found that national courts in EU Member States must in all cases be able to review and set aside award decisions on procurement contracts subject to EU procurement Directives.

A subsequent ruling clarified that there should be a period of time between the contract award decision and the formal award of the contract to ensure that complainants (unsuccessful tenderers) are able , if justified , to bring actions to court for the suspension and set aside of the contract award decision .

What does it apply to?

All procurements that have been carried out under EU Procurement Directives and have been advertised in the Official Journal of the European Union.

There is a requirement to give a **minimum of ten (10) calendar day’s** standstill period **between** advising tenderers via The Chest, email or post of the contract award decision and entering into a contractually binding agreement with the successful tenderer.

Does this requirement affect Standing Orders or the Constitution of the County Council?

No. The five day call in period (Section 12 Constitution) following an award decision by an individual Member of the Executive or a Committee or Sub-Committee of the Executive, or a key decision made by an officer with delegated authority from the Executive, or a County Forum or under joint arrangements remains unchanged. The 10 day standstill period will commence **after** the five days have elapsed. They are not allowed to run concurrently.

When does the 10 day period start?

The standstill begins the day after the award decision is dispatched. If the standstill period ends on a non-working day the period must be extended to the end of the next working day.

What might happen in the 10 day standstill period?

Tenders may seek additional briefing of the award decision. It is necessary to inform the tenderer of the reasons why they have been unsuccessful in an appropriate form (contact Central Procurement for advice) It is necessary to allow three full working days between the dispatch of additional briefing and the end of the standstill period . If a request arrives within the standstill period but after the first two working days of the standstill period there is no need to provide further briefing within the standstill period. You will still need to provide it within 15 days of receipt of a written request, which is normal Practice and will not affect the standstill period.

A legal challenge may be made, *which* should be communicated to Legal Services immediately.

No move towards entering into a contractual agreement can be made until the outcome of legal proceedings are concluded

Timetable

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| Day 0 | Contract award decision dispatched to all tenderers who returned a tender |
| Day 1 | Standstill Period begins |
| Day 3 | Last day for the receipt of requests for additional debriefing from tenderers |
| Day 7 | Last day for the dispatch of additional debriefing to tenderers |
| Day 10 | Last day of standstill (subject to non-working days) |

Further advice is available from:

Legal Services
Central Procurement Unit