

## **APPENDIX A ALCATEL JUDGEMENT – IMPLICATIONS FOR CONTRACT AWARD PROCEDURE**

The Government has announced that, with immediate effect, all procurements subject to the full EU procurement regime must be subject to a mandatory standstill period of at least 10 days between declining unsuccessful tenders and the actual award of contract. This standstill period is to allow unsuccessful tenderers the opportunity to challenge an award decision. Successful objections made during the standstill period could ultimately lead to award decisions being overturned.

The announcement follows the UK acceptance of a decision made by the European Court of Justice in the Alcatel case. The new procedure requires that as soon as the award decision has been made:

1. Unsuccessful tenderers are notified individually in writing, confirming:
  - (a) the award criteria,
  - (b) where appropriate the unsuccessful tenderers score against those criteria,
  - (c) where appropriate the winning score,
  - (d) and the name of the successful bidder.

The 10 day calendar day standstill period begins from the day after the notification is issued. It is recommended letters are always emailed or faxed to avoid disagreements about when they are actually received. If the last day of the standstill period falls on a non-working day the period must be extended to the next working day.

2. Tenderers may request an additional debrief. Requests may be made either verbally or in writing. If this request is made within 2 working days of the start of the standstill period the debriefing information must be dispatched at least 3 full working days before the end of the standstill period. If the information can not be provided within this timescale, the 10 day period will need to be extended.

NB Commercially sensitive details eg pricing must NOT be divulged during debriefing. Advice on debriefing is available from either Resources & Commissioning or Legal Services.

3. Where additional debriefing is requested after the 2 working day period the information must be provided within 15 days. There is no requirement to extend the standstill period if a request is made after the 2 working day period.
4. A letter to the successful tenderer can also be sent at the same time as letters are sent to unsuccessful tenderers. The letter must be prepared in consultation with legal services and cannot indicate to the contractor that you will enter into a contract with them.
5. If no legal challenge has been launched by the end of Day 10, the contract award letter may be issued or contract signed and sent off to the successful tenderer.
6. If a legal challenge is threatened, you must consult the Head of Legal and Electoral Services and then await the outcome of the application to the court before concluding the contract.

In the meantime or in any case of doubt consult the Head of Resources and Commissioning or Head of Legal and Electoral Services

**Martin Cawte**  
**Head of Resources and Commissioning**

**David Holling**  
**Head of Legal & Electoral  
Services**

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