



Glasgow City Council
Standing Orders Relating to Contracts
2007

Made in terms of Section 81 of the Local Government (Scotland) Act 1973

CONTENTS

PART I - STANDING ORDERS RELATING TO CONTRACTS GENERAL MATTERS

1. PRELIMINARY	1
<i>Extent and Application.....</i>	<i>1</i>
<i>Definitions.....</i>	<i>2</i>
2. TENDERING PROCEDURES FOR DIFFERENT CONTRACT VALUES	3
3. EU PROCUREMENT : SUPPLIES/SERVICES CONTRACTS OF £100,000 AND ABOVE and WORKS CONTRACTS OF £3,000,000 AND ABOVE	4
<i>Prescribed Thresholds</i>	<i>4</i>
<i>Aggregation.....</i>	<i>5</i>
<i>Mixed Procurement.....</i>	<i>5</i>
<i>Part A / Part B Services</i>	<i>5</i>
<i>Services/Supplies.....</i>	<i>6</i>
<i>Services/Works</i>	<i>6</i>
<i>EU Procurement Procedures.....</i>	<i>6</i>
<i>Open Procedure</i>	<i>6</i>
<i>Restricted Procedure</i>	<i>6</i>
<i>Negotiated Procedure</i>	<i>7</i>
<i>Competitive Dialogue</i>	<i>7</i>
<i>Advertising.....</i>	<i>7</i>
<i>Timescales.....</i>	<i>8</i>
<i>Tenderers Right to Information Regarding Contract Awards</i>	<i>11</i>
<i>Mandatory Standstill Period.....</i>	<i>11</i>
<i>Special Types of EU contract/procedures.....</i>	<i>12</i>
<i>Framework Agreement.....</i>	<i>12</i>
<i>Dynamic Purchasing Systems (DPS)</i>	<i>13</i>
<i>e-Auctions</i>	<i>15</i>
<i>Special Rules : Works Concessions; Public Housing Schemes; Design Contracts</i>	<i>16</i>
4. SUPPLIES/SERVICES CONTRACTS UP TO £100,000 and WORKS CONTRACTS UP TO £3,000,000	16
5. SUPPLIES/SERVICES CONTRACTS BELOW £20,000 and WORKS CONTRACTS BELOW £300,000 IN CASES WHERE TENDERING IS CONSIDERED INAPPROPRIATE.....	17
6. TENDERING PROCEDURES FOR ALL CONTRACTS (SUBMISSION, OPENING, EVALUATION, ACCEPTANCE AND REPORTING).....	18
<i>Submission</i>	<i>18</i>

<i>Invitation to Tender</i>	18
<i>Late Tenders</i>	19
<i>Opening</i>	20
<i>Authorised Officers</i>	20
<i>Disqualification</i>	20
<i>Evaluation</i>	21
<i>Acceptance</i>	21
<i>Letters to Successful Tenderers</i>	22
<i>Letters to Unsuccessful Tenderers/Candidates</i>	22
<i>Execution of Contracts</i>	22
<i>Reporting</i>	22
<i>Executive Committee</i>	22
<i>Contract Management System</i>	23
7. ELECTRONIC PROCUREMENT	24
8. NEGOTIATED AND EXTENDED CONTRACTS	24
9. MISCELLANEOUS	25
<i>Standards</i>	25
<i>Prevention of Collusion, Corruption or Illegal Practices</i>	25
<i>Equal Opportunity and Race Equality</i>	25
<i>Freedom of Information</i>	26
<i>Assignment</i>	26
<i>Scots Law</i>	26
10. DISPOSAL OF SURPLUS MATERIALS	27
<i>Disposal</i>	27
<i>Tenders</i>	27
<i>Quotations</i>	28
11. PAYMENT BY INSTALMENTS	28
<i>Contracts with a value of £20,000 or below</i>	28
<i>Contracts with a value in excess of £20,000 but below £500,000.</i>	29
<i>Contracts with a value in excess of £500,000</i>	29
12. POST TENDER COMMUNICATIONS	29

PART I: STANDING ORDERS RELATING TO CONTRACTS: GENERAL MATTERS

1. PRELIMINARY

1.1 Extent and Application

- 1.1.1 Glasgow City Council makes these Standing Orders in terms of section 81 of the Local Government (Scotland) Act 1973.
- 1.1.2 The Standing Orders must be interpreted in accordance with the key principles of openness, fairness and non-discrimination.
- 1.1.3 Subject to the provisions of Standing Order 1.1.7, the Standing Orders apply to all contracts made by or on behalf of the Council for the execution of works, for the supply of goods and materials, or for the provision of services.
- 1.1.4 The Standing Orders are subject to the over-riding provisions of European Union, United Kingdom, or Scottish legislation. They are also subject to any EU Commission, UK government or Scottish Executive guidance on public procurement that may be issued from time to time.
- 1.1.5 The Standing Orders shall not apply to any contracts made on behalf of the Council by the Authorities Buying Consortium or any other central purchasing body with whom the Council has made arrangements for the award of works, supplies or services contracts on its behalf.
- 1.1.6 All Council personnel shall comply with the terms of the Standing Orders. Failure by any employee to comply with the Standing Orders may result in disciplinary action.
- 1.1.7 The Standing Orders do not apply to any of the following:
 - 1.1.7.1 contracts of employment;
 - 1.1.7.2 social care contracts (which shall be subject to separate Standing Orders);
 - 1.1.7.3 contracts relating to the disposal of heritable property; and
 - 1.1.7.4 contracts for the execution of works, the supply of goods and materials, or the provision of services which are, in the reasonable opinion of the Executive Director of the Procuring Service, urgently required for the prevention of risk to life or damage to property.
- 1.1.8 The Standing Orders may be reviewed by the Council from time to time.

1.1.9 The Standing Orders may be suspended either in whole or in part by the Executive Committee in respect of the proposed award of any contract upon the joint recommendation of the Executive Director of the Procuring Service, the Solicitor to the Council and the Executive Director of Financial Services. This is subject to the provisos that:-

1.1.9.1 there are special circumstances justifying the suspension; and

1.1.9.2 the suspension is within the statutory powers of the Council.

1.1.10 The Standing Orders must be read in conjunction with the Corporate Procurement Manual. All Council personnel must comply with the Corporate Procurement Manual. Where there is any discrepancy, the Standing Orders shall take precedence.

1.1.11 All directors or trustees of associated or subsidiary companies, trusts or other bodies whose accounts form part of the Council's Group Accounts shall ensure that they adhere to the procedures set out in these Standing Orders and the Corporate Procurement Manual. It is recognised that such bodies will have their own separate management structures and so will have a different executive approvals process for the conduct of procurement activities and the award of contracts. In all other matters, however, directors or trustees shall follow the procedures set out here.

1.1.12 Any query regarding the application or interpretation of these Standing Orders should be made in the first instance to the Solicitor to the Council.

1.2 Definitions

1.2.1 "**Authorities Buying Consortium**" means the consortium of West of Scotland local authorities constituted by a Minute of Agreement registered in the Books of Council and Session on 9 October 2000.

1.2.2 "**contract documents**" means the invitation to tender for or to negotiate a contract, the descriptive document (if any), the proposed conditions of contract, the specification of the supplies, services or works required by the Council and all supplementary documents.

1.2.3 "**Corporate Procurement Manual**" means the mandatory procedure manual issued by the Council, setting out the detailed requirements for the conduct of procurement activity within the Council (as amended from time to time) with which all Council personnel are required to comply.

1.2.4 "**Corporate Procurement Unit**" means the unit established within the Council to promote and co-ordinate strategic procurement and develop procurement staff, processes and systems.

1.2.5 "**Council's Buyer Profile**" means the website maintained by the Council on which contract documents may be made available to interested parties via the internet. It may be found at <http://www.glasgow.gov.uk/eu/Business/Procurement/>

- 1.2.6 **"EU Regulations"** means the Public Contracts (Scotland) Regulations 2006 (as amended from time to time).
- 1.2.7 **"Executive Committee"** means the key decision making body of the Council chaired by the Leader of the Council, except in the case of any contract relating to the Strathclyde Pension Fund, in which case it means the Strathclyde Pension Fund committee of the Council.
- 1.2.8 **"Executive Director of the Procuring Service"** means the head of the Procuring Service.
- 1.2.9 **"Most Economically Advantageous Tender"** means the tender offer that is most economically advantageous from the Council's point of view having regard to the subject matter of the contract and including matters such as quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost effectiveness, after-sales service, technical assistance, delivery date and delivery period or period of completion (all as may be considered appropriate in relation to any particular contract).
- 1.2.10 **"Procuring Officer"** means any officer designated by the Executive Director of the Procuring Service to have particular responsibility for undertaking any procurement exercise (or any part of a procurement exercise) on behalf of the Procuring Service. Each Procuring Officer must be authorised to carry out procurement activities under the Register of Procurement Officers maintained by the Head of the Corporate Procurement Unit. Each Procuring Officer must also have received training based on an overview of the Corporate Procurement Manual.
- 1.2.11 **"Procuring Service"** means the service department of the Council with responsibility for procuring any particular requirement for supplies, services or works on behalf of the Council or the disposal of surplus materials.
- 1.2.12 **"Proper Officer"** means any officer in the employment of the Council who is duly authorised for the purpose of signing contracts under the Council's Scheme of Delegations to Officers.
- 1.2.13 **"Strathclyde Pension Fund"** means Glasgow City Council in its capacity as administering authority for the Strathclyde Pension Fund in terms of the Local Government Pension Scheme (Scotland) Regulations 1998 (as amended).

2. TENDERING PROCEDURES FOR DIFFERENT CONTRACT VALUES

- 2.1 The procedure for the award of any contract depends upon the estimated value of that contract. The relevant values and the associated tendering procedure that must be applied by the Executive Director of the Procuring Service, with effect from 31 January 2006 to 31 December 2007, are detailed in Table 1 below. These values are exclusive of VAT and relate to the full life of the contract.

TABLE 1 : RELEVANT VALUES AND ASSOCIATED TENDERING PROCEDURE

Contract Type	Contract Value	Applicable Procedure
Works	£3,000,000 and above	Standing Orders 3, 6 and 7
Supplies / Services	£100,000 and above	Standing Orders 3, 6 and 7
Works	Up to £3,000,000	Standing Orders 4, 6 and 7
Supplies/Services	Up to £100,000	Standing Orders 4, 6 and 7
Works/Supplies/Services	Up to £20,000 (Supplies/Services) or £300,000 (Works) in cases where tendering is inappropriate	Standing Order 5

These values will be reviewed in accordance with any revision of the threshold values for supply, services or works contracts intimated from time to time by the EU Commission. All other financial limits specified in the Standing Orders shall be subject to review from time to time in accordance with Standing Order 1.1.8.

3. EU PROCUREMENT : SUPPLIES/SERVICES CONTRACTS OF £100,000 AND ABOVE and WORKS CONTRACTS OF £3,000,000 AND ABOVE

This Standing Order applies together with the procedures in Standing Order 6 and 7 where the Executive Director of the Procuring Service proposes to award any contract with an estimated value equal to or exceeding the prescribed threshold.

3.1 Prescribed Thresholds

With effect from 31 January 2006 - 31 December 2007, the prescribed thresholds are as follows:-

Contracts for the execution of works : £3,000,000

Contracts for the supply of goods/materials : £100,000

Contracts for the provision of services : £100,000

Values are exclusive of VAT and relate to the full life of the contract. (Note also that they are not identical to the prescribed EU thresholds).

3.2 Aggregation

3.2.1 The Procuring Officer must take into account the aggregate value of any single requirement for works, services or supplies across the whole Council to determine if it exceeds the EU threshold. If so, even if the procurement of any such requirement is split among a number of contracts which, taken individually, are below the threshold values, each of these contracts is subject to the EU Regulations in the same way as if the requirement were procured through a single large contract.

3.2.2 The following rules for aggregation must be applied by the Procuring Officer:

3.2.2.1 if there is a number of contracts for a single requirement for the same type of works, supplies or services then the total value of the individual contracts (or "lots") must be aggregated. If the aggregate value over the contract term equals or exceeds the relevant threshold then, subject to Standing Order 3.2.2.2, the EU Regulations apply to the award of each contract.

3.2.2.2 there is an exemption for "small lots" of an estimated value over the contract term below £54,738 (for supplies or services) and £684,221 (for works) as long as this value does not exceed 20% of the total value of all "lots". Any exempt "small lot" must be advertised in accordance with Standing Order 4.

3.3 Mixed Procurement

The EU Regulations include rules for determining how to treat mixed procurement comprising goods and services, as follows:-

3.3.1 *Part A / Part B Services*

Where services specified in both Parts A and B of the "Categories of Services" as described in Schedule 3 to the EU Regulations are to be provided under a single contract, then the entire contract shall be treated as:

3.3.1.1 a Part A Services contract if the value attributable to the services specified in Part A exceeds that attributable to those specified in Part B; and

3.3.1.2 a Part B Services contract if the value attributable to the services specified in Part B is equal to or exceeds that attributable to those specified in Part A. If the value of the Part A Services exceeds the relevant EU threshold,

however, then the entire contract must be advertised as a Part A Services contract.

3.3.2 *Services/Supplies*

Where services and supplies are to be provided under a single contract, then the entire contract shall be treated as:

3.3.2.1 a services contract if the value attributable to the services exceeds that attributable to the supplies; and

3.3.2.2 a supplies contract if the value attributable to the supplies is equal to or exceeds that attributable to the services.

3.3.3 *Services/Works*

Where a contract for services includes "Activities Constituting Works" as described in Schedule 2 to the EU Regulations that are only incidental to the principal object of the contract then the entire contract shall be treated as a services contract.

3.4 **EU Procurement Procedures**

All procurement under the EU Regulations shall be carried out in accordance with one of the following procedures:-

- the open procedure;
- the restricted procedure;
- the negotiated procedure :
 - (i) with prior publication of a Contract Notice; or
 - (ii) without prior publication of a Contract Notice.
- the competitive dialogue procedure.

3.4.1 *Open Procedure*

This is a straightforward "one stage" tendering procedure. The assessment of suppliers and their qualifications to undertake the contract takes place at the same time as the evaluation of their tender.

3.4.2 *Restricted Procedure*

This is a two stage tendering procedure, suitable where the Council wants to limit the number of suppliers who are invited to tender. The assessment of suppliers and their qualifications to undertake the contract is carried out as a initial "pre-qualification" stage through the issue of a Pre-qualification Questionnaire (PQQ). The Council is then entitled to select those suppliers who meet the PQQ requirements for

invitation to tender. A minimum of 5 tenderers must, wherever possible, be invited to tender.

3.4.3 *Negotiated Procedure*

This procedure may only be used where expressly permitted under the EU Regulations. The Executive Director of the Procuring Service must obtain the prior written permission of the Solicitor to the Council and the Executive Director of Financial Services in order to use the negotiated procedure. There are two forms of the negotiated procedure:-

- negotiated procedure where publication of a Contract Notice is mandatory; and
- negotiated procedure where publication of a Contract Notice is non-mandatory.

3.4.4 *Competitive Dialogue*

This procedure is only available in limited circumstances when a particularly complex contract is being procured. The Executive Director of the Procuring Service must obtain the prior written permission of the Solicitor to the Council and the Executive Director of Financial Services in order to use the competitive dialogue procedure. The nature of the procedure allows the Council, through dialogue with suppliers, to develop a specification best suited to meeting its needs. A minimum of 3 tenderers must, wherever possible, be invited to participate in the dialogue.

Procuring Officers shall ensure that the selected procedure is carried out in accordance with the relevant provisions of the EU Regulations. The Solicitor to the Council must be consulted for legal advice in order to ensure compliance with the relevant provisions.

3.5 **Advertising**

3.5.1 Contracts affected by the EU Regulations must be advertised in the Official Journal of the European Union (OJEU). There are three kinds of notices which may require to be published (depending on the procedure selected) in the OJEU at different stages in the procurement process as follows:-

3.5.1.1 a Prior Indicative Notice (PIN) which gives advance warning to contractors of the essential characteristics of a forthcoming contract, including a forecast of when the Contract Notice will appear in the OJEU. Each PIN must be published at least 52 days and no more than 12 months before despatch of the Contract Notice;

3.5.1.2 a Contract Notice giving more details about the particular contract including the criteria by which the contract is to be awarded;

3.5.1.3 a Contract Award Notice giving details of any contract awarded under the EU Regulations which must be published regardless of whether any of the other Notices have been published.

3.5.2 Where the Executive Director of the Procuring Service wishes to retain an option to extend the period of any contract in accordance with the provisions of these Standing Orders, the Procuring Officer shall ensure that the Contract Notice expressly states that the contract may be extended for a specified period using the negotiated procedure.

3.5.3 The Contracts Administration Section within the Corporate Law Section of Legal and Administrative Services must be consulted regarding the preparation and publication of any notice to be published in the OJEU.

3.6 Timescales

3.6.1 The EU Regulations set out timescales that must be applied for expressions of interest and/or submission of tenders. These depend upon the procedure that has been selected. The Executive Director of the Procuring Service must ensure that, as a minimum, the relevant timescale detailed in Table 2 below is applied during the EU tendering procedure. These are minimum timescales and may be extended (but not reduced) at the discretion of the Executive Director of the Procuring Service:-

TABLE 2 : EU PROCUREMENT PROCEDURES : MINIMUM TIMESCALES

Procedure	Expressions of Interest	Tender Response	Tender Response where PIN published (general requirement)	Tender Response where PIN published (minimum requirement)
Open (incl. DPS)	N/A	52 days	36 days	22 days
Restricted	37 days	40 days	36 days	22 days
Negotiated (with prior publication of a Contract Notice)	37 days	N/A	N/A	22 days
Negotiated (without prior publication of a Contract Notice)	N/A	N/A	N/A	N/A
Competitive Dialogue	37 days	N/A	N/A	N/A
DPS Call-off (see Standing order 3.9.2.3(5))	N/A	15 days	N/A	N/A
Accelerated Procedure	15 days	10 days	N/A	10 days

NB: Timescale period commences from the day following date of despatch of relevant notice to the OJEU. Timescales must be extended if required due to the complexity of the particular procurement. Tender response periods, where stated to be "N/A" for the negotiated and competitive dialogue procedures, should allow sufficient time from the despatch of the invitation to tender to enable compliance with Standing Order 3.6.4. It is recommended that the tender response period under either of those procedures is the same as for the restricted procedure.

3.6.2 In cases of urgency rendering compliance with the normal timescales impractical, with the prior written approval of the Solicitor to the Council and the Executive Director of Financial Services, the timescales in the restricted procedure or the negotiated procedure (with prior advertisement) for expressions of interest can be reduced to 15 days and for return of tenders to 10 days. An explanation why the accelerated timescales are used must be included in the Contract Notice. (Urgency, in this context must be narrowly defined and must normally arise for reasons external to the Council. It does not cover situations of administrative inefficiency). The Executive Director of the Procuring Service shall prepare and retain a written report regarding the reason(s) why the accelerated timescale was applied in relation to any particular tendering procedure.

3.6.3 Certain minimum timescales specified in Table 2 may be reduced for certain procedures where electronic means of communication and information exchange are used as follows:-

- by seven days where the Contract Notice is drawn up and transmitted by electronic means in accordance with the format and procedure set out on the EU commission's SIMAP website(<http://simap.europe.eu>);
- by five days where the Council offers unrestricted and full direct access by electronic means to the contract documents (in accordance with Standing Order 7) from the date of publication of the Contract Notice and the Contract Notice specifies the Internet address at which the documents are available.

These reduced timescales are shown in Table 3 below:-

TABLE 3 : EU PROCUREMENT PROCEDURE : REDUCED TIMESCALES WHERE ELECTRONIC MEANS OF COMMUNICATION USED

Procedure	Expressions of Interest		Tender Response		Tender Response where PIN published (general requirement)		Tender Response where PIN published (minimum requirement)	
	SIMAP Format	Online Access Only	SIMAP Format	Online Access Only	SIMAP Format	Online Access Only	SIMAP Format	Online Access Only
*Open (incl. DPS)	N/A	N/A	45 days	47 days	29 days	31 days	22 days	22 days
Restricted	30 days	No reduction	No reduction	35 days	No reduction	31 days	22 days	22 days
Negotiated (with prior publication of a Contract Notice)	37 days (where no PIN published) 30 days (where PIN published)	No reduction	N/A	N/A	N/A	N/A	22 days	22 days
Negotiated (without prior publication of a Contract Notice)	N/A	N/A	N/A	N/A	N/A	N/A	22 days	22 days
Competitive Dialogue	30 days	No reduction	N/A	N/A	N/A	N/A	22 days	22 days
Accelerated Procedure	10 days	No reduction	No reduction	No reduction	N/A	N/A	10 days	10 days

*Where documents are communicated by a combination of both SIMAP Format and online access, the timescale in the Open Procedure can be reduced to 40 days for tender response (where no PIN published) and 24 days for tender response (where PIN published - general requirement).

3.6.4 In the event that any tenderer reasonably requests further information relating to the contract documents, such information must be sent out not later than six days before the last date for receipt of tenders (or four days if the restricted or accelerated procedure is being used). The same information must also be made available to all other tenderers within the same timescales.

3.7 Tenderers Right to Information Regarding Contract Awards

3.7.1 As soon as possible after a decision has been made, following the evaluation process set out in Standing Order 6.3, to award any contract to the successful tenderer(s):-

3.7.1.1 the Contract acceptance letter(s) shall be issued by the Solicitor to the Council in accordance with Standing Order 6.4.4 ; and

3.7.1.2 the Executive Director of the Procuring Service shall prepare letters for issue at the same time as the acceptance letter(s) by the Solicitor to the Council informing unsuccessful candidates (i.e. those who failed to be selected for invitation to tender) and unsuccessful tenderers of:-

- (1) the criteria for the award of contract;
- (2) where practicable the score obtained by:-
 - that unsuccessful candidate/tenderer; and
 - the successful tenderer(s); and
- (3) the name of the successful tenderer(s).

3.7.2 The Corporate Procurement Manual, at Section 10.13, refers Procuring Officers to standard templates of the relevant letters to be issued to tenderers.

3.7.3 As soon as possible after any decision to abandon or re-commence an award procedure, the Executive Director of the Procuring Service must inform all tenderers.

3.8 Mandatory Standstill Period

In relation to any contract award to which the EU Regulations apply, with the exception of Part B Services as described in Schedule 3 to the EU Regulations:-

- 3.8.1 The Executive Director of the Procuring Service shall leave a minimum standstill period of 10 calendar days between the date of informing tenderers of the award decision and making the actual award of the contract. If any tenderer makes a written request for a debriefing by midnight on the second working day of the 10 day standstill period, the Executive Director of the Procuring Service must de-brief that tenderer during the standstill period.
- 3.8.2 Upon such written request, any unsuccessful candidate or tenderer must be advised of the reason(s) why it was unsuccessful and the characteristics and relative advantages of the successful tenderer.
- 3.8.3 The Executive Director of the Procuring Service must allow three working days between the de-briefing and the end of the standstill period. If necessary to meet this requirement, the standstill period must be extended. The Corporate Procurement Manual or, as required, the Solicitor to the Council must be consulted for further guidance on this aspect of the award procedure.
- 3.8.4 In any event, the Executive Director of the Procuring Service shall, within 15 days of a written request from any unsuccessful candidate/tenderer inform that candidate/tenderer of the reasons why it was unsuccessful and the name of the successful tenderer(s).

3.9 **Special Types of EU contract/procedures**

3.9.1 *Framework Agreement*

A Framework Agreement is a general term for agreements with economic operators which set out terms and conditions under which specific purchases (call-offs) can be made throughout the term of the agreement. Regulation 19 of the EU Regulations must be applied to the award of any Framework Agreement.

3.9.1.1 In awarding any Framework Agreement under the EU Regulations:-

- (1) the term of the Framework Agreement must not exceed four years unless the Executive Director of the Procuring Service obtains the prior written agreement of the Solicitor to the Council and the Executive Director of Financial Services that there are exceptional circumstances justifying a longer duration;
- (2) no substantial change may be made to the terms of the Framework Agreement when any contract is awarded under that Framework; and
- (3) no Framework Agreement may be used in any improper manner to distort competition or avoid application of the EU Regulations or these Standing Orders.

3.9.1.2 In awarding any contract under a Framework Agreement:-

- (1) the contract must comply with all the substantive terms set out in the Framework Agreement as originally awarded.
- (2) without prejudice to (1) above, where there is only one Framework supplier, in awarding any contract under that Framework the Executive Director of the Procuring Service may consult with the supplier in writing requesting it to supplement its tender if necessary.
- (3) where there is more than one Framework supplier:-
 - provided that there were sufficient qualified candidates and compliant tenders, the Framework Agreement must be entered into with at least three suppliers; and
 - any contract under the Framework Agreement must be awarded either: -
 - ❖ through the application of terms set out in the Framework Agreement without further competition, or
 - ❖ where not all the terms of the proposed contract are laid down in the Framework Agreement, through a mini-competition

3.9.1.3 Where award of the contract is made through mini competition:

- (1) award criteria for any mini-competition must be stated in the Framework Agreement;
- (2) all Framework suppliers capable of performing the contract must be informed in writing about the contract and invited to tender by a specified reasonable deadline; and
- (3) the contract must be awarded to the tenderer who submitted the best tender in accordance with the award criteria stated in the Framework Agreement.

3.9.2 *Dynamic Purchasing Systems (DPS)*

A DPS is a completely electronic system which may be established for a limited period to purchase commonly used supplies, services or works. Regulation 20 of the EU Regulations must be applied in relation to the use of any DPS.

3.9.2.1 The Council may use a DPS only for the purchase of commonly used works, services or goods. The Executive Director of the Procuring Service shall decide, in consultation with the Head of the Corporate Procurement Unit, the Solicitor to the Council and the Executive Director of Financial Services whether a DPS may be used for the purchase of any specific works, services or goods.

3.9.2.2 Where a DPS is so used, it must:-

- (1) operate as a completely electronic system;
- (2) not last for more than four years unless the Executive Director of the Procuring Service obtains the written permission of the Solicitor to the Council and the Executive Director of Financial Services that there are exceptional circumstances justifying a longer duration;
- (3) not be operated in a manner that hinders, prevents or distorts competition.

3.9.2.3 Where the Executive Director of the Procuring Service decides to establish and operate a DPS:-

- (1) the DPS shall be advertised by publication of a Contract Notice under the open procedure;
- (2) the Contract Notice must specify where the contract documents may be found;
- (3) any tenderer who meets the evaluation criteria and submits a compliant indicative tender must be invited to participate in the DPS;
- (4) any tenderer who misses an initial opportunity to participate may still apply at a later date to be included in the DPS;
- (5) when any particular contract is to be awarded under the DPS, a simplified Contract Notice must be sent to the OJEU in the first instance, inviting any tenderer who is not already participating to submit an indicative tender within 15 days from despatch of the notice (see Table in Standing Order 3.6.1);
- (6) when the specified deadline has passed, all indicative tenders must be evaluated and all members of the DPS invited to tender for the particular contract within a time limit set by the Council;

- (7) the particular contract must be awarded to the tenderer who submits the best tender in accordance with the award criteria specified in the original Contract Notice (although such criteria may be formulated more precisely).
- (8) tenderers must not be charged for application to join or admission to the DPS.

3.9.3 *e-Auctions*

An e-Auction is a repetitive electronic process by which all tenderers submit prices to be revised downwards or otherwise submit new and improved elements of their tenders. Regulation 21 of the EU Regulations must be applied in relation to the use of any eAuction.

3.9.3.1 e-Auctions may be used under most tender procedures and, where competition is being re-opened, under either a Framework Agreement or DPS. They may be used as part of a 2-stage tendering procedure which allows for the submission of qualitative information for evaluation, followed by an eAuction for the submission of prices. They may not be used:-

- (1) in certain circumstances where the negotiated procedure is being used;
- (2) for the award of a works or services contract concerning intellectual performance (e.g. the design of works);
- (3) where the contract specification cannot be precisely established.

3.9.3.2 Prior to the publication of any Contract Notice for a contract where it is intended to use an e-Auction, the Executive Director of the Procuring Service shall consult with the Head of the Corporate Procurement Unit.

3.9.3.3 Where it is agreed to conduct an e-Auction:-

- (1) the contract documents must be drafted and the e-Auction conducted in accordance with specific procedural rules issued by the Solicitor to the Council in consultation with the Executive Director of Financial Services and the Head of the Corporate Procurement Unit as set out in the Corporate Procurement Manual;
- (2) the Contract Notice must state that an e-Auction may be used for the award of the contract;
- (3) the award criteria for the contract must be either price only or on price and/or other factors where the award criteria is the Most Economically Advantageous

Tender. An e-Auction can only take quality criteria into account where these can be quantified and expressed in figures or percentages.

- (4) all tenderers who submit admissible tenders must be invited to participate in the e-Auction.
- (5) the invitation to tender must include details on how the e-Auction will be conducted;
- (6) throughout the e-Auction, tenderers may submit new prices or values and the Procuring Officer must ensure that sufficient information is communicated instantaneously to each tenderer to ascertain its relative ranking in the e-Auction at any time;
- (7) the identity of participating tenderers may not be disclosed during any phase of the e-Auction;
- (8) at the close of the e-Auction, the contract must be awarded on the basis of the results of the e-Auction taken together with any other tender evaluation criteria.

3.10 Special Rules : Works Concessions; Public Housing Schemes; Design Contracts

3.10.1 Special rules apply to the procurement of the following types of contract:-

- 3.10.1.1 public works concession contracts : where the contractor or "concessionaire" is not paid directly by the Council, but is instead given an opportunity to exploit the works to be constructed in order to generate profit
- 3.10.1.2 certain design and construct contracts for public housing schemes.
- 3.10.1.3 design contests for the acquisition of plans or designs by the Council following adjudication by a jury, as part of a procedure leading to the award of a public services contract of a value in excess of the relevant EU threshold.

3.10.2 Such contracts must be awarded in accordance with the relevant rules set down in the EU Regulations. The Executive Director of the Procuring Service shall consult the Solicitor to the Council and the Executive Director of Financial Services prior to commencing any tendering procedure for the award of such contracts.

4. SUPPLIES/SERVICES CONTRACTS UP TO £100,000 and WORKS CONTRACTS UP TO £3,000,000

This Standing Order applies together with the procedures in Standing Order 6 and 7 where the Executive Director of the Procuring Service proposes to award any

contract with an estimated value of up to £100,000 (for supplies or services) or £3,000,000 (for works) or is otherwise exempt from the provisions of Standing Order 3.

4.1 The Executive Director of the Procuring Service must:-

4.1.1 assess whether the contract might potentially be of interest to economic operators located in other Member States of the European Union; and

4.1.2 ensure a degree of advertising sufficient to enable competition in accordance with the principles of openness, fairness and non-discrimination.

4.2 For any contract that is deemed to be potentially of interest to economic operators located in other Member States of the European Union advertisement on the Council's Buyer Profile **and** in accordance with Standing Order 3 shall be required in order to comply with this Standing Order.

4.3 For any contract that is not deemed to be potentially of interest to economic operators located in other Member States of the European Union, advertisement on the Council's Buyer Profile shall be deemed sufficient to comply with this Standing Order.

4.4 The tendering procedure set out in Standing Order 3 shall be applied to any contract advertised in accordance with Standing Order 4.3 above where the contract is potentially of interest to economic operators located in other Member States of the European Union.

5. SUPPLIES/SERVICES CONTRACTS BELOW £20,000 and WORKS CONTRACTS BELOW £300,000 IN CASES WHERE TENDERING IS CONSIDERED INAPPROPRIATE

The tendering procedure laid down in Standing Order 4 need not be applied to any contract with a total estimated value below £20,000 (for supplies/services) or £300,000 (for works) where tendering is considered inappropriate as long as the duration of the contract does not exceed four years.

5.1 For the purposes of this Standing Order, tendering is inappropriate in the following cases:-

5.1.1 in respect of any contract which is, in the reasonable opinion of the Executive Director of the Procuring Service, urgently required for the prevention of risk to life or damage to property; or

5.1.2 where, in the opinion of the Executive Director of the Procuring Service, there exist special circumstances which make it impossible or inappropriate to seek formal tenders (e.g. where there is only one potential supplier).

5.2 Where tendering is inappropriate, the following procedure shall apply:-

- 5.2.1 The Executive Director of the Procuring Service shall prepare and retain for audit purposes a written report recording the reason(s) why the tendering procedure was not applied.
- 5.2.2 Where possible, three bids must be obtained by telephone, fax or written quotation. Any oral quotation must be confirmed in writing. All quotations must be retained. The successful quotation shall be accepted by the Executive Director of the Procuring Service following evaluation in accordance with Section 10.3 of the Corporate Procurement Manual.
- 5.3 Where the circumstances set out in Standing Order 5.1 above do not exist, tendering is appropriate and Standing Order 4 must be applied to the award of any contract with an estimated value below £20,000 (for supplies/services) or £300,000 (for works).
- 5.4 Even at this value of expenditure, a contract is required. The Procuring Officer must ensure that either an appropriate works contract is used or in the case of supplies/services, where considered appropriate, the Council's Standard Terms and Conditions for the Supply of Goods and Services form the basis of the contract. The Procuring Officer must determine whether these Standard Terms and Conditions are sufficient to govern the contract and, in cases of doubt, must contact the Solicitor to the Council for advice.
- NB - Experience suggests that contracts for leasing of equipment (e.g. photocopiers, vending machines etc.) can be onerous. The Procuring Officer must obtain approval from the Executive Director of Financial Services to enter into such leasing agreements.

6. TENDERING PROCEDURES FOR ALL CONTRACTS (SUBMISSION, OPENING, EVALUATION, ACCEPTANCE AND REPORTING)

This Standing Order applies in respect of all contracts, irrespective of value, to be procured in accordance with either Standing Orders 3 or 4.

6.1 Submission

6.1.1 Invitation to Tender

6.1.1.1 The invitation to tender and contract documents shall:-

- state the nature and purpose for which tenders are invited.
- state the location, date and time (in all cases 12 noon) for the delivery of tenders
- state that tenders received after the closing date and time specified in the contract documents, or at a place other than the location specified, shall not be considered
- specify the period during which tenders must remain open for acceptance.

- state that the Council reserves the right to accept other than the lowest tender or to accept no tender at all.
- set out the criteria which shall be used in evaluating tenders
- where the evaluation criteria are other than the lowest price, these shall be set out in order of importance in the contract documents.
- include a Tender Offer page with provision for the total tender price to be inserted (where appropriate) and a signature by an authorised signatory on behalf of the tenderer.
- state that no tender shall be received except in a sealed envelope bearing the words "Tender for" followed by the name and number of the contract to which it relates and the name or other description of the tenderer. (NB this last requirement shall not apply where the procurement procedure is being carried out by electronic means of communication in accordance with Standing Order 7).

6.1.1.2 Tenders of a value up to £100,000 (supplies/services) or £3,000,000 (works) must be delivered to a prescribed location within the Procuring Service. Tenders of a value of £100,000 and above (supplies/services) or £3,000,000 and above (works) must be delivered to a prescribed location within the Chief Executive Department (Legal and Administrative Services).

6.1.1.3 All tenders shall remain in the custody of the Procuring Service (or, where appropriate, the Corporate Law Section of Legal and Administrative Services) to which they have been delivered until they have been opened.

6.1.2 *Late Tenders*

6.1.2.1 No tender shall be considered for acceptance unless it is received at the specified location by the date and time prescribed according to the contract documents.

6.1.2.2 Late tenders must remain unopened. The tenderer must be advised as soon as possible that if the late tender is not uplifted (or re-called if the procurement procedure is being carried out by electronic means of communication in accordance with Standing Order 7) within 14 days it will be destroyed (or deleted). Where there is any question as to whether or not a tender has been received late, the express approval of the Solicitor to the Council shall be required to admit the tender for consideration.

6.1.2.3 Any tender submitted to an address other than the location specified in the contract documents must remain

unopened. The tenderer must be advised as soon as possible that if the tender is not uplifted (or re-called if the procurement procedure is being carried out by electronic means of communication in accordance with Standing Order 7) within 14 days it will be destroyed (or deleted).

6.2 Opening

6.2.1 *Authorised Officers*

Tenders shall be opened as follows:-

6.2.1.1 In the case of contracts:

- for the provision of supplies or services of up to an estimated value of £100,000; and
- for the execution of works of up to an estimated value of £3,000,000

tenders shall be opened by two officers of the Procuring Service, one of whom shall be at a salary grade not lower than Grade 7 unless otherwise expressly authorised by the Solicitor to the Council and the Executive Director of Financial Services;

6.2.1.2 In the case of all other contracts, tenders shall be opened by two officers of the Chief Executive Department (Legal and Administrative Services), at least one of whom shall be at a salary grade not lower than Grade 9.

6.2.2 *Disqualification*

6.2.2.1 *Mandatory Disqualification*

The following tenders must not be considered for acceptance:-

(1) unless the procurement procedure is being carried out by electronic means of communication in accordance with Standing Order 7,

- tenders submitted in whole or in part in pencil
- tenders submitted by fax
- tenders submitted by email
- tenders submitted to the wrong location (see Standing Order 6.1.2.3 above)

(2) late tenders (see Standing Order 6.1.2 above).

6.2.2.2 *Qualified Tenders*

Any tender which attempts to qualify any terms or conditions in the contract documents may be disqualified.

Where a Procuring Officer considers that it would be appropriate to disqualify such a tender he or she shall consult the Solicitor to the Council who will decide, in consultation with the Executive Director of Financial Services where necessary, whether the tender shall be disqualified.

6.3 Evaluation

6.3.1 The contract documents shall state whether tenders are to be evaluated on the criteria of either lowest price or Most Economically Advantageous Tender. Tenders shall be evaluated strictly in accordance with the evaluation criteria set out in the contract documents.

6.3.2 No tender is to be accepted in accordance with criteria not set out in the contract documents unless following consultation with the Solicitor to the Council and the Executive Director of the Procuring Service it is agreed that there are exceptional circumstances. The Executive Director of the Procuring Service shall report on that tender to the Executive Committee prior to award of the contract.

6.3.3 If, during the evaluation process, any post-tender communication with tenderers is necessary prior to contract award in order to clarify or supplement any aspect of their tender, such communication shall be conducted in accordance with Standing Order 12.

6.4 Acceptance

6.4.1 If none of the tenders submitted is to be accepted, the Executive Director of the Procuring Service or, as appropriate, the Solicitor to the Council shall notify all tenderers accordingly. No tender shall be accepted unless the Executive Director of the Procuring Service and the Executive Director of Financial Services are satisfied as to the technical capability, professional fitness and financial standing of the successful tenderer.

6.4.2 After a tender has been accepted, the Executive Director of the Procuring Service or, as appropriate, the Solicitor to the Council shall notify unsuccessful tenderers, indicating who was awarded the contract and (where practicable) the estimated cost of that contract.

6.4.3 All letters issued under this Standing Order 6.4 shall be issued at the same time and shall comply with the requirements of the Corporate Procurement Manual and shall be in the form prescribed in the Procurement Tool-Kit issued along with the Corporate Procurement Manual. The Solicitor to the Council must be consulted in cases

where further advice or assistance is required. Where the EU Regulations apply to the award of any contract, letters shall be issued in accordance with Standing Orders 3.7 and 3.8.

6.4.4 *Letters to Successful Tenderers*

Letters of acceptance shall be issued to the successful tenderer(s) in accordance with the following procedure:-

6.4.4.1 Contracts equal to or in excess of £500,000 (Supplies/Services), and equal to or in excess of £3,000,000 (Works):-

The Solicitor to the Council shall issue any letter of acceptance upon instruction from the Executive Committee provided that the Executive Committee decision to instruct acceptance has not been called in by the prescribed number of Council members by noon on the sixth working day following the Executive Committee meeting. In the event that the decision has been so called-in, the acceptance letter shall not be issued until the Solicitor to the Council has been instructed to do so in accordance with a final decision of the Executive Committee.

6.4.4.2 Contracts for supplies/services equal to or in excess of £100,000 up to £500,000 and works contracts equal to or in excess of £100,000 up to £3,000,000:-

The Solicitor to the Council shall issue any letter of acceptance upon instruction from the Executive Director of the Procuring Service

6.4.4.3 Contracts up to £100,000 (whether for supplies, services or works):

The Executive Director of the Procuring Service shall issue any letter of acceptance.

6.4.5 *Letters to Unsuccessful Tenderers/Candidates*

For all contracts, the Executive Director of the Procuring Service shall issue any letter informing unsuccessful tenderers/candidates of the Council's decision regarding the award of a contract.

6.4.6 *Execution of Contracts*

Every contract shall be signed on behalf of the Council by a Proper Officer.

6.5 **Reporting**

6.5.1 *Executive Committee*

Any contract awarded with an estimated value in excess of £60,000 but no greater than £500,000 (supplies/services) and £3,000,000 (works) shall be reported to the Executive Committee by the Executive Director of the Procuring Service. A report shall be submitted to the Executive Committee on a three-monthly basis containing the following information in relation to any such contract awarded within that period:-

- the value of any contract awarded
- the identity of the tenderer to whom it was awarded
- the number of tenderers invited to submit a tender
- the number of tenders submitted
- the criteria adopted for awarding the contract
- where due to exceptional circumstances as set out in Standing Order 6.3.2, the contract was to be awarded to anyone other than the lowest or Most Economically Advantageous tenderer, the amount of the lowest or Most Economically Advantageous Tender and the amount of the successful tender and the reason(s) for the selection of the successful tenderer.
- such other information as may be specified from time to time by the Solicitor to the Council in consultation with the Executive Director of Financial Services.

The report shall also be made available for inspection by other members of the Council.

6.5.2 *Contract Management System*

6.5.2.1 The Head of the Corporate Procurement Unit shall maintain a Contract Management System (CMS) for the registration and monitoring of all contracts and framework agreements across the Council with a value above £20,000.

6.5.2.2 The Procuring Officer within the Procuring Service shall ensure that the prescribed information is entered onto the CMS and updated regularly in accordance with the requirements of the Head of the Corporate Procurement Unit.

6.5.2.3 The Procuring Officer shall:-

- (1) enter the prescribed information regarding the proposed contract at the time when the procurement process for the award of that contract is initiated;

- (2) use the unique CMS contract reference number in relation to that contract throughout the procurement process for the award of that contract on all notices, publications, documentation and correspondence; and
- (3) ensure that, as successive stages in the procurement process take place, the prescribed information in the CMS is updated accordingly up to and including contract termination.

7. ELECTRONIC PROCUREMENT

- 7.1 The Head of the Corporate Procurement Unit may, in consultation with the Solicitor to the Council and the Executive Director of Financial Services direct that any suitable procurement procedure is to be carried out by electronic means of communication.
- 7.2 Where such direction has been made:-
 - 7.2.1 the contract documents may be issued, tenders may be submitted and received, and information throughout the procurement process may be exchanged by electronic means;
 - 7.2.2 the timescales set out in Standing Order 3.6 may be reduced in accordance with Standing Order 3.6.3 where the tendering procedure is subject to the EU Regulations; and
 - 7.2.3 the Procuring Officer shall comply with such procedures as may be issued by the Solicitor to the Council in consultation with the Executive Director of Financial Services and the Head of the Corporate Procurement Unit. Such procedures may permit certain amendments to Standing Order 6 for the sole purpose of facilitating the procurement of a particular contract by means of electronic communication.

8. NEGOTIATED AND EXTENDED CONTRACTS

- 8.1 With the exception of any contract to which the EU Regulations apply, if:-
 - 8.1.1 the Executive Director of the Procuring Service, the Solicitor to the Council and the Executive Director of Financial Services consider that there are special circumstances which justify the negotiation of either:-
 - (1) a contract with one supplier; or
 - (2) in the case of an existing contract, an extension to that contract;
- without prior advertisement in accordance with the Standing Orders, then Standing Order 4 shall not apply to such negotiation.

- 8.2 The Executive Director of the Procuring Service shall obtain the prior written agreement of the Solicitor to the Council and the Executive Director of Financial Services in respect of any contract to be awarded or extended in accordance with Standing Order 8.1.

9. MISCELLANEOUS

9.1 Standards

9.1.1 Where there is a recognised European or International standard applicable to any contract current at the date of tender, the contract documents shall require that the works, goods, or services to be supplied shall at least meet the requirements of that standard.

9.1.2 In the absence of any such European or International standard, the contract documents shall require that an appropriate equivalent standard be used. In presenting evidence of equivalence tenderers shall be required to provide a certified translation into English of the standard being used.

9.2 Prevention of Collusion, Corruption or Illegal Practices

9.2.1 Every contract shall include a clause entitling the Council to:-

9.2.1.1 terminate the contract if the supplier or its representative (whether with or without the supplier's knowledge) shall have:-

- (1) practised collusion in tendering for the contract or any other contract with the Council; or
- (2) employed any corrupt or illegal practices in obtaining or performing the contract or any other contract with the Council; and

9.2.1.2 recover from the supplier the amount of any loss resulting from such termination

9.3 Equal Opportunity and Race Equality

9.3.1 Before entering into any contract, the Procuring Officer shall obtain from the supplier an assurance in writing that, to the best of its knowledge and belief, the supplier has:-

9.3.1.1 complied with all statutory requirements relating to equal opportunity in employment; and

9.3.1.2 is not unlawfully discriminating within the meaning and scope of the Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000 (or any statutory modification or re-enactment) relating to discrimination in employment.

9.4 Freedom of Information

9.4.1 The contract documents shall give notice to tenderers of the Freedom of Information (Scotland) Act 2002 (or, if applicable, the Environmental Information (Scotland) Regulations 2004). The Act and Regulations give a statutory right of access to all information held by the Council except where an exemption or exception can be applied.

9.4.2 Tenderers who seek to incorporate provisions within any contract that all or some information is provided by them in confidence will not necessarily be entitled to rely on such provisions.

9.4.3 The Procuring Officer shall ensure that the standard Freedom of Information clause drafted by the Solicitor to the Council is incorporated in the contract documents.

9.5 Assignment

9.5.1 Except where otherwise agreed between the Executive Director of the Procuring Service and the Solicitor to the Council, every contract entered into by the Council shall include a clause prohibiting the supplier from assigning or sub-letting the contract without the prior written consent of the Council.

9.6 Scots Law

9.6.1 Except where otherwise agreed between the Executive Director of the Procuring Service and the Solicitor to the Council, every contract entered into by the Council shall be in writing and shall be subject to Scots Law and the exclusive jurisdiction of the Scottish Courts.

PART II : STANDING ORDERS RELATING TO CONTRACTS : SPECIAL MATTERS

10. DISPOSAL OF SURPLUS MATERIALS

10.1 The care, custody and level of stores and equipment in any service is the responsibility of the Executive Director of the Procuring Service. He or she shall ensure that all obsolete or excess stock or scrap materials are identified and disposed of by competitive tender or public auction unless beforehand the Solicitor to the Council and the Executive Director of Financial Services approve otherwise in a particular case.

10.1.1 Disposal

Where, in the opinion of the Executive Director of the Procuring Service, stock is surplus or scrap and has been valued, he or she shall first offer the surplus material to other Services of the Council. Only where no other service wishes the surplus material shall it be offered to third parties on the following basis:-

10.1.1.1 For value:-

where the Executive Director of the Procuring Service proposes to dispose of surplus or scrap material for value to a third party, such disposal shall take place at the discretion of the Executive Director of the Procuring Service by way of competitive tender in accordance with Standing Order 10.1.2 below. Where surplus or scrap materials are disposed of on a recurring basis (e.g. surplus vehicles) the Executive Director of the Procuring Service may seek the approval of the Executive Committee for a special scheme for disposal.

10.1.1.2 Donations:-

where the Executive Director of the Procuring Service proposes that surplus scrap material be donated or provided at less than the market value to a charity or voluntary organisation, he or she shall seek the approval of the Executive Committee before making such a disposal. Following such approval, the Executive Director of the Procuring Service shall report the donation to the Executive Committee as soon as reasonably practicable.

10.1.2 Tenders

The Executive Director of the Procuring Service shall , where he or she considers that tenders are appropriate, ensure that:-

10.1.2.1 details of what has to be disposed are specified and advertised as required;

- 10.1.2.2 arrangements are made for viewing if appropriate;
- 10.1.2.3 arrangements for receipt, custody and opening of tenders comply with these Standing Orders; and
- 10.1.2.4 the tenderer offering the best price shall be accepted. Where, in exceptional cases, the successful tenderer is not the one offering the best price, the Executive Director of the Procuring Service shall prepare and retain a written record of the reason(s) why it was selected.

10.1.3 *Quotations*

Where the Executive Director of the Procuring Service considers the surplus to be a small quantity of materials of low value, he or she may dispose of it on a casual basis. At least three interested parties shall be invited to submit written quotations, where possible. The Executive Director of the Procuring Service shall retain a written record of the type and amount of materials disposed of and the successful tender offer.

[NOTE: The Executive Director of Land and Environmental Services will not actively circulate to other services details of any surplus vehicles and items of plant for whose maintenance that Service is responsible.

The Executive Director of Land and Environmental Services has instituted a file of written requests from other services for such vehicles. Requests will be acknowledged with an indication of whether there is any likelihood of an appropriate surplus vehicle being made available.

If any appropriate vehicles become available and are considered potentially suitable for further use, the Executive Director of Land and Environmental Services will offer them to the service with the earliest request on file. The offer will contain relevant details of the vehicle and likely costs involved].

11. PAYMENT BY INSTALMENTS

In any contract for the supply of goods and materials where the purchase price is to be paid by the Council to any contractor in instalments prior to completion of the contract, the following shall apply:-

11.1 *Contracts with a value of £20,000 or below*

- 11.1.1 The Executive Director of the Procuring Service must be satisfied that payment by instalment is the only available option if the contract is to proceed.
- 11.1.2 The proposed instalments shall reflect the progress of the contract and the approximate value of goods or materials supplied.
- 11.1.3 If a proposal requires payment for goods or materials which are to be retained in the possession of the contractor (e.g. until further work has

been completed) then a document vesting ownership in the Council must be obtained prior to the payment of the first instalment.

11.1.4 The Executive Director of the Procuring Service shall ensure that any such goods or materials are insured while retained on the Contractor's premises.

11.1.5 If any instalment is released following a site or factory visit to inspect work in progress or equipment, a written report of the visit shall be prepared and retained within the contract records.

11.1.6 In cases where there is doubt about the propriety of making instalment payments, advice must be sought from the Solicitor to the Council and the Executive Director of Financial Services.

11.2 *Contracts with a value in excess of £20,000 but below £500,000.*

11.2.1 The requirements contained in Standing Orders 11.1.1 to 11.1.6 above also apply in the case of these contracts.

11.2.2 The Executive Director of the Procuring Service shall obtain the prior written approval of the Solicitor to the Council and the Executive Director of Financial Services when entering into any agreement to make payment by instalments.

11.3 *Contracts with a value in excess of £500,000*

11.3.1 The requirements contained in Standing Orders 11.1.1 to 11.1.6 also apply in relation to these contracts.

11.3.2 The Executive Director of the Procuring Service shall obtain the approval of the Executive Committee prior to entering into any agreement to make payment by instalments.

12. POST TENDER COMMUNICATIONS

12.1 The Executive Director of the Procuring Service may instruct Procuring Officers to contact any tenderer in respect of any matter necessary to clarify or supplement their tender in accordance with these Standing Orders and, where applicable, the EU Regulations and any related EU Commission, UK government, or Scottish Executive guidance.

12.2 In order to ensure that there is no distortion of competition, post tender communications undertaken prior to contract award shall be carried out in a restricted and carefully handled manner. Any amendment to tenders or contract documents made as a result of such communications must not go beyond clarifying or supplementing a tenderer's offer. It is essential to consider, prior to commencing communications whether the amendments that may be achieved are such that a tenderer excluded from the process

(whether on the list of tenderers or not) could allege that they had been unfairly treated and/or could have submitted a better offer.

- 12.3 In particular, all Procuring Officers shall ensure that all discussions on fundamental aspects of contracts, variations on which are likely to distort competition, and in particular on prices, shall be ruled out.
- 12.4 In conducting post tender communications prior to contract award, Procuring Officers shall comply with the following additional rules:-
- 12.4.1 all tenderers must be treated equally and in an open and fair manner;
- 12.4.2 tenderers must not be permitted to amend their bids in a manner that allows them to improve their offer;
- 12.4.3 post tender communications must not be carried out in such a manner as to leave the Council open to charges of acting anti-competitively;
- 12.4.4 where any factor giving rise to post tender communications is not specific to one tenderer, all tenderers must be invited to participate in such communications;
- 12.4.5 there must be no material change to the specification(s) and/or criteria on which tenders are to be assessed;
- 12.4.6 if it becomes apparent that a material change is required, the tendering process must be recommenced with a revised specification or evaluation criteria;
- 12.4.7 the Procuring Officer must keep written records of all meetings with contractors and these must include the following details:-
- who was present from the Council (always more than one officer) and from the tenderer;
 - the date, time and location of any meeting; and
 - the nature of the discussion and the outcome (it would be advantageous if both parties can confirm agreement of the accuracy of this record);
- 12.4.8 if in doubt at any stage in the process, the Procuring Officer must seek advice from the Solicitor to the Council and the Head of the Corporate Procurement Unit, as appropriate.