



ABERDEEN
CITY COUNCIL

STANDING ORDERS RELATING TO CONTRACTS AND PROCUREMENT

Approved by full Council on ~~30th June 2010~~ **5 March 2014**

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PART A - GENERAL CONTRACTS FOR SUPPLIES, SERVICES AND WORKS

1 EXTENT AND APPLICATION

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- 1(1) These Standing Orders are made under ~~s~~Section 81 of the Local Government (Scotland) Act 1973.
- 1(2) These Standing Orders must be interpreted in accordance with the principles of openness, fairness and non-discrimination.
- 1(3) No tender shall be invited or contract entered into unless the total estimated expenditure has been previously approved by the Council. This requires specific **full Council or** Committee approval or the use of appropriate delegated powers. The allocation of a budget as part of the Council's budget setting process is insufficient.
- 1(4) All tendering for Supplies and Services shall, where appropriate, be carried out in conjunction with the Council's Head of Procurement and the Head of Legal and Democratic Services. All tendering for Works shall, where appropriate, be carried out in conjunction with the Director of Housing and Environment or the Director of Enterprise, Planning and Infrastructure and the Head of Legal and Democratic Services.
- 1(5) Part A of these Standing Orders shall apply, unless otherwise stated: -
- (a) to all contracts made by or on behalf of the Council for the supply of goods or materials, ~~or for~~ the provision of services, ~~or for~~ the execution of works. Where such contracts are regulated by any legislation or any Directive of the European Union, the UK Government or the Scottish Government and there is a conflict between the terms of that legislation or that Directive and the terms of the Standing Order, then the terms of the legislation or Directive shall prevail;
 - (b) to the amendment or variation of an existing contract where that amendment or variation is of such magnitude, and/or involves such a level of additional expenditure, that it should be regarded as a new contract.
 - (c) to all other contracts made by or on behalf of the Council, including but not limited to: -
 - (I) any contracts which involve a transfer of Council resources (in any form) to a third party;
 - (II) any contracts whereby the Council receives funds from a third party; and

(III) any Public Services Concession Contracts or Public Works Concession Contracts as detailed in Standing Order 4(10) hereof.

~~1(6)~~ Subject to compliance with the provisions of the 201206 Regulations or any other rule of law, :-

1(6) any contract may be exempted ~~by the Council~~ from any or all of the provisions of Part A of these Standing Orders:-

~~(a)(a)~~ by the Council or any competent Committee thereof provided the Council or Committee is satisfied that the exemption is justified by special circumstances. ~~A and a~~ record shall be kept of these circumstances.

(b) ~~any contract may be exempted from any or all of the provisions of Part A of these Standing Orders~~ if, in the opinion of the Head of the Commissioning Service controlling the expenditure involved, the contract is urgently required to meet the exigencies of the Service. Prior to commissioning the necessary supplies, services or works, the Head of the Commissioning Service must obtain the written consent of the Chief Executive, the Head of Legal and Democratic Services, the Head of Finance, and, where the contract is for the supply of goods or materials or the provision of services, the Head of Procurement. Any contract made on behalf of the Council under this paragraph shall be reported to the appropriate Committee of the Council by the Commissioning Officer as soon as practicable.

1(7) The Standing Orders in this ~~P~~part A shall not apply to:-

- (a) contracts of employment; or
- (b) any contract relating to the acquisition or disposal of land or any interest therein.

1(8) Where the Council enters into a contract as the agent of another party or provides professional services to another party in connection with the making of a contract between that party and a third party, the provisions of Part A of these Standing Orders shall apply unless the party for whom the Council is acting specifies otherwise.

1(9) Where the Council is the sole or primary funder of another party then the Council shall ensure that, as a condition of such funding, that party shall comply with Part A of these Standing Orders except where the Council approves the use of that party's existing competitive tendering procedure.

1(10) All Council staff shall comply with the terms of these Standing Orders. Failure by any employee to comply with these Standing Orders may result in disciplinary action.

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- 1(11) The Standing Orders must be read in conjunction with the Council's Corporate Procurement Policy. All staff must comply with the Corporate Procurement Policy and any procedure, guide or manual made under that Policy. Where there is any discrepancy, the Standing Orders shall take precedence.
- 1(12) There are no legal personalities within the Council other than the Council itself and no Service, Department, Establishment, or other part of the Council has the legal capacity to enter into a contract ~~without the prior written agreement of the Head of Legal and Democratic Services~~. All contracts are let or made by or on behalf of the Council as a whole and all contractual documentation must ~~have been~~ approved (or, in exceptional cases, accepted subject to caveat) by the Head of Legal and Democratic Services. Unless it is agreed otherwise in writing by the Head of Legal and Democratic Services, ~~their nominated representative~~ a Legal Manager or the Chief Executive, all contracts must be signed in accordance with Standing Order 44 of the Council's "Standing Orders and Committee Orders of Reference".
- 1(13) Unless it is agreed otherwise in writing by the Head of Legal and Democratic Services, all tenders and contracts to which Standing Orders 4 ~~and~~ 5 apply shall be advertised on the Public Contracts Scotland Portal, notwithstanding any other form of advertisement or notice required by law or otherwise. Such advertising is not required for tenders or contracts to which Standing Order 6 applies or for tenders or contracts entered into via External Frameworks in accordance with Standing Order 21(1) or via Constructionline in accordance with Standing Order 21(2).
- 1(14) In the event that a supplier or contractor refuses to accept the Council's Terms & Conditions of Contract for any supplies, services or works, under no circumstances may any officer of the Council accept that supplier's or contractor's own Terms & Conditions of Contract without first having referred those Terms & Conditions of Contract to the Head of Legal and Democratic Services for review and approval.

NB - Experience suggests that contracts for leasing of equipment (e.g. photocopiers, vending machines etc) can be onerous. The Commissioning Officer must refer the contractual documentation to the Head of Legal and Democratic Services for assessment, and obtain approval from the Head of Legal and Democratic Services, Head of Finance and Head of Procurement to enter into such leasing agreements.

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2 DEFINITIONS

2(1) General

In these Standing Orders the following words and phrases will have the following meanings: -

“~~2006~~**2012 Regulations**” means the Public Contracts (Scotland) Regulations ~~2006~~**2012** (as amended from time to time);

“**Central Procurement Unit**” (“**CPU**”) means the unit established within the Council to promote and co-ordinate strategic procurement and develop procurement staff, processes and systems;

“**Commissioning Officer**” means any officer designated by the Head of the Commissioning Service to have particular responsibility for undertaking any procurement exercise (or any part of a procurement exercise) on behalf of the Commissioning Service. Each Commissioning Officer must be authorised to carry out procurement activities under the Register of Commissioning Officers maintained by the Head of Procurement. Each Commissioning Officer must also have received training on these Standing Orders and the Council’s Corporate Procurement Policy;

“**Commissioning 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 **goods or materials**;

“**Constructionline**” means the UK Register of Pre-Qualified Construction Services;

“**the Council’s Corporate Procurement Policy**” means the policy approved 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 staff are required to comply;

“~~an~~ **EU Procurement**” means a procurement ~~which complies with all of the rules set out in~~undertaken in accordance with the ~~2006~~**2012** Regulations;

“~~the~~ **EU Supplies/Services Threshold**” means the threshold set by the EU for Supplies and Services Contracts as amended from time to time;

“~~the~~ **EU Works Threshold**” means the threshold set by the EU for Works Contracts as amended from time to time;

“**Head of the Commissioning Service**” means the Head of Service in the Commissioning Service;

“**Head of Legal and Democratic Services**” shall be taken to include also the Council’s Legal Managers;

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“**Most Economically Advantageous Tender**” means the best value for money tender based on the optimum combination of price and quality, not simply price alone;

“the Public Contracts Scotland Portal” means the website maintained by the Scottish Government on which contract documents may be made available to interested parties via the internet, and which may be found at <http://www.publiccontractsscotland.gov.uk>;

2(2) Works Procurements

In these Standing Orders, references to Works are references to “Public Works Contracts” as defined in the ~~2006~~2012 Regulations. It is recognised that the procurement of Works requires specialist knowledge. It is also recognised that Works procurements are almost exclusively undertaken by officers within either: the Housing and Environment Service or the Enterprise, Planning and Infrastructure Service. Notwithstanding ~~the terms of these Standing Orders nor~~ any provision in these Standing Orders to the contrary, where Works are being procured then all references to the Head of Procurement shall mean the relevant Director and references to the CPU shall mean the equivalent or relevant personnel within Housing and Environment or Enterprise, Planning and Infrastructure, as appropriate.

3 TENDERING PROCEDURES FOR DIFFERENT CONTRACT VALUES andAND AGGREGATION RULES ON AGGREGATION

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3(1) Tendering Procedures for Different Contract Values

- (a) The procedure to be followed for the award of any contract by the Council depends upon the estimated total value of that contract. Values or amounts referred to in Part A of these Standing Orders shall be based on the best available estimate at the time of tendering.
- (b) The relevant values and the associated tendering procedure that must be applied by the Commissioning Officer are detailed in Table 1 below. These values are exclusive of VAT and relate to the full life of the contract including any extensions.
- (c) These values will be reviewed in accordance with any revision of the thresholds values for Supplies, Services or Works contracts intimated from time to time by the European Commission. All other financial limits specified in the Standing Orders shall be subject to review from time to time.

Table 1: Relevant Values and Associated Tendering Procedure

Contract Type	Estimated Contract Value	Applicable Procedure
Works	10% less than the applicable EU Threshold and above	Standing Order 4 – an EU Procurement
Supplies/Services	10% less than the applicable EU Threshold and above	Standing Order 4 – an EU Procurement
Works	From £75,001 to 10% less than the applicable EU Threshold	Standing Order 5 – a competitive tendering exercise (Non-EU)
Supplies/Services	From £60,001 to 10% less than the applicable EU Threshold	Standing Order 5 – a competitive tendering exercise (Non-EU)
Works	Up to £75,000	Standing Order 6 – four competitive quotes
Supplies/Services	Up to £60,000 (Supplies/Services)	Standing Order 6 – four competitive quotes

3(2) Aggregation

- (a) The Commissioning Officer must take into account the aggregate value of any single requirement for supplies, services or works across the whole Council to determine if it exceeds the applicable threshold. If so, even if the procurement of any such requirement is split among a number of contracts which, taken individually, are below the applicable threshold values, each of these contracts is subject to the requirements of the Standing Orders and, where applicable, the ~~2006~~2012 Regulations in the same way as if the requirement were procured through a single large contract.

- (b) If there are a number of contracts for a single requirement for the same type of supplies, services or works 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, the applicable procedure set down in Standing Order 3(1) above must be applied to the award of each contract. Standing Order 4 provides further detail regarding rules on aggregation applicable to EU Procurements.

4 EU PROCUREMENT

An EU Procurement must be undertaken where the Commissioning Service proposes to tender for any contract with an estimated value equal to or exceeding the Council’s thresholds prescribed at Standing Order 4(1) below. This means that the procurement must be undertaken in accordance with the rules set out in the ~~2006~~2012 Regulations.

4(1) The Council’s Prescribed Thresholds at which an EU Procurement must be undertaken

- (a) Contracts for the execution of works: 10% less than the EU Works Threshold.
- (b) Contracts for the supply of goods/~~materials~~: 10% less than the EU Supplies/Services Threshold.
- (c) Contracts for the provision of services: 10% less than the EU Supplies/Services Threshold.

Values are exclusive of VAT and relate to the full life of the contract. The thresholds at which the Council must undertake an EU Procurement have been set at 10% less than the prescribed EU thresholds in order to ensure that the Council meets its obligations under the ~~2006~~2012 Regulations and its Treaty Obligations.

4(2) Aggregation

The Commissioning 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 ~~2006~~2012 Regulations in the same way as if the requirement were procured through a single large contract.

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

- (a) if there are 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 4(2)(ii), the ~~2006~~2012 Regulations apply to the award of each contract.
- (b) there is an exemption for "small lots" of an estimated value over the contract term below €80,000 (for supplies or services) and €1,000,000 (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 5.

4(3) **Mixed Procurement**

The ~~2006~~2012 Regulations include rules for determining how to treat mixed procurement comprising works, supplies and services, as follows:-

(a) **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 ~~2006~~2012 Regulations are to be provided under a single contract, then the entire contract shall be treated as:

- (I) 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
- (II) 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.

(b) **Services/Supplies**

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

- (I) a services contract if the value attributable to the services exceeds that attributable to the supplies; and
- (II) a supplies contract if the value attributable to the supplies is equal to or exceeds that attributable to the services.

(c) **Services/Works**

Where a contract for services includes "Activities Constituting Works" as described in Schedule 2 to the ~~2006~~2012 Regulations that are only incidental to the principal object of the contract then the entire contract shall be treated as a services contract.

4(4) EU Procurement Procedures

All procurements subject to Part 3 of the ~~2006~~2012 Regulations shall be carried out in accordance with one of the following procedures: - the open procedure; the restricted procedure; the negotiated procedure (with or without prior publication of a Contract Notice); or the competitive dialogue procedure.

(a) **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.

(b) **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 an 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.

(c) **Negotiated Procedure**

This procedure may only be used where expressly permitted under the ~~2006~~2012 Regulations. The Head of the Commissioning Service must obtain the prior written permission of the Head of Legal and Democratic Services and Head of Procurement in order to use the negotiated procedure. There are two forms of the negotiated procedure: - (1) negotiated procedure where publication of a Contract Notice is mandatory; and (2) negotiated procedure where publication of a Contract Notice is non-mandatory.

(d) **Competitive Dialogue**

This procedure is only available in limited circumstances when a particularly complex contract is being procured. The Head of the Commissioning Service must obtain the prior written permission of the Head of Legal and Democratic Services and Head of Procurement 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.

(e) **General**

Commissioning Officers shall seek guidance from the CPU before determining the appropriate procedure to be selected. The Head of Procurement shall ensure that the selected procedure is carried out in accordance with the relevant provisions of the ~~2006~~2012 Regulations. The Head of Legal and Democratic Services must be consulted for legal advice in order to ensure compliance with the relevant provisions.

4(5) Advertising

(a) Contracts affected by the ~~2006~~2012 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:-

- (I) 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;
- (II) a Contract Notice giving more details about the particular contract including the criteria by which the contract is to be awarded;
- (III) a Contract Award Notice giving details of any contract awarded under the ~~2006~~2012 Regulations which must be published regardless of whether any of the other Notices have been published.

(b) The CPU must be consulted regarding the preparation and publication of any notice to be published in the OJEU.

4(6) Timescales

- (a) The ~~2006~~2012 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 Commissioning Officer, in conjunction with the CPU 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 Commissioning Officer:-
- (b) In cases of urgency rendering compliance with the normal timescales impractical, then subject to obtaining the prior written approval of the Head of Legal and Democratic Services and Head of Procurement, 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 Head of the Commissioning 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.
- (c) 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:-
 - (I) 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>);
 - (II) by five days where the Council offers unrestricted and full direct access by electronic means to the contract documents (in accordance with Standing Order 9) from the date of publication of the Contract Notice, and where the Contract Notice specifies the Internet address at which the documents are available.

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. Dynamic Purchasing System ("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 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 4(9)(ii)(e))	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 tenderers to prepare and submit an appropriate response. It is recommended that the tender response period under either of those procedures is no less than that for the restricted procedure.

- (d) The CPU must be consulted for advice on reduced timescales. 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 Contract Notice) ^a	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 Contract Notice) ^a	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

^aWhere 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).

- (e) 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.

4(7) Tenderer's Right to Information rRegarding Contract Awards

- (a) As soon as reasonably practicable after a decision has been made to eliminate a candidate at the PQQ stage of a restricted procedure or to eliminate any candidates during a negotiated procedure or a competitive dialogue, the CPU must notify those candidates of their elimination by notice in writing.
- (b) As soon as possible after a decision has been made to award any contract to the successful tenderer(s) following the evaluation process set out in Standing Order 7(6): -
 - (I) the CPU shall, by notice in writing, (in accordance with the template letters approved by the Head of Legal and Democratic Services), inform all tenderers and all candidates concerned of the Council's decision to award the contract;
 - (II) the notice referred to in (I) above shall include: -
 - (i) the criteria for the award of the contract;
 - (ii) where practicable, the score obtained by that unsuccessful candidate/tenderer and the successful tenderer(s);
 - (iii) the name of the successful tenderer(s);
 - (iv) for unsuccessful tenderers only, a summary of the reasons why that unsuccessful tenderer was unsuccessful;
 - (v) for unsuccessful tenderers only, the characteristics and relative advantages of the successful tenderer(s); and
 - (vi) a precise statement as to the effect of the standstill period on the recipient's rights, including the date on which the standstill period is anticipated to end.
- (c) As soon as possible after any decision to abandon or re-commence an award procedure, the Head of Procurement must inform all tenderers of the Council's decision including the reasons for that decision.

4(8) Mandatory Standstill Period

- (a) In relation to any contract award to which the 20062012 Regulations apply:-
 - (I) The Head of Procurement shall ensure that a minimum standstill period is observed between the date of informing tenderers of the intention to award a contract in accordance with Standing Order 4(7) above and the actual award of the contract in accordance with the 20062012 Regulations.
 - (II) The Head of Procurement 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 characteristics and relative advantages of the successful tender and the name of the successful tenderer(s).

4(9) Special Types of EU contracts/procedures: Framework Agreements

- (a) 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 20062012 Regulations must be applied to the award of any Framework Agreement.
- (b) No Framework Agreement may be used in any improper manner to distort competition or avoid application of the 20062012 Regulations or these Standing Orders.
- (c) In awarding any Framework Agreement under the 20062012 Regulations:-
 - (I) the term of the Framework Agreement must not exceed four years unless the Head of the Commissioning Service obtains the prior written agreement of the Head of Legal and Democratic Services that there are exceptional circumstances justifying a longer duration;
 - (II) no substantial change may be made to the terms of the Framework Agreement when any contract is awarded under that Framework
- (d) In awarding any contract under a Framework Agreement:-
 - (I) the contract must comply with all the substantive terms set out in the Framework Agreement as originally awarded.

- (II) without prejudice to (a) above, where there is only one Framework supplier, in awarding any contract under that Framework the Head of the Commissioning Service may consult with the supplier in writing requesting it to supplement its tender if necessary.
- (e) Where there is more than one Framework supplier:-
 - (I) provided that there were sufficient qualified candidates and compliant tenders, the Framework Agreement must be entered into with at least three suppliers; and
 - (II) any contract under the Framework Agreement must be awarded either: -
 - (i) through the application of terms set out in the Framework Agreement without further competition, or
 - (ii) where not all the terms of the proposed contract are laid down in the Framework Agreement, through a mini-competition.
- (f) Where award of the contract is made through mini-competition:
 - (I) award criteria for any mini-competition must be stated in the Framework Agreement;
 - (II) 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
 - (III) the contract must be awarded to the tenderer who submitted the most economically advantageous tender in accordance with the award criteria stated in the Framework Agreement.

4(10) Special Types of EU contracts/procedures: Dynamic Purchasing Systems (DPS)

- (a) 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 ~~2006~~2012 Regulations must be applied in relation to the use of any DPS.
 - (I) The Council may use a DPS only for the purchase of commonly used works, services or supplies. The Commissioning Officer shall decide, in consultation with the Head of Procurement, and the Head of Legal and Democratic Services whether a DPS may be used for the purchase of any specific works, services or supplies.
 - (II) Where a DPS is so used, it must:-
 - (i) operate as a completely electronic system;

- (ii) not last for more than four years unless the Head of the Commissioning Service obtains the written agreement of the Head of Legal and Democratic Services that there are exceptional circumstances justifying a longer duration;
 - (iii) not be operated in a manner that hinders, prevents or distorts competition.
- (b) Where it is agreed to establish and operate a DPS:-
 - (I) the DPS shall be advertised by publication of a Contract Notice under the open procedure;
 - (II) the Contract Notice must specify where the contract documents may be found;
 - (III) any tenderer who meets the evaluation criteria and submits a compliant indicative tender must be invited to participate in the DPS;
 - (IV) any tenderer who misses an initial opportunity to participate may still apply at a later date to be included in the DPS;
- (c) 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 2 in Standing Order 4(6)(a));
 - (I) 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;
 - (II) 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).
 - (III) tenderers must not be charged for application to join or admission to the DPS.

4(11) Special Types of EU contracts/procedures: e-Auctions

- (a) 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 ~~2006~~2012 Regulations must be applied in relation to the use of any e-Auction.

- (b) 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 e-Auction for the submission of prices.
- (l) They may not be used:-
- (i) in certain circumstances where the negotiated procedure is being used;
 - (ii) for the award of a works or services contract concerning intellectual performance (e.g. the design of works);
 - (iii) where the contract specification cannot be precisely established.
- (c) Prior to the publication of any Contract Notice for a contract where it is intended to use an e-Auction, the Head of the Commissioning Service shall obtain the prior written consent of the Head of Procurement and the Head of Legal and Democratic Services.
- (d) Where it is agreed to conduct an e-Auction:-
- (l) the contract documents must be drafted and the e-Auction conducted in accordance with any specific procedural rules issued by the Head of Legal and Democratic Services in consultation with Head of Procurement
 - (II) the Contract Notice must state that an e-Auction may be used for the award of the contract;
 - (III) 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.
 - (IV) all tenderers who submit admissible tenders must be invited to participate in the e-Auction.
 - (V) the invitation to tender must include details on how the e-Auction will be conducted;
 - (VI) throughout the e-Auction, tenderers may submit new prices or values and the CPU must ensure that sufficient information is communicated instantaneously to each tenderer to ascertain its relative ranking in the e-Auction at any time;
 - (VII) the identity of participating tenderers may not be disclosed during any phase of the e-Auction;

- (VIII) 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.

4(12) Special Rules: Services Concessions; Works Concessions; Public Housing Schemes; Design Contracts

- (a) Special rules apply to the procurement of the following types of contract:-
 - (I) public services concession contracts: where payment by the Council includes or solely consists of the contractor's or "concessionaire's" right to exploit the service or services provided under the contract;
 - (II) 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;
 - (III) certain design and construct contracts for public housing schemes; and
 - (IV) 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.
- (b) Such contracts must be awarded in accordance with the relevant rules set down in the ~~2006~~2012 Regulations. The Commissioning Service shall obtain Committee approval and consult with the Head of Procurement and the Head of Legal and Democratic Services prior to commencing any tendering procedure for the award of such contracts.

5 COMPETITIVE TENDERING (NON-EU)

5(1) This Standing Order applies together with the procedures in Standing Orders 7 and 9 where the Head of the Commissioning Service proposes to award any contract with an estimated value of between £60,001 up to 10% less than the EU Threshold (for supplies or services) or between £75,001 up to 10% less than the EU Threshold (for works) or is otherwise exempt from the provisions of Standing Order 4.

5(2) The Commissioning Officer must:-

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

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- (b) ensure a degree of advertising and follow a procedure leading to the award of a contract which is sufficient to enable competition in accordance with the principles of openness, fairness and non-discrimination.
- 5(3) For any contract that is deemed to be potentially of interest to economic operators located in other Member States of the EU, advertisement on the Public Contracts Scotland Portal and in accordance with Standing Order 4 shall be required in order to comply with this Standing Order.
- 5(4) 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 Public Contracts Scotland Portal, or for Works contracts use of Constructionline, shall be deemed sufficient to comply with this Standing Order.

6 COMPETITIVE QUOTES - SUPPLIES/SERVICES CONTRACTS BELOW £60,000 and AND WORKS CONTRACTS BELOW £75,000

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- 6(1) The tendering procedure laid down in Standing Order 5 need not be applied to any contract with a total estimated value below £60,000 (for supplies/services) or £75,000 (for works) as long as the duration of the contract does not exceed 1 year. If the duration of the contract exceeds ~~1~~one year, the prior written approval of the Head of Legal and Democratic Services must be given.
- 6(2) In these circumstances, the Commissioning Officer shall comply with the requirements of the Council's Financial Regulations and, where possible, obtain four quotes 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 Head of the Commissioning Service following evaluation in accordance with the Corporate Procurement Policy.
- 6(3) Even at this value of expenditure, a **written** contract is required. The Commissioning Officer must ensure that either an appropriate Works contract is used or, in the case of supplies/services, an appropriate contract as determined by the Head of Legal and Democratic Services.

~~6(4) In the event that a supplier or contractor refuses to accept the Council's Terms & Conditions of Contract for any supplies or services, under no circumstances may any officer of the Council accept that supplier's or contractor's own Terms & Conditions of Contract without first having referred those Terms & Conditions of Contract to the Head of Legal and Democratic Services for review and approval. In relation to works contracts, Commissioning Officers shall take advice from the Head of Legal and Democratic Services, where appropriate, prior to accepting such terms and conditions.~~

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~~NB Experience suggests that contracts for leasing of equipment (e.g. photocopiers, vending machines etc.) can be onerous. The Commissioning Officer must refer the contractual documentation to the Head of Legal and Democratic Services for assessment, and obtain approval from the Head of Legal and Democratic, Head of Finance and Head of Procurement to enter into such leasing agreements.~~

7 TENDERING PROCEDURES FOR ALL CONTRACTS

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This Standing Order applies in respect of all contracts, irrespective of value, to be procured in accordance with Standing Order 4 (EU Procurement) and Standing Order 5 (Competitive Tendering Non-EU). This Standing Order does not apply to contracts procured in accordance with Standing Order 6 (Competitive Quotes) or to contracts entered into via External Frameworks in accordance with Standing Order 21(1) or via Constructionline in accordance with Standing Order 21(2).

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7(1) Submission

- (a) The invitation to tender and contract documents shall:-
- (I) state the nature and purpose for which tenders are invited;
 - (II) state the location, date and time (in all cases 16:00 hours) for the delivery of tenders;
 - (III) 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;
 - (IV) specify the period during which tenders must remain open for acceptance;
 - (V) state that the Council reserves the right to accept other than the lowest priced tender or to accept no tender at all;
 - (VI) set out the criteria which shall be used in evaluating tenders;
 - (VII) where the evaluation criteria are other than the lowest price, these shall be set out in order of importance in the contract documents;
 - (VIII) include a Form of Tender 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, together with a Certificate as to Canvassing and a Declaration;

- (IX) 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 only.
- (b) Tenders must be delivered to a prescribed location. All tenders for Supplies and Services shall remain in the custody of the Head of Procurement, and tenders for Works shall remain with the Commissioning Officer, until they have been opened. The date and time of receipt by the Council of tender envelopes from tenderers shall be clearly stamped thereon at the time of receipt.
 - (I) 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. 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) 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 written approval of the Head of Legal and Democratic Services shall be required to admit the tender for consideration.
 - (II) 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) within 14 days it will be destroyed (or deleted).

7(2) Opening

- (a) Tenders shall be opened as follows:-
 - (I) The Head of Procurement shall prepare a list of all parties to whom tender documents have been sent.
 - (II) All tender envelopes timeously received shall be opened by the Head of Procurement or a member of staff authorised by him/her in the presence of two Members of the Council, who shall immediately initial the tender documents.

- (III) Immediately following tender envelopes being opened the Head of Procurement shall note those tenderers who have offered on the list mentioned in paragraph (a) hereof. Opposite the appropriate tenderer, the Head of Procurement shall insert the amount of the tender. When the list is completed by the insertion of the foregoing information it shall be signed by the same two Officers as mentioned in paragraph (b) hereof, and countersigned by the Head of Procurement.
- (IV) Tender opening will take place on Mondays and Wednesdays every week.

7(3) Disqualification

- (a) The following tenders must not be considered for acceptance:-
 - (I) tenders submitted in whole or in part in pencil;
 - (II) tenders submitted by fax;
 - (III) tenders submitted by email (unless the procurement procedure is being carried out by electronic means of communication);
 - (IV) tenders submitted to the wrong location;
 - (V) tenders submitted late, i.e. after the date and time of submission.
 - (VI) Any tender which attempts to qualify any terms or conditions in the contract documents may be disqualified. Where the Commissioning Officer or Head of Procurement considers that it would be appropriate to disqualify such a tender he or she shall consult the Head of Legal and Democratic Services who will decide, in consultation with the Head of Procurement where necessary, whether the tender shall be disqualified.

7(4) Checking

- (a) Between the last date and time for the lodgement of tenders and the date on which a decision is taken as to which, if any, tender is to be accepted, the CPU in conjunction with the Commissioning Officer:-
 - (I) shall rectify errors in extensions or summations discovered in the checking of any tender and correct the total sum quoted in the tender;

- (II) may contact a tenderer if, on examination of the tenders, it is discovered that a tenderer has not complied with the requirements of the tender documentation. (Contact under this sub-heading shall be limited to ascertaining if the tenderer is prepared to conform to the requirements of the tender documentation without amendment to the total sum quoted in its tender. The tender of any tenderer who does not so confirm shall be rejected). A full record shall be kept of such contact and retained with the original tender.
 - (III) may contact a tenderer if it is considered that a tenderer has made a major error in the tender. (Contact under this sub-heading shall be limited to ascertaining if the tenderer wishes to confirm the tender as it stands (subject to arithmetical correction) or wishes to seek permission to withdraw the tender). A full record shall be kept of such contact and retained with the original tender.
- (b) 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 and shall be undertaken by the CPU in conjunction with the Commissioning Officer. 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.
- (c) In particular, the CPU shall ensure that all discussions on fundamental aspects of tenders, variations on which are likely to distort competition, and in particular on prices, shall be ruled out. In conducting post tender communications prior to contract award, the CPU shall comply with the following additional rules:-
- (I) all tenderers must be treated equally and in an open and fair manner;
 - (II) tenderers must not be permitted to amend their bids in a manner that allows them to improve their offer;
 - (III) post tender communications must not be carried out in such a manner as to leave the Council open to charges of acting anti-competitively;
 - (IV) 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;

- (V) there must be no material change to the specification(s) and/or criteria on which tenders are to be assessed;
- (VI) if it becomes apparent that a material change is required, the tendering process must be recommenced with a revised specification or evaluation criteria;
- (VII) the Commissioning Officer must keep written records of all meetings with contractors and these must include the following details:-
 - (i) who was present from the Council (always more than one officer) and from the tenderer;
 - (ii) the date, time and location of any meeting; and
 - (iii) the nature of the discussion and the outcome (it would be advantageous if both parties can confirm agreement of the accuracy of this record);
- (d) At all stages in the process, the CPU must seek advice from the Head of Legal and Democratic Services, as appropriate.

7(5) Evaluation

- (a) The tender 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 tender documents. No tender is to be accepted in accordance with criteria not set out in the tender documents unless following consultation with the Head of Legal and Democratic Services it is agreed that there are exceptional circumstances. The Director of the Commissioning Service shall keep a written record of the exceptional circumstances and the risk assessment undertaken.
- (b) 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 7(4) (ii) and (iii) above.

7(6) Acceptance

- (a) The Most Economically Advantageous Tender may be accepted by the Head of Procurement in consultation with the Director of the Commissioning Service, Head of Legal and Democratic Services and Head of Finance.

- (b) If none of the tenders submitted is to be accepted, the Head of Procurement shall notify all tenderers accordingly. No tender shall be accepted unless the Director of the Commissioning Service and the Head of Finance are satisfied as to the technical capability, professional fitness and financial standing of the successful tenderer.
- (c) After a tender has been accepted, the Head of Procurement shall notify unsuccessful tenderers, indicating who was awarded the contract and shall comply with the requirements set out in Standing Order 4(7).
- (d) All letters issued under this Standing Order shall be issued at the same time. The Head of Legal and Democratic Services must be consulted in cases where further advice or assistance is required. Where the ~~2006~~2012 Regulations apply to the award of any contract, letters shall be issued so as to ensure compliance with the mandatory standstill period in accordance with the ~~2006~~2012 Regulations.
- (e) No tender shall be accepted by a Commissioning Service if it involves a level of expenditure which exceeds the amount previously approved by the relevant Committee in accordance with Standing Order 1(3) hereof. Where a Commissioning Service intends to accept such a tender, the additional expenditure must be approved by the appropriate Committee before the tender can be accepted.
- (f) No tender shall be accepted unless the appropriate contractual documentation has been approved by the Head of Legal and Democratic Services.
- (g) In assessing contract documentation under (f) above, the Head of Legal and Democratic Services shall determine the most appropriate form of contract for each procurement, regardless of value. All contracts let following a tender process under these Standing Orders must be signed in accordance with Standing Order 44 of the Council's "Standing Orders and ~~Committee~~ Orders of Reference" unless it is agreed otherwise in writing by the Head of Legal and Democratic Services, ~~their nominated representative a~~ **Legal Manager** or the Chief Executive.

8 APPLICABLE LAW

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- 8(1)** All contracts entered into in terms of and in accordance with these Standing Orders shall, unless otherwise authorised by the appropriate Director in consultation with the Head of Legal and Democratic Services and only then in special circumstances, be in writing and shall be subject to the law of Scotland and the exclusive jurisdiction of the Scottish Courts.

9 ELECTRONIC PROCUREMENT

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- 9(1)** The Head of Procurement may, in consultation with the Head of Legal and Democratic Services, direct that a procurement procedure is to be carried out by electronic means of communication.

- 9(2)** Where such direction has been made:-

- (a) the tender documents may be issued, tenders may be submitted and received, and information throughout the procurement process may be exchanged by electronic means;
- (b) the timescales set out in Table 2 at Standing Order 4(6)(i) may be reduced in accordance with Table 3 at Standing Order 4(6)(iii) where the tendering procedure is subject to the ~~2006~~2012 Regulations; and
- (c) the Commissioning Officer shall comply with such procedures as may be issued by the Head of Procurement in consultation with the Head of Legal and Democratic Services.

10 NEGOTIATED AND EXTENDED CONTRACTS

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- 10(1)** With the exception of any contract to which the ~~2006~~2012 Regulations apply, if the Head of the Commissioning Service, the Head of Legal and Democratic Services and the Head of Finance consider that there are special circumstances which justify the negotiation of either:-

- (a) a contract with one supplier; or
- (b) in the case of an existing contract, an extension to that contract;

without prior advertisement in accordance with the Standing Orders, then Standing Order 5 shall not apply to such negotiation.

- 10(2)** The Head of the Commissioning Service shall obtain the prior written agreement of the Head of Legal and Democratic Services and the Head of Finance in respect of any contract to be awarded or extended in accordance with Standing Order 10(1).

11 CORRUPT OR ILLEGAL PRACTICES

11(1) Except where otherwise agreed by the Head of Legal and Democratic Services, every written contract shall contain a clause to the effect that the Council shall be entitled to cancel the contract with immediate effect and to recover from the contractor the amount of any loss or damage resulting from such cancellation if: -

- (a) the contractor shall have offered, or given or agreed to give, to any person any gift, consideration, inducement or award of any kind for doing or not doing any action in relation to the contract or any other contract with the Council; or
- (b) like acts shall have been done by any person employed by the contractor or acting on behalf of the contractor (whether with or without the contractor's knowledge); or
- (a) in relation to any contract with the Council, the contractor or persons employed by the contractor or acting on behalf of the contractor shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or the Bribery Act 2010 or have given any fee or reward, the receipt of which is an offence under any legislation pertaining to local authorities; or
- (d) the contractor or its representative (whether with or without its knowledge) shall have practised collusion in tendering for the contract or any other contract with the Council or shall have employed illegal practices either in obtaining or executing the contract or any other contract with the Council.

~~11(1) entitling the Council to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation, if the contractor shall have offered or given or agreed to give to any person any gift for consideration of any kind as an inducement or reward for doing or for refraining from doing or for having done or refrained from doing any action in relation to the winning or execution of the contract or any other contract with the Council, or for showing or forbearing to show favour or disfavour, these acts shall have been done by any person employed by the contractor or acting on its behalf (whether with or without the knowledge of the contractor), or if in relation to any contract with the Council the contractor or any person employed by it or acting on its behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010, or shall have given any fee or reward, the receipt of which is an offence under Section 68(2) of the Local Government (Scotland) Act 1973.~~

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11(2) Without prejudice to the foregoing generality, if any contractor tendering for a contract with the Council or under a contract entered into with the Council shall offer or give any gratuity, bonus, discount, consideration or bribe of any kind whatsoever to any Member or Official of the Council, the Council shall forthwith remove that contractor from the list of tenderers or determine that contract as the case may be, and such contractor shall be liable for any loss or damage which the Council may thereby sustain.

12 HEALTH & AND SAFETY

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12(1) The Commissioning Officer shall, wherever possible, in the selection of tenderers for the execution of construction and related works, take reasonable steps to ensure that all prospective tenderers employing five or more persons shall have submitted in advance evidence to show compliance with the relevant sections of the Construction (Design & Management) Regulations 2007 and any amendment or replacement and that in all cases due regard is had to the requirements of the Health and Safety at Work etc. Act 1974 and regulations thereunder.

13 INSURANCES

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13(1) **Except where otherwise agreed by the Head of Legal and Democratic Services,** every contract in connection with the execution of works and, where appropriate, the supply of goods or materials **and** the provision of services shall provide that the contractor shall:-

(a) maintain such insurances as are necessary or are specifically required to cover –

(I) liability to workpeople under statute and at common law; ~~and~~

(II) liability to third parties; **and**

(III) liability to the Council for failing to meet appropriate professional standards; and

(b) whenever required, produce for inspection by any officer authorised by the Council for that purpose documentary evidence that the insurances are properly maintained and the relative policy or policies and receipts in question.

13(2) Certificates of insurance (and any renewal receipts therefor during the period of the contract) shall be exhibited to the Council prior to the commencement of every contract for the carrying out of works or the provision of supplies or services and on demand thereafter throughout the whole period of the contract.

14 PERFORMANCE BONDS

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- 14(1)** At the discretion of the Commissioning Officer, contractors may be required to enter into a Bond with a bank or insurance company for a sum equal to 10% of the contract sum for the due performance of the contract **and/or** a parent company guarantee.
- 14(2)** In the case of a contract subject to the conditions of contract issued by the Scottish Building Contracts Committee, the Performance Bond or Bonds shall be discharged on the issue of a Certificate of Practical Completion and in the case of a contract subject to the Institution of Civil Engineers Conditions of Contract, the Performance Security or Bond shall be discharged to the extent of 50% on the issue of a Certificate of Substantial Completion and shall be discharged to the remaining extent at the end of the Defects Correction Period under the contract.

15 ADMINISTRATION AND MONITORING OF CONTRACTS

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- 15(1)** The Head of Procurement shall maintain a Contract Register for the monitoring of all contracts and framework agreements developed or in use across the Council, which shall include the value or amount of each contract (where able to be so identified), all payments made to account and the total payments made **under** the contract. In addition, the Head of Procurement shall maintain any records of award of contract required under the **2006** Regulations. The Commissioning Officer within the Commissioning Service shall ensure that the prescribed information as detailed by the CPU is communicated to the CPU. Quarterly updates of each Service's register should be sent to the Head of Procurement **by each of the Council's Heads of Service**.
- 15(2)** Throughout the procurement process the Commissioning Officer shall:-
- (a) communicate the information regarding the proposed contract at the time when the procurement process for the award of that contract is initiated;
 - (b) use a unique contract reference number in relation to that contract throughout the procurement process (details of these can be obtained by the Central Procurement Unit) for the award of that contract on all notices, publications, documentation and correspondence; and
 - (c) ensure that, as successive stages in the procurement process take place, the prescribed information in the Contract Register is updated accordingly up to and including contract termination.

- 15(3) Contract monitoring and management arrangements agreed during the tender process will be determined by the complexity and risk associated with the contract, conditions in the relevant market and must consider both financial and quality aspects. The Director of the Commissioning Service must ensure processes are in place for this.
- 15(4) Contracts entered into in terms of these Standing Orders must be monitored and managed by the Commissioning Service throughout the contract term, to ensure delivery of the contracted supplies, services or works in accordance with the contract requirement and standard. No contract for Supplies or Services shall be amended without the prior written consent of the Head of Legal and Democratic Services and the Head of Procurement. In relation to Works contracts, Commissioning Officers shall take advice from the Head of Legal and Democratic Services, where appropriate, prior to amending any contracts.

16 DISPOSAL OF SURPLUS GOODS AND MATERIALS

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- 16(1) Subject to the provisions of these Standing Orders all surplus goods and materials in excess of £10,000 in value to be disposed of by any part of the Council shall be advertised for sale either by inviting sealed offers or by public auction, unless in special circumstances (of which the Committee concerned shall be the judge) it is otherwise decided.
- 16(2) The arrangements for the disposal of surplus goods and materials not falling within paragraphs (1) shall be delegated to the appropriate Director.

17 ACQUISITION AND DISPOSAL OF LAND AND BUILDINGS

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- 17(1) Prior to proposals by Standing Committees regarding the possible acquisition, development, disposal or change of use of lands or buildings owned by the ~~City~~ Council and relating to the provision of services for which they are responsible being recommended for approval to the Finance and Resources Committee, the Head of Legal and Democratic Services and Head of Finance shall be fully consulted in order that an evaluation of the proposals can be made and the Committees advised accordingly.
- 17(2) When considering any proposals:
- (a) ~~a~~A Committee, other than the Superannuation Investment Committee in considering a proposal which would involve:-
- (I) the acquisition of land or buildings; or
 - (II) the provision of buildings
- shall take into account any instructions thereon which the Finance and Resources Committee may wish to give in relation to the matter.

- (i) ~~w~~hen a Committee, following the appropriate consultations, has:
- (a) approved a change of use of any land or building; or
 - (b) declared any land or building surplus to requirements,
- it shall be referred to the Finance and Resources Committee for final determination.

18 ~~18~~ — BLACKLISTING

18(1)—In any tendering process, the Council shall have regard to recognised good practice, including any guidance or advice issued by the Scottish Government, in relation to the unlawful practice of blacklisting and shall ensure that suitable questions about blacklisting are included in tender documentation where appropriate.

18(2)—Except where otherwise agreed by the Head of Legal and Democratic Services, every contract in connection with the execution of works or the supply of goods or materials or the provision of services shall contain the following clause or a clause to similar effect;

“The contractor must not commit any breach of the Employment Relations Act 1999 (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Act 1998 by unlawfully processing personal data in connection with any blacklisting activities. Breach of this Clause is a material default which shall entitle the Council to terminate the contract with immediate effect.”

~~18(1) In any tendering process, the Council shall have regard to recognised good practice, including any guidance or advice issued by the Scottish Government, in relation to the unlawful practice of blacklisting and shall ensure that suitable questions about blacklisting are included in tender documentation where appropriate.~~

~~18(2) Except where otherwise agreed by the Head of Legal and Democratic Services, every contract in connection with the execution of works or the supply of goods or materials or the provision of services shall contain the following clause or a clause to similar effect;~~

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~~18~~“The contractor must not commit any breach of the Employment Relations Act 1999 (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Act 1998 by unlawfully processing personal data in connection with any blacklisting activities. Breach of this Clause is a material default which shall entitle the Council to terminate the contract with immediate effect.”**GENERAL DELEGATIONS TO CHIEF EXECUTIVE AND HEAD OF LEGAL AND DEMOCRATIC SERVICES**

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~~18(1)~~ The Head of Legal and Democratic Services, whom failing the Director of Corporate Governance, is authorised to raise or defend, or in emergency (and with the approval of the Chief Executive) settle legal actions of all descriptions.

~~18(2)~~ The Chief Executive, whom failing, any appropriate Director is authorised in an emergency to initiate action under any statutory procedure related to a function vested in the Council subject to report being made to the appropriate Committee at the first opportunity.

19 APPLICATION OF INTERPRETATION ACT ETC

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19(1) The Interpretation Act 1978, shall apply to the interpretation of these Standing Orders as it applies to the interpretation of an Act of Parliament.

19(2) Nothing in these Standing Orders shall prejudice the taking of any action required by virtue of any ~~legislation~~ statute.

20 EQUAL OPPORTUNITIES

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20(1) Before entering into a contract, the Council shall obtain from the contractor an assurance in writing that, to the best of its knowledge and belief, it has complied with all statutory requirements in respect of compliance with human rights and equalities legislation and is not discriminating against any person or persons.

21 USE OF EXTERNAL FRAMEWORKS AND CONTRACTS (e.g. SCOTLAND EXCEL, CATALIST, etc.) AND CONSTRUCTIONLINE

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21(1) External Frameworks and Contracts

Use of approved external frameworks or contracts will be deemed to be compliant with these Standing Orders and, as such, are a legitimate procurement strategy in appropriate circumstances. Use of any specific external frameworks or contracts by the Council must be approved in writing by the Head of Procurement and the Head of Legal and Democratic Services prior to the Council entering into such frameworks/contracts. The Head of Procurement will keep a “Register of Approved External Frameworks and Contracts”. The Head of Legal and Democratic Services will review the terms and conditions pertaining to each approved external framework/contract and will complete a due diligence which will be kept in the Register of Approved External Frameworks and Contracts. If Commissioning Services wish to purchase via an approved external framework or contract they must obtain the prior written approval of the Head of Legal and Democratic Services and the Head of Procurement. Only once such written approval has been given will the Council be able to enter into such external frameworks or contracts.

21(2) Constructionline

Where the Council is entering into a non-EU Works contract then Commissioning Officers will be permitted to utilise Constructionline notwithstanding the provisions of these Standing Orders.

22 ASSIGNATION

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22(1) Except where otherwise provided in a contract entered into with the Council, a contractor shall not assign or sub-let the contract or any part thereof except with the prior written consent of the Council.

23 RESPONSIBLE THIRD PARTIES

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23(1) It shall be a condition of the engagement of the services of any third party or person (not being an Official of the Council), including any consultant and/or other professional advisor, who is to be responsible to the Council for a contract that, in relation to that contract, he/she shall:-

- (a) comply with these Standing Orders as though he/she were an Official of the Council;
- (b) at any time during the carrying out of the contract produce on request to the appropriate Chief Officer all records maintained by him/her in relation to that contract; and

- (c) on completion of the contract, transmit to the appropriate Chief Officer all such records relating to that contract.

24 BREACH OF STANDING ORDERS – REPORTING & DISCIPLINARY ACTION

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- 24(1)** Any non-compliance with or breach of these Standing Orders must be reported immediately on discovery to the relevant Service Manager, Head of Service or Director, as appropriate, and the Head of Legal and Democratic Services in her capacity as Monitoring Officer to the Council.
- 24(2)** Failure to report any known non-compliance or breach may result in disciplinary action being taken against the employee who failed to report the non-compliance or breach.
- 24(3)** The relevant Service Manager, Head of Service or Director, as appropriate, will undertake an investigation in accordance with the Council's Managing Discipline Policy where deemed necessary. Appropriate disciplinary action may be taken where: -
- (a) Serious non-compliance with or breach of the Standing Orders is identified; or
- (b) Repeated non-compliance with or breach of the Standing Orders is identified.
- 24(4)** In the event of a serious breach of the Standing Orders, the Head of Legal and Democratic Services in her capacity as Monitoring Officer may undertake such investigations as deemed necessary, and will report to the relevant Director, Chief Executive or Committee of the Council as appropriate.

25 SUSTAINABILITY

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- 25(1)** Sustainable Procurement incorporates environmental, economic and social considerations. Sustainable Procurement, where relevant to the subject of the contract, should be incorporated into every procurement process and the Council's Sustainable Procurement Policy should be followed.

26 FREEDOM OF INFORMATION and ENVIRONMENTAL INFORMATION

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- 26(1)** The tender documents shall give notice to tenderers of the Freedom of Information (Scotland) Act 2002 (and, if applicable, the Environmental Information (Scotland) Regulations 2004). The said 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.

26(2) Tenderers who seek to incorporate provisions within any contract to the effect that all or some information is provided by them in confidence will not necessarily be entitled to rely on such provisions.

26(3) Except where otherwise agreed by the Head of Legal and Democratic Services, ~~The Commissioning Officer shall ensure that the standard~~ appropriate Freedom of Information clause (and/or, as relevant, an Environmental Information clause) ~~drafted by the Head of Legal and Democratic Services is~~ shall be incorporated in the contract documents.

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PART B - SOCIAL CARE CONTRACTS

27 RESOURCE TRANSFER FROM HEALTH BOARDS

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27(1) Where agreement has been reached between the Council and any relevant Health Board for the transfer of resources, whether in money or otherwise, from that Board to the Council, then the Director of Social Care and Wellbeing, in consultation with the Head of Finance and Head of Legal and Democratic Services, may enter into a contract with that Board for the transfer of those resources without the requirement for Committee approval subject to: -

- (a) the contract in question being for the transfer of resources to the Council and for no other purpose; and
- (b) the Director of Social Care and Wellbeing advising the Council at no less than three monthly intervals of the amount of resources so agreed.

27(2) Where the Council intends to enter into any arrangement or contract to which Part B of these Standing Orders applies, and which is to be funded in whole or in part by resources transferred or to be transferred from any Health Board in accordance with Standing Order 27(1), then the said Board may be involved in discussions with and be consulted by the Commissioning Officer in relation to the decision to award any contract to such extent as the Director of Social Care and Wellbeing considers appropriate, save that the final decision to award any such contract shall always be that of the Council acting in accordance with Part A of these Standing Orders.

28 RESIDENTIAL/NURSING HOME CARE

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28(1) In order to assist the Council to comply with its obligations in terms of the Social Work (Scotland) Act 1968 (Choice of Accommodation) Directions 1993 ("the 1993 Directions") or such other Directions as may from time to time be in force, the Director of Social Care and Wellbeing in consultation with the Head of Legal and Democratic Services shall utilise the national model contract on a call off basis only for the provision of private or voluntary sector care home services, such care to be paid for by the Council at rates set nationally and approved by the Council in each financial year.

28(2) The Director of Social Care and Wellbeing may enter into contractual arrangements with the providers of such care services on the terms specified in said national model contract, subject to: -

- (a) confirming that the provider in question is an appropriate person to provide such services;

- (b) the provider being the holder of a current and valid Certificate of Registration from the appropriate registration authority to provide the categories of care for which the Council wishes to contract; and
- (c) the provider being on the Council's Approved Provider List prior to the commencement of the contract.

29 NON-RESIDENTIAL SERVICES

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- 29(1)** The Council may from time to time approve sums of money to be utilised solely for the purposes of providing non-residential social care services. The Director of Social Care and Wellbeing and the Head of Legal and Democratic Services shall develop standard model contracts for such services and which shall thereafter be entered into with the providers of such services, subject to: -
- (a) the Director of Social Care and Wellbeing confirming that the provider is a suitable person to provide such services; and
 - (b) the provider being on the Council's Approved Provider List prior to the commencement of the contract; and
 - (c) if appropriate, the provider being the holder of a current and valid Certificate of Registration from the appropriate registration authority to provide the categories of care for which the Council wishes to contract.

30 COMMISSIONING SERVICES/TENDERING

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- 30(1)** In tendering for social care services and in recognition of the need for Service Users to be involved in the arrangement made for care and the 1993 Directions, the Director of Social Care and Wellbeing shall ensure that Service Users and/or their representatives are fully consulted throughout the tendering process. In particular, a Service User and/or representative will be invited to participate in the evaluation of tenders, including attendance at any presentations or site visits conducted as part of that evaluation.
- 30(2)** Notwithstanding the terms of Standing Order 30(1) above but subject always to the provisions of the ~~2006~~2012 Regulations, the Director of Social Care and Wellbeing, subject to the agreement of the Head of Legal and Democratic Services, may certify a purchase as being unsuitable for tendering, due either to the nature of the services required or the timescales involved. In such circumstances, there shall be no requirement for a competitive tendering exercise to be conducted, however the selected provider must satisfy the requirements of Standing Order 29(1) (a) - (c).

31 **PART A OF THESE STANDING ORDERS**

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31(1) Except as may be required to accord or comply with Standing Order ~~No.~~ 30, the entire provisions of Part A of these Standing Orders shall apply to Social Care Contracts as they apply to Council Contracts in general.