Scotland Excel

Standing Orders Relating to Contracts 2008

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Scotland Excel

Standing Orders Relating to Contracts

1. Introduction

1.1 These standing orders are made under Section 81 of the Local Government (Scotland) Act, 1973 and shall apply to the making of all contracts by or on behalf of Scotland Excel.

1.2 The Standing Orders are subject to any overriding requirements of the EU Directive on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts and to any UK or Scottish legislation implementing the Directive (the "EU Procurement Rules").

1.3 All contracts let by or on behalf of Scotland Excel, regardless of whether any such contracts are otherwise exempted from the application of these standing orders, shall be subject to an obligation to seek best value and to be able to demonstrate fairness, non-discrimination, equal treatment and transparency in the contract procedure chosen to all parties having an interest in that procedure.

2. Interpretation

2.1 For the purposes of these standing orders the following words and expressions shall have the meanings given to them in this Standing Order:

a) any reference to "a signature" or "signed" includes reference to a signature or being signed using electronic means;

b) "electronic means" means electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by radio, by wire, by optical means or by other electromagnetic means;

c) "written" or "in writing" means any expression consisting of words or figures which can be read, reproduced and subsequently communicated. It may include information which is transmitted and stored by electronic means;

d) "Contract Documents" means the documents to be used in any tendering procedure and where different those intended to form part of any contract following on from a tendering procedure. It includes, but is not restricted to, the pre-qualifying questionnaire, the invitation to tender for or to

negotiate a contract, the proposed conditions of contract, the specification or the description of the goods, services or works required by Scotland Excel and any Bills of Quantities and includes any such documents or their equivalents issued using electronic means;

e) "the EU Procurement Rules" is defined in Standing Order 1.2;

f) "the EU Threshold" for the purpose of determining the value of thresholds within these Standing Orders refers to the threshold for determining the application of the Public Contract (Scotland) Regulations 2006 to public supply contracts and Part A public services contracts. This is currently £139,893.00, but is changed every second year on 1 January of that year. The next change is due on 1 January 2010;

g) "Member Authority" means any local authority which is a member of the Joint Committee;

h) "Scotland Excel" and "Joint Committee" mean the Joint Committee.

Constituted under Section 57 of the Local Government (Scotland) Act 1973 and established for the purpose of regulating the joint discharge of the Functions by the Member Authorities. References to Scotland Excel are to be treated as references to the Joint Committee and vice versa;

i) "Executive Sub-Committee" means the sub-committee of that name appointed by the Joint Committee in accordance with the Terms and conditions of Scotland Excel and having such role and functions as determined by the Joint Committee. Any references to the Executive Sub-Committee shall be treated as references to the Joint Committee.

j) "the Management Group" means the group of that name established under the Terms and Conditions of Scotland Excel and having responsibility for the overall supervision and monitoring of the performance of the Director and the Scotland Excel staff in delivering Scotland Excel's annual business plan objectives;

k) "the Terms and Conditions of Scotland Excel" means those terms and conditions agreed among the member Authorities to govern their individual memberships and the operation of Scotland Excel and its Functions;

l) "the Functions" means the general purchasing functions that the Member Authorities wish to carry out jointly all as more particularly described in the Terms and Conditions of Scotland Excel;

m) "the Clerk" means the Director of Corporate Services of Renfrewshire Council or his nominee;

n) "the Director" means the officer appointed by the Joint Committee to have overall responsibility for the operational performance of Scotland Excel or her nominee;

o) Any reference to a statute, other legislation or European Directive shall include reference to any statute, legislation or Directive amending or replacing it;

p) Any reference to a contract shall include, where the context allows, reference to a framework agreement or a sub-contract.

2.2 Words imparting the masculine gender only shall include the feminine gender and vice versa.

2.3 Words imparting the singular number shall, except where the context otherwise requires, include the plural number and vice versa.

3. Suspension, Variation and Revocation

3.1 These Standing Orders may be varied or revoked by the Joint Committee. Any variation to or revocation of the Standing Orders will be effective on the first working day after the conclusion of the meeting of the Joint Committee at which it was approved.

3.2 These Standing Orders or any part of them may be suspended by the Executive Sub-Committee in respect of any procurement exercise or contract on receiving a joint recommendation from the Director and the Clerk that there are special circumstances justifying such suspension and that it is in the interests and within the powers of Scotland Excel to do so.

3.3 The Clerk shall have power to vary these Standing Orders but only in the following circumstances:-

a) to reflect changes in job titles, reorganisations of departments and vacancies in posts; or

b) to change references to any piece of legislation where the legislation is repealed and to insert references to new pieces of legislation where the new pieces of legislation largely re-enact the provisions of the repealed legislation; or

c) to change the financial values of the EU Threshold where referred to in these Standing Orders, to implement any changes in that threshold.

4. Financial Provision

4.1 Prior to inviting offers or recommending the acceptance of offers, the Director will require to be satisfied that:-

a) in the case of periodic call of contracts of a general nature, suitable general financial provision has been made or will be made in the budgets of Member Authorities; or

b) in the case of specific one off contracts for individual authorities or bodies, specific financial provision has been approved.

4.2 In the case of paragraph 4.1(b) above, confirmation of such approval will be required to be obtained by the Director in advance from the individual authority.

5. Equalities Prevention of Discrimination

5.1 No contract may be awarded unless the Director has in accordance with the Guidance on Race Relations matters issued by the Secretary of State and

referred to in the Local Government Act 1988, obtained information from contractors relating to that guidance. The information is a means by which the Director can assess whether the contractors concerned are complying with the responsibilities placed on them by the Race Relations Act 1976 (as amended).

5.2 All tenderers must be asked to produce their equal opportunities policy when submitting their tenders.

5.3 Before entering into a contract, the Director shall obtain from the contractor an assurance in writing that, to the best of the contractor's knowledge and belief, the contractor has complied with all statutory requirements in respect of ensuring equal opportunity in employment.

5.4 All contracts entered into by or on behalf of Scotland Excel shall contain a condition prohibiting the contractor from discriminating against any person directly or indirectly, by way of victimisation or harassment on grounds of race, gender, disability or age.

6. Form of Contract

6.1 Except in circumstances where the Director and the Clerk agree otherwise, every contract shall be:-

a) in the name of Renfrewshire Council as servicing and contracting authority for Scotland Excel;

b) in writing;

c) signed by the Director or the Clerk or other officer authorised to sign contracts; and

d) subject to the Laws of Scotland.

6.2 The Contract Documents in respect of all contracts shall be prepared by the Director. The Director may also make use of Contract Documents prepared by the Office of Government Commerce or the Scottish Procurement Directorate where permitted by those bodies to do so. It is the Director's responsibility to ensure that the Contract Documents are suitable for the contract.

6.3 The values stated in these Standing Orders are the total estimated value of the contract concerned and not the estimated annual value of the contract. Where it is likely that a supply of goods or services will be required on a continuing basis over a number of years, for example with maintenance contracts, the Director shall take into account the anticipated duration of the continuing supply when estimating the value of the contract for the purposes of these Standing Orders.

6.4 It is not permitted to deliberately divide any procurement exercise or disposal into two or more contracts if the intention in doing so is to avoid the application of any financial thresholds in these Standing Orders or the EU Procurement Rules.

6.5 For the avoidance of doubt, the values stated are exclusive of any Value Added Tax that may be levied.

6.6 All tender documents must clearly state that the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 apply to all contracts arranged by or on behalf of Scotland Excel. This is to ensure that contractors are aware that Scotland Excel or any of the Member Authorities may be required, as a matter of law, to release information to third parties that the contract or may wish to be treated as confidential.

6.7 The Director in consultation with the Clerk may approve guidance notes on tendering procedures for any contract or type of contract let by or on behalf of Scotland Excel. Any such guidance notes once approved shall form part of these Standing Orders and shall be complied with.

7. Exemptions

7.1 Subject to Standing Order 1.3, there shall be exempted from the provisions of these Standing Orders any contract where:-

7.2 The Executive Sub-Committee is satisfied that there are special circumstances justifying exempting the contract from Standing Orders or any part of them.

7.3 The total estimated value of the proposed contract is less than £40,000. Where the total estimated value of a proposed contract falls below £40,000 the contract shall be let in accordance with the Guidance on "Contracts With a Value of Less Than £40,000", published under Standing Order 6.7.

7.4 In the opinion of the Director, action is urgently required to prevent danger to life, serious risk to health or damage to property. In such circumstances a report will be submitted to the Executive Sub-Committee or the Management Group at the first available subsequent meeting detailing both the circumstances justifying use of this exemption and the action taken.

7.5 Tenders are to be invited on behalf of any consortium, or similar body, of which Scotland Excel is a member, in accordance with any method adopted by such a body, except where specific provision has been made for the application of these Standing Orders or any part of them to a particular consortium. However, in the event that the financial contribution by Scotland Excel to a consortium or similar body in respect of any one contract is in excess of the exemption limit in Standing Order 7.2 and the contract is not being let by any local authority in terms of its own Standing Orders relating to contracts, the use of this exemption requires the prior approval of the Executive Sub-Committee.

7.6 Notwithstanding Standing Order 13.7, the contract is for the execution of works or the supply of goods, materials or other services being an extension to an existing contract and identified by the Director as necessary and being so urgent as not to permit the invitation of tenders; such matters to be reported to the next meeting of the Executive Sub-Committee.

7.7 It is a contract of employment. However, this exemption does not apply to contracts with employment agencies for the supply of staff.

7.8 The contract relates to the transfer, acquisition or disposal of an interest in heritable property including a licence to occupy or use heritable property.

7.9 The contract relates to the appointment of legal counsel and solicitors to act a Scotland Excel's Edinburgh agents.

7.10 In the Director's opinion it is essential that the contract is entered into for the settlement of any claim or litigation raised by or against Scotland Excel; such matter to be reported in the next meeting of the Executive Sub-Committee.

7.11 The contract is being funded by money provided by the government or a public body (including funds from the National Lottery) and the award of that money to Scotland Excel is subject to such conditions that make it impractical for Scotland Excel to comply with these Standing Orders in letting the contract. However, in such circumstances, the Director shall submit a report to the Executive Sub-Committee in advance of the contract award explaining the procedure to be used and why these Standing Orders could not be complies with.

7.12 The contract is for the commissioning of theatrical, musical, dramatic or other artistic performances.

7.13 The contract is for the disposal by Scotland Excel of surplus or scrap materials and equipment previously used by Scotland Excel or any Member Authority.

8. Publicity for Tenders and Contracts

8.1 Scotland Excel is under a duty to ensure that, in relation to each contract it intends to award, the contract is given a degree of advertising which is sufficient to enable open competition and to meet the requirements of the principles of equal treatment, non-discrimination and transparency. Contracts that are subject to the EU Procurement Rules must comply with the provisions relating to advertising of contracts in these Rules. For all other contracts Scotland Excel must put in place procedures to meet its obligations with regard to advertising those contracts. Accordingly the following procedures shall apply:-

a) The obligation to advertise tendering opportunities for contracts in terms of this Standing Order applies only to contracts for supplies or services with a value of £40,000 or more and to contracts for works with a value of £500,000 or more.

b) The Director shall approve an internet based website or websites to be used by Scotland Excel to advertise contracts.

c) In addition to advertising on a website, the Director may choose to advertise the contract in any other way such as in trade journals or newspapers.

d) The Director shall ensure that Scotland Excel's own website contains links to all websites approved by her for advertising Scotland Excel's contracts.

9. Procedures

9.1 Where the estimated value of any contract is likely to equal or exceed the thresholds for the application of the EU Procurement Rules, the Director shall be responsible for determining whether or not those Rules apply and may refer the matter to the Clerk who will provide assistance and guidance to the Director in determining whether the EU Procurement Rules apply to the

contract and ensuring that the various requirements of the EU Procurement Rules are followed.

9.2 Where it is established that the EU Procurement Rules apply to any contract, the Director will be responsible for determining the appropriate procedure to be followed in terms of those Rules and shall ensure that the contract is advertised, tendered evaluated and awarded in compliance with those Rules. The tendering procedures under the Rules are not set out in these Standing Orders. The procedures in Standing Orders 10, 11 and 13.1 a – i may only be used where Scotland Excel is not required to use the equivalent procedures in the EU Procurement Rules.

9.3 Any contract that is not required to follow a procedure set out in the EU Procurement Rules must be let in accordance with one of the procedures set out in Standing Orders 10, 11, 12, 13, 15, 25, 26 and 27.

9.4 E-procurement in terms of Standing Order 15 shall be used for all contracts let by Scotland Excel under Standing Orders 10 (Restricted Procedure) and 11 (Open Procedure) unless there is a valid and substantial reason for not doing so. The terms of Standing Order 15.2 which prescribes conditions for the use of e-procurement must be complied with.

10. Restricted Procedure

10.1 The Director may approve the use of the restricted procedure which subject to Standing Order 9.4 (use of e-procurement) shall be conducted in accordance with this Standing Order.

10.2 Where the Director approves the use of the restricted procedure, she shall issue a notice on a website approved in terms of Standing Order 8.1 for giving publicity to contracts. In addition the Director may also publicise the contract more widely including placing the notice in one or more national newspapers inviting contractors to apply to be selected to tender.

10.3 The notice must contain sufficient information to enable any potential tenderer to determine whether they are interested in bidding for the contract. This should include the subject matter of the contract, its duration, estimated commencement date and where appropriate its estimated value. The notice should also indicate if e-procurement is to be used.

10.4 The notice must also specify a date and time by which requests to be selected to tender must be received. This date and time must be no sooner than 10 working days from the date the notice is published.

10.5 The Director shall issue a pre-qualification questionnaire to all potential contractors responding to the notice issued in terms of Standing Order 10.2.

10.6 No contractor may be invited to tender unless they have successfully complied with the technical and financial checks in Standing Order 17 and have met the criteria to be invited to tender set out in the pre-qualification questionnaire issued under Standing Order 10.5.

10.7 The Director must select a sufficient number of tenderers to be invited to tender to ensure genuine competition which must not in any event be less than four. Where fewer than four contractors express an interest, all those contractors meeting the minimum evaluation criteria, must be invited to tender.

10.8 The Director shall send invitations to tender, in writing, simultaneously to each contractor selected to tender for a contract and the invitation to tender shall be accompanied by the Contract Documents. The invitation to tender shall state the requirements of Standing Orders 18, 19, 22.3 and 22.4 below.

10.9 The invitation to tender shall also include the final date and time for the receipt of tenders by Scotland Excel, and where e-procurement is not being used the address to which the tenders must be sent. The invitations to tender must also include the criteria to be used in evaluating the tenders.

11. Open Tendering

11.1 The Director may approve the use of the open procedure which subject to Standing Order 9.4 (use of e-procurement) shall be conducted in accordance with this Standing Order.

11.2 Where the Director approves the use of the open procedure, the Director may issue a notice on a website approved in terms of Standing Order 8.1(b) for giving publicity to contracts. In addition, the Director may also publicise the contract more widely including placing a notice in one or more national newspapers inviting expressions of interest from potential tenderers.

11.3 The notice must state the evaluation criteria for the award of the contract and must contain sufficient information to enable any potential contractor to determine whether they are interested in bidding for the contract. This should include the subject matter of the contract, its duration, estimated commencement date and where appropriate its estimated value. The notice should also indicate if e-procurement is to be used.

11.4 The notice must also specify a date and time by which expressions of interest must be received. This date and time must be no sooner than 10 working days from the date the notice is published.

11.5 The Director shall send an invitation to tender to all contractors who have submitted a valid expression of interest and who have met any financial or technical criteria pre-determined by the Director. The invitations to tender must comply with the requirements of Standing Orders 10.8 and 10.9.

11.6 Where tenders are advertised under the open procedure, a charge will be made in respect of the issue of Contract Documents where the value of the contract exceeds the EU Threshold. No charge shall be made for the issue of Contract Documents where e-procurement is used.

12. Serial and Two Stage Contracts

12.1 Where the Director considers that tenders should be obtained for a series of projects, or in two stages, for any proposed works, the Director shall first obtain the approval of the appropriate Board to that course of action both in respect of the execution of the works and the tendering procedures.

13 Negotiated Procedure and Extensions to Existing Contracts

13.1 Where the EU Procurement Rules do not apply, the negotiated procedure may be used in the following circumstances only:-

a) where as a result of the invitation of competitive tenders, no valid offer or only one valid offer complying with the specification has been received; provided always that no significant changes are made to the Contract Documents that were previously issued for competitive tender; or

b) where the Director is satisfied that the requirement of the contract is unique or, after research, only one suitable source of supply can be identified; or

c) where the Director is satisfied that for reasons of technical complexity or compatibility or for reasons connected to the protection of exclusive rights, subsequent deliveries of equipment or goods or the provision of services require to be purchased from the original supplier; or

d) where in the case of a supply contract, the goods to be purchased or hired are to be manufactured purely for the purpose of research, experiment, study or development, but not when the goods are to be purchased or hired to establish their commercial viability or to recover their research and development costs; or

e) when (but only if strictly necessary) for reasons of extreme urgency brought about by events unforeseeable by and not attributable to Scotland Excel or any of the Member Authorities, the other procedures in contract Standing Orders 10 and 11 cannot be complied with; or

f) where in the case of a services or a supply contract, in the opinion of the Director it is in the interests of Scotland Excel or any of the Member Authorities to take advantage of a particularly advantageous bargain available for a very short period of time at a price considerably lower than normal market prices; or

g) where pending the letting of a contract with a duration of at least one year ("the main contract") it is necessary to award a short term contract to cover the period up to the commencement of the main contract;

h) where continuity of supply or service is likely to be jeopardised if negotiated procedures are not followed, providing that the proposed extension and the estimated value of the goods or services in the contract do not exceed the original contract period or value;

i) Where the use of negotiated procedures is necessary to accommodate a shortfall in projected demand against contract quantities providing that the proposed extension and the estimated value of the goods or services in the contract do not exceed the original contract period or value.

13.2 Where the EU Procurement Rules apply, the negotiated procedure may only be used on any ground specified in those Rules for the use of the negotiated procedure either with or without the publication of a contract notice.

13.3 For the purposes of these Standing Orders:-

a) Where the EU Procurement Rules do not apply the negotiated procedure means the direct negotiations with a single contractor without competition or further competition with a view to awarding the contract to that contractor or extending an existing contract.

b) Where the Executive Sub-Committee has authorised the use of the negotiated procedure with a named contactor and it is decided to award the contract to that contractor the Director may proceed to award the contract without getting the prior approval of the Board to the contract award, notwithstanding that the value of the contract exceeds the EU Threshold.

c) In all cases where the use of negotiated procedures has been approved, the Director shall as soon as practicable after the contract award report to the Executive Sub-Committee on the outcome of the negotiations and the contract award.

13.4 The Director may authorise the use of the negotiated procedure in terms of Standing Order 13(1)(a), where its use is justified.

13.5 Except as provided for in Standing Orders 13(1)(a), 13.1(e) (extreme urgency) and 13.1(f) (advantageous bargain), the negotiated procedure may only be used with the prior approval of the Executive Sub-Committee. Where the negotiated procedure is used in terms of contract Standing Orders 13(1)(a),13.1(e) and 13.1(f) the Director shall report to the next meeting of the Executive Sub-Committee, explaining the circumstances justifying the use of that contract Standing Order.

13.6 In all cases where negotiated procedures have been used in terms of this Standing Order, a full written record of all contacts, discussions and communications with prospective contractors shall be kept by the Director together with a full explanation as to why the Director considered it to be appropriate to use the negotiated procedure.

13.7 Where the Director considers that an existing contract should be extended and the option to extend is given to Scotland Excel in terms of the contract, the Director may authorise the exercise of that option on behalf of Scotland Excel. For the avoidance of doubt, where the contract does not make provision for the extension of the contract, the Director shall not extend that contract unless the use of the negotiated procedure can be justified in terms of these Standing Orders and the procedure in Standing Orders 13.3 and 13.5 has been followed.

13.8 For the purposes of Standing Order 13.7 an extension of a contract includes the option to increase the amount of supplies, services or works acquired under the contract as well as the option to increase the duration of the contract.

13.9 Where in terms of Standing Order 13.7 an extension of a contract includes the option to increase the amount of supplies, services or works acquired under the contract as well as the option to increase the duration of the contract.

13.10 Where in terms of Standing Order 13.7, the contract does not make provision for the extension of the contract and the initial contract was not let in accordance with the EU Procurement Rules, the total value of the contract including the value of any extension shall not exceed the EU Threshold.

13.11 For the avoidance of doubt, where the negotiated procedure is used for any contract in terms of this Standing Order 13, there is no requirement to publish information relating to that contract on the website or websites approved under Standing Order 8.1(b).

14. Approved List of Tenderers

14.1 The Director may keep a list of contractors to be invited to tender for contracts for the supply of goods, or materials or for the provision of services or for the execution of works. However, this list may only be used as an exclusive means of selecting tenderers to be invited to tender where there is no legal requirement to publicise the contract opportunity more widely (see Standing Order 8). Where the Director is able to use the list and where he decides to use the list for any contract, invitations to tender for a contract may be limited to persons whose names appear on the list. The Director may also use the list to encourage competition by inviting contractors on the list to tender as well as publicising the contract to meet legal requirements.

14.2 The list shall be held and maintained by either:-

a) the Director; or

b) by a suitable external organisation approved by the Executive Sub-Committee.

14.3 The selection of tenderers from the list will be the responsibility of the Director

14.4 Where the list is prepared and maintained by the Director, the list shall contain the names of the persons who wish to be included on the list and whose inclusion on the list has been approved by the Director. The Director may decide not to include a contractor on the list unless a satisfactory review has been carried out by the Director of the technical capability of the contractor and a satisfactory assessment of the financial standing of the contractor has been carried out by the Director in conjunction with the Director of Finance and Information Technology of Renfrewshire Council.

14.5 A list prepared and maintained by the Director in terms of this Standing Order will be reviewed at least once every three years. Prior to any such reviews, notices inviting applications for inclusion in the list shall be published on a website approved in terms of Standing Order 3.1(b) and at the Director's discretion in one or more national newspaper or in such Trade Journals as the Director may consider appropriate. The advertisement will indicate the categories of products and services included on the lists and the procedure for the submission of application. All contractors previously approved for inclusion on the list will be invited to re-apply. No application for inclusion on the list shall be considered unless it is in writing. The Director shall keep a copy of all applications for inclusion on such a list.

14.6 The Director may amend the list of approved contractors at any time but shall provide an annual report to the Joint Committee detailing any such amendments which have been made. The requirement to provide an annual report does not apply where the list is held and maintained by an external organisation.

14.7 The Director will keep records detailing the following and will provide an annual report on these matters to the Joint Committee:-

a) The inclusion and addition of contractors to the list.

b) The rejection or exclusion of contractors from the list and the reasons for such exclusion or rejection.

c) The establishment of new categories or lists.

d) The use made of the lists by Scotland Excel or any other body.

e) The number of invitations to tender issued to each organisation on the list and the responses to those invitations.

f) The Director will make suitable arrangements to monitor the financial status of the contractors included on the list.

14.8 In terms of Standing Order 14.2(b), the Director may use a list of contractors established and held by any other body. However, before using a list in these circumstances, the Director must satisfy herself as to the selection criteria being used to permit bodies on to the list and for selecting potential contractors from that list to be invited to tender for contracts being let by Scotland Excel.

14.9 In the event that a contractor is removed from the list held by the Director under Standing Order 14.2 (a) or has an application to be added to the list refused, the contractor shall be advised of this decision forthwith and the Director shall keep a record listing the name and address of the contractor and explaining the reason why that contractor has been removed from the list or why the application to be added to the list has been refused and shall provide an annual report of this record to the Joint Committee.

14.10 The Director shall ensure that no person has been excluded from, or included in, the approved list by reason of consideration of non-commercial matters within the meaning of Section 17 of the Local Government Act 1988 or any statutory modification or re-enactment thereof.

14.11 The Director may suspend a contractor from the list in circumstances where the Director has serious concerns regarding the contractor's ability to provide the supplies, services or work in relation to which the contractor is on the list. The purpose of the suspension shall be to allow the Director to carry out investigations regarding the contractor's fitness or otherwise to remain on the list. The suspension shall be for a period not exceeding 6 months or until the end of the investigation whichever is sooner at which point the Director must reinstate the contractor to the list or remove the contractor from the list and Standing Order 14.9 shall apply.

14.12 Where the Director has authorised the use of the approved list a minimum of four firms will be selected from the list to be invited to tender. The selection for invitation to tender will be made against pre-determined criteria appropriate to the requirements of the particular contract. Where there are fewer than four contractors on the list able to undertake the work, all the able contractors on the list shall be invited to tender.

14.15 Where contracts require to be notified in the EU Journal under open or restricted tendering procedures, the Director may, if considered appropriate, authorise the issuing of a copy of the EU Notice to firms selected from the list.

14.16 The Director will keep a record of all invitations to tender issued to each firm and the responses to the invitation.

15. E-Procurement

15.1 This Standing Order shall apply to any tendering procedure or contract entered using electronic means. The other Standing Orders shall continue to apply to any tendering procedure or contract entered into using the electronic means except to the extent that they are inconsistent with this Standing Order 15.

15.2 The Director may conduct any tendering exercise or a negotiated procedure or enter into any contract using electronic means ("e-procurement"), provided that :-

a) the e-procurement is to take place using a system approved by the Director; and

b) to do so would not significantly restrict or distort competition.

15.3 Where e-procurement is being used, the Director must consider whether it is appropriate to impose any specific requirements regarding verification and authentication of the tender submission and the signature of the person making that submission.

15.4 Any tender document issued using electronic means must state whether Scotland Excel has any specific requirements relating to authentication or verification of the tender submission or of the signature of the person making the submission.

15.5 Where e-procurement is being used any invitation to tender shall provide information as to the internet address which offers unrestricted and full direct access by electronic means to the Contract Documents.

15.6 Standing Order 15.5 shall replace Standing Orders 18, 19 and 20 in their entirety where e-procurement is used and the following provisions shall apply:-

a) No tender submitted using electronic means will be considered unless it is received in the format requested by Scotland Excel in the Contract Documents and at the electronic address specified by Scotland Excel and unless it is received prior to the deadline for the receipt of tenders, as stated in the Contract Documents.

b) The Director shall ensure that each tender is kept unopened in a single secure electronic mailbox that cannot be opened before the deadline for the receipt of tenders.

c) The Director shall ensure that insofar as is reasonably practicable the system used does not allow the identity of the contractor submitting the tender to be revealed prior to the tender being opened after the deadline for the receipt of tenders.

d) The Director shall ensure that for each procurement project the system used shall keep and, if required, produce a record showing the time and date of receipt of all tenders received in respect of each e-procurement exercise.

e) This Standing Order shall also apply to the receipt and custody of tenders for sub-contracts let using electronic means to be performed by nominated sub-contractors.

f) The system used must not allow late tenders or tenders sent in the wrong format or sent to the wrong address to be received.

g) The Director may extend the deadline for the submission of bids by notifying all potential tenderers of the extension in the following circumstances:-

(i) prior to any bids being received by Scotland Excel; or

(ii) where following bids being received but before Scotland Excel is able to open those bids due to the functionality of the e-procurement system.

15.7 In the circumstances in (ii) above, any tenderers who have already submitted bids may be given the opportunity to re-submit their bids. Where tenderers are permitted to re-submit bids, the same opportunity must be extended to all tenderers.

15.8 All tenders for an e-procurement project shall be opened immediately one after the other during one session; and:-

a) The Director shall ensure that for each e-procurement project a record showing the particulars of each tender received and the date and time when those tenders were opened shall be kept.

b) At least two officers at a level not lower than salary Grade K shall be present when the tenders for each contract are opened and a record shall be kept of the officers present.

15.9 In addition to the register of tenders kept in accordance with Standing Order 21, the Director shall establish and maintain a register, whether in electronic form or otherwise listing all of the contracts which have been entered into using electronic means and the name of the successful contractor in each case.

15.10 Acceptance of tenders for e-procurement projects shall be in accordance with Standing Order 23.

15.11 The following provisions apply to the undertaking of electronic auctions by or on behalf of Scotland Excel:-

a) For the purpose of these Standing Orders, the expression “electronic auctions” means a repetitive process involving an electronic device for the presentation of new prices, revised downwards, and/or new values concerning certain elements of tenders, which occurs after an initial full evaluation of tenders, enabling them to be ranked using automatic evaluation methods.

b) The Director may authorise the carrying out of an electronic auction where satisfied that it is in the interests of Scotland Excel or any of the Member Authorities to do so and that the electronic auction is in accordance with the EU Procurement Rules.

c) The Director may only authorise the carrying out of an electronic auction where she is satisfied that the likely benefit of an electronic auction will outweigh the costs of undertaking the electronic auction.

d) An electronic auction may only be carried out where the possibility of the use of an electronic auction has been stated in the Contract Documents issued to contractors and, where EU Procurement Rules apply, in the contract notice published in OJEU.

e) For the avoidance of doubt, an electronic auction may be used where previous stages of a tendering procedure have not been undertaken using electronic means.

f) Before proceeding with an electronic auction, the Director shall make a full initial evaluation of the tenders in accordance with the award criteria set and with the weighting fixed for them. All tenderers who have submitted admissible tenders shall be invited simultaneously by electronic means to submit new prices and/or new values.

g) At least two working days must elapse between the date on which the invitations referred to in 15.10(g) are sent and the date of the electronic auction.

h) Throughout each phase of an electronic auction Scotland Excel shall instantaneously communicate to all tenderers involved at least sufficient information to enable them to ascertain their relative rankings at any moment. Scotland Excel may also, at any time, announce the number of participants in that electronic auction. In no case, however, may Scotland Excel disclose the identities of the tenderers during any phase of an electronic auction.

i) Prior to the commencement of any electronic auction, Scotland Excel shall intimate to all tenderers involved:-

(i) All relevant information concerning individual connection to the electronic system to be used in the electronic auction.

(ii) The date and time fixed for the start of the electronic auction.

(iii) The number of phases in the electronic auction.

(iv) The mathematical formula to be used in the electronic auction to determine automatic re-ranking of tenders on the basis of the new values or new prices submitted and incorporating the weighting of all the criteria set to determine the most economically advantageous tender.

(v) Where variant bids are authorised to a separate mathematical formula for each variation.

(vi) Proposed duration of the electronic auction together with any proposals for the extension of the duration of the electronic auction.

j) Any electronic auction will be subject to such additional procedural requirements

16. Submission of In-house Tenders

16.1 Where Scotland Excel has invited one of its own in-house services to tender, the other contractors who have been invited to tender shall be advised of this fact in the Contract Documents.

17. Technical and Financial Checks

17.1 No contractor may be awarded a contract for the supply of goods, materials or services or the execution of works unless following a review of the proposed contractor, the Director of the procuring department is satisfied as to:-

a) the technical capability of the proposed contractor; and

b) in conjunction with the Director of Finance and Information Technology of Renfrewshire Council, the financial standing of the proposed contractors.

17.2 It shall not be necessary to review the financial standing of proposed contractors where:-

a) the estimated value of the contract is £100,000 or below; or

b) it has been reviewed in the preceding 12 months from the date of invitation to tender.

17.3 The Director shall keep a record showing the results of each check of the technical capacity and financial standing of proposed contractors.

18. Receipt and Custody

18.1 In relation to contracts whose value does not exceed the EU Threshold, the envelope containing the tender shall be addressed impersonally and delivered to the office of the Director as specified on the tender document concerned in whose custody it shall remain until the time arranged for its opening.

18.2 In relation to contracts whose value exceeds the EU Threshold, the envelope containing the tender shall be addressed impersonally and delivered to the office of the Clerk as specified on the tender document concerned. The tender shall remain in the custody of the Clerk until the time arranged for its opening.

18.3 This Standing Order shall also apply to the receipt and custody of tenders for sub-contracts to be performed or goods or services or materials to be supplied by nominated sub-contractors.

18.4 Standing Orders 18.1 to 18.3 above do not apply where e-procurement is used. In such circumstances Standing Order 15 shall be complied with.

19. Late Tenders

19.1 Tenders received after the closing date and time specified in the Contract Documents, or at a place other than the place specified therein, shall not be considered. Such late tenders will be returned to the tenderer with a covering letter explaining why the tender is not being considered. Such late tenders may be opened to ascertain the name of the tenderer but no details of the tender shall be disclosed.

20. Opening of Tenders

20.1 All tenders in relation to contracts where the estimated value does not exceed the EU Threshold shall be opened by the Director. Such tenders shall be opened in the presence of the Director together with one other senior member of staff of salary Grade K or over who is, at the time, not directly involved in the contract to which the tenders relate.

20.2 All tenders in relation to contracts where the estimated value exceeds the EU Threshold shall be opened by the Clerk together with a consortium staff member of a level not lower than salary Grade K who is, at the time, not directly involved in the contract to which tenders relate.

20.3 Electronic tenders of whatever value may be opened by the Director.

21. Register of Tenders

21.1 The Director shall keep and maintain a register of all tenders received and opened in terms of Standing Order 20 in respect of each contract and shall include therein the name and address of each tenderer, the value or amount of the tender and the register shall be signed by the designated officials present and by any councillor in attendance.

21.2 The register shall also list any tenders rejected or not considered and explain why those tenders were rejected or not considered.

21.3 The register shall also include a statement of the names and addresses of persons to whom tender documents were issued but who have declined or failed to submit a tender and if known stating whether the contractor declined to tender or failed to tender.

22. Checking of Tenders & Post Tender Negotiations

22.1 All tenders shall be subject to checking by the Director who shall, if required by Standing Order 23.4, prepare and submit a written report in respect of all the tenders received in a form that complies with Standing Order 24 and containing a specific recommendation as to the acceptance of the successful tender or tenders and the reasons therefor.

22.2 Between the last date and time for the receipt of tenders and the date on which a decision is taken as to which, if any, tender is to be accepted the Director may instruct members of staff or consultants to enter into post tender negotiations. Post tender negotiations shall only be used in circumstances where the Director has identified a tenderer who has submitted the best price of the most economically advantageous tender to Scotland Excel for a contract or part of a contract and where the Director is satisfied that there is scope for improvement in the offer received and that such negotiations will be in the best interests of securing value for money or improved terms and conditions for Scotland Excel. Post tender negotiations may only be used with that tenderer so identified. Post tender negotiations shall not be used to put other tenderers at a disadvantage or to distort competition.

22.3 Where it is considered possible that post tender negotiations might apply, a clear indication will be give to prospective contractors in the tender documents that post tender negotiations might be considered.

22.4 Between the last date and time for the receipt of tenders and the date on which a decision is taken as to which, if any, tender is to be accepted, the Director may instruct members of the Director's staff or consultants to contact a tenderer in respect of any contract in cases where such contact may be necessary to validate or clarify the terms of the tender or to effect any necessary adjustments but for no other purpose.

22.5 Notwithstanding the other terms of this Standing Order 22, where examination of the tenders reveals obvious errors or discrepancies which would affect the tender figures, these errors will be dealt with in the following manner:-

a) Any obvious arithmetical errors will be rectified by the appropriate officer checking the tenders and the amount of tender shall be held to be the amount so rectified and the tenderer informed in writing of the corrected amount.

b) Where there is an obvious and genuine error in rates occurring, the tenderer will be given the opportunity of either confirming that they agree to their tender being considered with the error remaining or withdrawing their tender. This procedure must be undertaken in writing. Should the tenderer decide to withdraw their tender, it will not be considered for acceptance. The tenderer must not be given the opportunity to submit an amended tender.

22.6 A full written record shall be kept by the Director of all contracts where post tender negotiations have been used and the written record will be retained with the original tender. The written record will include the justification for authorising post tender negotiations, the nature of the negotiations undertaken, the outcome of such negotiations and shall detail any additional terms agreed by Scotland Excel.

23. Acceptance

23.1 Except where the most economically advantageous tender is to be accepted, which shall be based on an evaluation by the Director of the criteria set out in the tender documents, if any award of contract is to be made, the lowest tender meeting the specification in the contract documentation shall be accepted.

23.2 A tender other than the lowest if payment is to be made by Scotland Excel or any of the Member Authorities shall not be accepted until the Executive Sub-Committee has approved a report from the Director recommending acceptance of such a tender.

23.3 In cases where the value of the contract exceeds £40,000 but does not exceed the EU Threshold, the contract shall be accepted by the Director. Where a contract is accepted in the aforementioned circumstances the Director shall report the award of the contract to the Executive Sub-Committee as soon as reasonably practicable thereafter.

23.4 In cases where the value of the contract exceeds the EU Threshold, the contract shall be accepted by either the Director or the Clerk on the authority of the Executive Sub-Committee. However, in circumstances where the Scotland Excel has undertaken work on behalf of a third party who is not a member of the Scotland Excel for contracts where the value exceeds the EU Threshold the Director may accept the contract, providing that she has obtained clear instruction and the necessary authority from the third party to do so and shall report the award of the contract to the Executive Sub Committee as soon as reasonably practicable thereafter.

23.5 In cases where the value of the contract exceeds the EU Threshold and in the opinion of the Management Group, urgency precludes obtaining the approval of the Executive Sub-Committee, the contract may be accepted by the Director on the authority of the Management Group, provided always that the acceptance of a contract in such circumstances is subject of a report to the next meeting of the Executive Sub-Committee.

23.6 Member Authorities may request Scotland Excel to undertake a tendering procedure on their behalf but may specifically request that the acceptance of the contract following on from that procedure is dealt with by the Member Authority in accordance with that Member Authority's Standing Orders relating to contracts. In such circumstances paragraph 23.1 to 23.5 do not apply to the award of that contract.

23.7 The Director shall, in relation to any contract awarded following the evaluation of criteria set out in the Contact Documents, keep a written record showing the assessment of each valid tender against those criteria. The written record shall demonstrate why the successful tender was evaluated as being the most economically advantageous.

23.8 The Director may terminate any tendering or negotiated procedure at any time up to the award of the contract where she believes that justification exists for that course of action. Where the Director does decide to terminate a tendering or negotiated procedure the Director shall write to all tenderers involved in that procedure informing them of her decision.

23.9 All tenderers shall be informed in writing of the success or otherwise of their tender as soon as is reasonably practicable after the approval of the successful tender. Except in the case of letters issued to successful tenderers by the Clerk in terms of Standing Order 23.4, the Director shall be responsible for writing to tenderers.

23.10 Where e-procurement has been used the communication with tenderers in terms of Standing Order 23.9 above will be undertaken using Scotland Excel's e-procurement system.

23.11 Where the EU Procurement Rules apply, no tender shall be accepted until the date when the mandatory standstill period in terms of those Rules has expired and the Director is satisfied that no valid challenge has been received to the contract award decision.

23.12 The mandatory standstill period is a period of at least 10 calendar days between the date of dispatch of the letters issued under Standing Order 23.9 and the date when it is proposed to enter into the contract.

23.13 The Director shall keep and maintain a register of all contracts that are not exempt from these Standing Orders and, in respect of each contract shall enter into that register, the following information:-

the name and address of the contractor;
a description of the purpose of the contract;
the duration of the contract; and
any other information relating to the contract which the Director considers to be material.

24. Content of Reports on Contracts

For all contracts requiring the approval of the Joint Committee or the Executive Sub-Committee, a report will be submitted detailing the following:-

(a) The nature of the requirements of the contract.

(b) The tendering procedures adopted.

(c) The selection and/or invitation of contractors and their responses to the invitation.

(d) A comparative digest of offers received.

(e) The recommendation on the award of the contract or contracts.

25. Nomination of Sub-Contractor

Where a contract provides for the nomination of a sub-contractor, the appointment of a nominated sub-contractor shall comply with these Standing Orders.

26. Framework Agreements

26.1 The director may invite contractors to tender to participate in a Framework Arrangement ("the Framework"). The Framework shall provide for agreement on the terms for future contracts between Scotland Excel and the contractors for the purchase by Scotland Excel of goods, services and works. The procedure for setting up a Framework shall comply with the following requirements:-

a) The contractors to participate in the Framework will be selected from those who have responded to a notice.

b) The notice shall be publishes on a website approved in terms of Standing Order 8 and in addition the notice may be published in such newspapers or journals or using such electronic means as the director considers appropriate (including publication in the Official Journal of the European Union), taking into account the estimated value of the contracts to be let under the Framework and the importance of the subject matter of the Framework to Scotland Excel.

c) The notice shall mention:-

(i) that Scotland Excel wishes to establish a Framework;

(ii) a description of the goods, service or works which are to be purchased under the Framework;

(iii) a period being not less than 14 days from the date of publication of the Notice, within which prospective participants may apply to be sent the tender documents; and

(iv) a closing date for expressions of interest to be submitted to Scotland Excel.

d) Scotland Excel shall invite at least five contractors to participate in the Framework. If fewer than five tenderers apply to participate in the Framework, all of those tenderers meeting the evaluation criteria shall be invited to participate.

e) If only two tenderers meeting the evaluation criteria have applied, the Director shall not proceed with the Framework and may choose to either publish a further Notice seeking expressions of interest or to terminate the tendering procedure.

26.2 Where a Framework has been established in accordance with Standing Order 26.1 the Director may award a contract under the Framework without being required to seek further competition amongst the contractors on the Framework.

26.3 Where the Director has set up a Framework and where the Framework permits, the Director may re-open competition amongst the contractors on the Framework by holding a mini-competition procedure. The mini-competition procedure may only be used where not all of the terms of the proposed contract are laid down in the Framework including, for example, circumstances where a new item has legitimately been added to the Framework.

26.4 Any mini-competition procedure in terms of Standing Order 26.3 shall include the following:-

a) every contractor on the Framework capable of performing the contract shall be consulted, in writing, to discover whether they wish to participate.

b) those contractors who do wish to participate shall be issued with an invitation to take part in the mini-competition asking the contractors to submit tenders within a specified time limit. The time limit fixed for the return of the bids shall take into account factors such as the complexity of the subject matter of the contract and the time needed to send in bids, but in any event shall not be less than 10 working days from the date the invitation to take part is issued.

c) each tender shall be kept confidential until the expiry of the time limit for the receipt of tenders; and

d) the award of contract shall be made to the contractor or contractors who have submitted the best tender or tenders on the basis of the award criteria specified in the contract documents based on the Framework documents.

26.5 The Director may elect to enter into contracts under an existing Framework that has been properly constituted by another local authority, by the Scottish Executive, the Office of Government Commerce or any other agency of the UK or Scottish Government. Any such contracts must be entered into in accordance with the conditions applicable to the relevant Framework.

27. Design Contests

27.1 Where the Director considers it appropriate to do so she may hold a design contest, which shall be a competitive procedure in which the Director invites the entry of plans and designs under predetermined rules under which the successful entry selected in terms of those rules is awarded a contract.

27.2 Where a design contest is to be held, a notice shall be placed on a website approved in terms of Standing Order 8.1(b) and in addition, may be placed in one or more national newspapers and also in such Trade Journals as the Director may consider necessary. The notice shall state:-

a) that a design contest is being held;

b) a description of the project;

c) the place where a prospective competitor may obtain a copy of the rules; and

d) the date not less than 14 days from the date of the publication of the notice by which the prospective competitor must initiate, in writing, their interest in being involved in the contest.

27.3 After the expiry of the period specified in the notice, invitations to tender shall be sent to at least three persons selected by the Director. If fewer than three persons have applied and are considered suitable by the appropriate Director, then invitations to tender shall be sent to all suitable persons. Where only one suitable applicant has applied the Director shall decide either to abandon the contest or to negotiate with the sole suitable applicant for the award of the contract using the negotiated procedure in contract Standing Order 13.

27.4 The prior approval of the Joint Committee or the Executive Sub-Committee is required before a design contest in terms of this Standing Order is commenced.

27.5 For the purposes of these Standing Orders a design contest means a competition in which Scotland Excel:-

a) invites the entry of plans and designs;

b) establishes rules for the competition under which the plans or designs will be judged by a jury;

c) may award prizes; and

d) is enabled to acquire the use or ownership of plans or designs selected by the jury.

28. Competitive Dialogue Procedure

28.1 The Director may choose to use the competitive dialogue procedure where, in her view, the other procedures in these Standing Orders are not appropriate to a contact and the contract is particularly complex.

28.2 The use of the competitive dialogue procedure would normally be appropriate only in circumstances where Scotland Excel or any of the Member Authorities has a requirement but does not know, in advance, what is the best technical, legal or financial solution for meeting that requirement.

28.3 Where the Director elects to use the competitive dialogue procedure she will follow the rules for such a procedure set out in the EU Procurement Rules.

29. Specification of Standards

Where there is a recognised British, European or International Standard applicable to any contract which is current at the date of tender, the Contract Documents shall require that the goods, materials or services to be used or supplied and all workmanship shall at least meet the requirement of that standard.

30. Assignation, Sub-Contracting, Termination and Variation

30.1 In every contract, there shall be included a provision whereby the contractor shall be prohibited from transferring or assigning to any person or persons whatever, any portion of the contract without the prior written consent of Scotland Excel. The Director shall have the power to consent on behalf of Scotland Excel to the assignation of a contract.

30.2 The sub-contracting of any part of a contract except to the extent permitted in writing by the appropriate Director shall be prohibited.

30.3 The Director may exercise any power on behalf of Scotland Excel to terminate any contract or part of a contract or to terminate Scotland Excel's participation in a Framework Agreement or to agree to vary or amend the terms of any contract but only following consultation with the Clerk and subject to the Director and the Clerk being satisfied that it is reasonable and in the interest of Scotland Excel to exercise that power.

31. Liquidated and Ascertained Damages

Where the Director deems it to be appropriate following consideration of the risks involved, the Director shall ensure that the contract provides for liquidated and ascertained damages. The amount to be specified in each such contract shall be determined by the Director.

32. Prevention of Collusion and Corrupt or Illegal Practices

In every written contract a clause shall be inserted to secure that Scotland Excel shall be entitled to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation if the contractor or the contractor's representative (whether with or without the knowledge of the contractor), shall have practised collusion in tendering for the contract or any other contract with Scotland Excel or any Member Authority or shall have employed any corrupt or illegal practices either in the obtaining or performance of the contract or any other contract with Scotland Excel or any Member Authority.

33. Health and Safety

No contract to which these Standing Orders apply will be accepted unless the contractor satisfies Scotland Excel that the contractor is operating health and safety policies which conform with current government legislation.

34. Schedule of Rates Contract

34.1 In every works contract which is a schedule of rates contract, the Director shall, prior to invitations to tender being issued, fix an indicative total value for the contract. The indicative total value shall be set out in any report to the Executive Sub-Committee concerning the contract in question.

34.2 Where it becomes apparent to the Director that the indicative total value is likely to be exceeded the Director shall ensure that a report on the matter is submitted to the next meeting of the Executive Sub-Committee. Where a contract has not been advertised under the EU Procurement Rules and the increase in the value of the contract is such that the EU Threshold is likely to be exceeded, no further orders shall be made under the contract.

34.3 The Director shall ensure that a condition is inserted in any such contract to the effect that the indicative total value of the contract cannot be exceeded without the approval of Scotland Excel.

35. Sustainable Development

35.1 When considering entering into any contract the Director must take into account the social, economic and environmental impacts of the proposed contract and whether the contract will contribute to the achievement of sustainable development.

35.2 In the context of these Standing Orders “sustainable development” shall be taken to mean development which secures a balance of social economic, health and environmental well-being in the impact of activities and decisions, and which seeks to meet the needs of the present without compromising the ability of future generation to meet their own needs.

36. Consultants

36.1 It shall be a condition of the engagement of the services of any consultant that:-

a) they shall comply with these Contract Standing Orders as though they were officers of Scotland Excel.

b) that at any time during the performance of the contract the consultant shall, on a request by the Director produce all records maintained by them in relation to the contract and on completion of the contract transmit all such records to the Director, if so required.

36.2 All contracts for consultancy services must set out clear output targets for performance by the consultant under the contract.

37. Records and Registers

37.1 Where these Standing Orders require that records or registers are kept, the Director shall obtain the approval of the Executive Sub-Committee prior to making arrangements for the disposal of any such records or registers.

37.2 The Register of Tenders kept in accordance with Standing Order 21 is to be regarded as a permanent record of Scotland Excel and is not to be destroyed or disposed of.