

**To:** Glasgow and the Clyde Valley Strategic Development Planning Authority Joint Committee

**On:** 11 September 2017

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**Report by:** The Clerk to the Joint Committee

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**Heading:** The Review of Standing Orders Relating to Contracts

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## 1. Summary

- 1.1 The purpose of this report is to seek approval for the existing Standing Orders Relating to Contracts to be revoked and replaced by the revised Standing Orders Relating to Contracts forming the Appendix to this report.
  - 1.2 The revised Standing Orders have been developed following a detailed review in light of the Public Contracts (Scotland) Regulations 2015; the Procurement (Scotland) Regulations 2016; the Concession Contracts (Scotland) Regulations 2016; and statutory guidance made under and in terms of the Procurement Reform (Scotland) Act 2014.
  - 1.3 Some of the key changes to the Standing Orders Relating to Contracts are:
    - The standing orders have been changed to reflect the requirements of the new legislation, to reflect best practice and to address the Joint Committee's past and likely future contract requirements.
    - The full range of procedures available under the new legislation has been included.
    - Rules applying to contracts for social care (and certain other specific services) have been developed.
    - Some re-ordering and clarifications have been made.
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## 2. Recommendations

2.1 The Joint Committee is recommended to:

- a) Revoke the existing Standing Orders Relating to Contracts;
  - b) Approve the revised Standing Orders Relating to Contracts attached as the Appendix to this report; and
  - c) Agree that the revocation of the existing Standing Orders and approval of the revised Standing Orders shall take effect on the first working day following this meeting of the Joint Committee.
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## 3. Background

3.1 The Glasgow and the Clyde Valley Strategic Development Planning Authority Joint Committee is required to have Standing Orders Relating to Contracts in terms of section 81 of the Local Government (Scotland) Act 1973.

3.2 It has been noted in the course of a routine audit that there was a need to review the Standing Orders Relating to Contracts in light of recent legislation and guidance, including the Public Contracts (Scotland) Regulations 2015; the Procurement (Scotland) Regulations 2016; the Concession Contracts (Scotland) Regulations 2016; and statutory guidance made under and in terms of the Procurement Reform (Scotland) Act 2014.

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## Implications of the Report

- 1. **Financial** – none.
- 2. **HR & Organisational Development** – none.
- 3. **Community Planning** – none.
- 4. **Legal** - to reflect best practice and to address the Joint Committee's past and likely future contract requirements.
- 5. **Property/Assets** – none.
- 6. **Information Technology** – none.
- 7. **Equality & Human Rights** - The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report. If required following implementation,

the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website.

8. **Health & Safety** – none.
9. **Procurement** – none.
10. **Risk** – none.
11. **Privacy Impact** – none.
12. **Cosla Policy Position** – not applicable.

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### **List of Background Papers**

None

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**Glasgow and the Clyde Valley**  
**Strategic Development Planning**  
**Authority Joint Committee**

**Standing Orders Relating to**  
**Contracts 2017**

# **Index**

1. Introduction
2. Interpretation
3. Suspension, Variation and Revocation of Standing Orders
4. Financial Provision
5. Equalities and Prevention of Discrimination
6. Form of Contract
7. Valuing the Contract
8. General Powers and Duties of the Strategic Development Plan Manager
9. Exemptions and Special Arrangements
10. Publicity for Tenders and Contracts
11. Procedures
12. Restricted Procedure
13. Open Procedure
14. Negotiated Procedure without Prior Publication of a Notice
15. Competitive Procedure with Negotiation
16. Competitive Dialogue Procedure
17. Innovation Partnerships
18. Quick Quotes
19. Extensions to Existing Contracts
20. E-Procurement
21. Opening of Tenders

22. Electronic Auctions
23. Submission of In-house Tenders
24. Technical and Financial Checks
25. Checking of Tenders and Post Tender Negotiations
26. Acceptance and Giving Reasons for Decisions
27. Content of Reports on Contracts
28. Nomination of a Sub-Contractor
29. Framework Agreements
30. Dynamic Purchasing Systems
31. Concessions
32. Design Contests
33. Specification of Standards
34. Assignment, Sub-Contracting, Termination and Modification
35. Liquidated and Ascertained Damages
36. Prevention of Corruption and Corrupt or Illegal Practices
37. Health and Safety
38. Schedule of Rates Contracts
39. Sustainable Procurement
40. Consultants
41. Records and Registers

# **Glasgow and the Clyde Valley Strategic Development Planning Authority Joint Committee**

## **Standing Orders Relating to Contracts**

### **1. Introduction**

1.1 Glasgow and the Clyde Valley Strategic Development Planning Authority Joint Committee (“the Joint Committee”) is a Strategic Development Plan Authority in terms of The Strategic Development Planning Authority Designation (No. 1) (Scotland) Order 2008) appointed by East Dunbartonshire, East Renfrewshire, City of Glasgow, Inverclyde, North Lanarkshire, Renfrewshire, South Lanarkshire, and West Dunbartonshire Councils to exercise certain of their functions with regard to the Clyde Valley Strategic Development Planning Authority area, more particularly set out in a Minute of Agreement between the said eight Councils dated 1<sup>st</sup>, 8<sup>th</sup> and 17<sup>th</sup> August 2013 and 11<sup>th</sup> and 21<sup>st</sup> February, 17<sup>th</sup> March and 16<sup>th</sup> and 20<sup>th</sup> July all 2014. In terms of Clauses 2.6 and 2.72 of the said Agreement the Joint Committee was given the power to regulate its own procedures including the adoption of Standing Orders with respect to contracts.

1.2 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 the Joint Committee. The standing orders are subject to any overriding requirements of:-

- a EU Directive 2014/24/EU on public procurement; EU Directive 2014/23/EU on the award of concession contracts; and any Scottish legislation implementing these Directives (the “EU Procurement Rules”);
- b the Procurement Reform (Scotland) Act 2014 and all regulations and guidance made under and in terms of that Act (the “Procurement Reform Rules”); and
- c the relevant provisions of the Treaty on the Functioning of the European Union particularly the principles of equal treatment, non discrimination and transparency (“the Treaty Principles”).

1.3 All contracts let by or on behalf of the Joint Committee, regardless of whether any such contracts are otherwise exempt 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 “the Clerk” means the Head of Corporate Governance of Renfrewshire Council or his nominee;
  - e “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 ESPD , the invitation to tender for or to negotiate a contract, the proposed conditions of contract, the specifications or the descriptions of the goods, services or works required by the Joint Committee and any Bills of Quantities and includes any such documents or their equivalents issued using electronic means;
  - f “Health or Social Care Services” means any of the services listed in the Schedule to the Procurement (Scotland) Regulations 2016;
  - g “ESPD” means the European Single Procurement Document;
  - h “the EU Procurement Rules” is defined in standing order 1.2 a);
  - i “Member Authority” means any local authority which is a member of the Joint Committee;
  - j “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 as set out in the aforesaid Minute of Agreement and shall, where the context permits, to include Committees and Sub-Committees of the Joint Committee.

- k “Regulated Contract” means a public contract (other than a public works contract) with an estimated value equal to or greater than £50,000; or a public works contract with an estimated value equal to or greater than £2,000,000 unless the public contract or public works contract is an excluded contract under the Procurement Reform Rules;
  - l “Regulated Procurement” means (i) any procedure carried out by the Joint Committee in relation to the award of a Regulated Contract including, in particular, the seeking of offers in relation to the contract and the selection of suppliers; and (ii) the award of a Regulated Contract by the Joint Committee;
  - m “Social and Other Specific Services” means the services listed in Schedule 3 of the Public (Contracts) Regulations 2015;
  - n “Sustainable Procurement Duty” means the duty of that name under the Procurement Reform Rules;
  - o “the Threshold” for the purpose of these standing orders refers to the threshold under Article 4 (c) of Directive 2014/24/EU (the threshold for public supply and service contracts awarded by sub-central contracting authorities). The sterling equivalent is currently £164,176, but is changed every second year on 1 January of that year. The next change is due on 1 January 2018;
  - p “the Strategic Development Plan Manager” means the officer appointed by the Joint Committee to have overall responsibility for the operational performance of the Joint Committee or his nominee;
  - q Any reference to a statute, other legislation or European Directive shall include reference to any statute, legislation or Directive amending or replacing it;
  - r 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 of Standing Orders**

- 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 Joint Committee in respect of any procurement exercise or contract on receiving a joint recommendation from the Strategic Development Plan Manager and the Clerk that there are special circumstances justifying such suspension and that it is in the interests and within the powers of the Joint Committee 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 E.U. 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 Strategic Development Plan Manager will require to be satisfied that:-
  - a in the case of periodic call off 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 standing order 4.1(b) above, confirmation of such approval will be required to be obtained by the Strategic Development Plan Manager in advance from the individual authority.

#### **5. Equalities and Prevention of Discrimination**

- 5.1 Tenderers must be asked to produce their equal opportunities policies before they may be shortlisted or recommended for an award of contract.
- 5.2 Before entering into a contract, the Strategic Development Plan Manager 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 under the Equality Act 2010 and all previous legislation, regulations and statutory guidance relating to equality.

- 5.3 All contracts entered into by or on behalf of the Joint Committee shall contain a condition obliging the contractor to comply with all duties arising from the Equality Act 2010.

## **6. Form of Contract**

- 6.1 Except in circumstances where the Strategic Development Plan Manager and the Clerk agree otherwise, every contract shall be:
- a in the name of Renfrewshire Council as servicing and contracting authority for the Joint Committee;
  - b in writing;
  - c signed by the Strategic Development Plan Manager 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 Strategic Development Plan Manager. The Strategic Development Plan Manager may also make use of Contract Documents prepared by the Scottish Government; the Crown Commercial Service, or any other agency of the UK government; Scotland Excel and all other Scottish Centres of Procurement Expertise; local authorities; and other collaborative bodies where the Joint Committee is eligible to use these Contract Documents and is permitted by those bodies to do so. It is the Strategic Development Plan Manager's responsibility to ensure that the Joint Committee is eligible to use the Contract Documents and that these are suitable for the contract.
- 6.3 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 the Joint Committee. This is to ensure that contractors are aware that the Joint Committee or any of the Member Authorities may be required, as a matter of law, to release information to third parties that the contractor may wish to be treated as confidential.

## **7. Valuing the Contract**

- 7.1 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 Strategic Development Plan Manager 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.

- 7.2 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.
- 7.3 For the avoidance of doubt, the values stated are exclusive of any Value Added Tax that may be levied.

## **8. General Powers and Duties of the Strategic Development Plan Manager**

- 8.1 The Strategic Development Plan Manager may delegate by prior notice in writing any of his rights or obligations under these standing orders to the Clerk, the Treasurer or any Director of Renfrewshire Council as servicing and contracting authority.
- 8.2 The Strategic Development Plan Manager 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 the Joint Committee. Any such guidance notes once approved shall form part of these standing orders and shall be complied with.
- 8.3 Where a contract is subject to the EU Procurement Rules, the Strategic Development Plan Manager shall ensure that consideration is given to whether the contract should be divided into lots. Where it is decided not to divide the contract into lots, the main reasons for that decision shall be indicated in the Contract Documents.
- 8.4 For every contract, the Strategic Development Plan Manager shall ensure that consideration is given to whether community benefit requirements should be included in accordance with the Procurement Reform Rules and current policy of the Joint Committee.

## **9. Exemptions and Special Arrangements**

- 9.1 Subject to standing order 1, there shall be exempted from the provisions of these standing orders any contract where:-
  - a the Joint Committee is satisfied that there are special circumstances justifying exempting the contract from standing orders or any part of them.

- b The total estimated value of the proposed contract is less than £50,000. Where the total estimated value of a proposed contract falls below £50,000 the contract shall be let in accordance with any Guidance on Contracts With a Value of Less Than £50,000, published under standing order 8.2.
- c In the opinion of the Strategic Development Plan Manager, 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 Joint Committee at the first available subsequent meeting detailing both the circumstances justifying use of this exemption and the action taken. For the avoidance of doubt, when using this exemption, the Strategic Development Plan Manager shall ensure that any relevant requirements of the Treaty Principles, the EU Procurement Rules and the Procurement Reform Rules are complied with.
- d Tenders are to be invited on behalf of any consortium, or similar body, of which the Joint Committee 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 the Joint Committee to a consortium or similar body in respect of any one contract is in excess of the exemption limit in standing order 9.1 b 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 Joint Committee.
- e Notwithstanding standing order 19, 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 Strategic Development Plan Manager 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 Joint Committee.
- f It is a contract of employment. However, this exemption does not apply to contracts with employment agencies for the supply of staff.
- g The contract relates to the transfer, acquisition or disposal of an interest in heritable property including a licence to occupy or use heritable property.
- h The contract relates to the appointment of legal counsel and solicitors to act as the Joint Committee's Edinburgh agents. However any such contract must be let in accordance with any relevant requirements of the Procurement Reform Rules

- i In the Strategic Development Plan Manager's opinion it is essential that the contract is entered into for the settlement of any claim or litigation raised by or against the Joint Committee; such matter to be reported in the next meeting of the Joint Committee.
- j 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 the Joint Committee is subject to such conditions that make it impractical for the Joint Committee to comply with these standing orders in letting the contract. However, in such circumstances, any relevant requirements of the Treaty Principles, the EU Procurement Rules and the Procurement Reform Rules shall be complied with the Strategic Development Plan Manager shall submit a report to the Joint Committee in advance of the contract award explaining the procedure to be used and why these standing orders could not be complied with.
- k The contract is for the commissioning of theatrical, musical, dramatic or other artistic performances.
- l The contract is for the disposal by the Joint Committee of surplus or scrap materials and equipment previously used by the Joint Committee or any Member Authority.
- m The contract is in respect of purchases made on the Joint Committee's behalf by Scotland Excel, in which case Scotland Excel's Standing Orders relating to Contracts shall apply.
- n Where the contract is awarded under an existing Framework Contract or Arrangement to which the Joint Committee is a party or which has been established by the Joint Committee and where the Framework Contract or Arrangement has been established in conformity with these standing orders or the EU Procurement Rules, whichever is appropriate, provided that where the value of the contract so placed exceeds £50,000 the Strategic Development Plan Manager shall, as soon as reasonably practical thereafter provide a report to the Joint Committee detailing the name of the contractor to whom the contract has been awarded and the value of that contract.
- o The Strategic Development Plan Manager has elected to let the contract in accordance with the Standing Orders Relating to Contracts of a Member Authority.

9.2 These standing orders apply to contracts for Social and other Specific Services and contracts for Health or Social Care Services unless varied by the special arrangements set out in Schedule 1.

## **10. Publicity for Tenders and Contracts**

10.1 The Joint Committee 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 the Joint Committee 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 £50,000 or more and to contracts for works with a value of £500,000 or more.
- b Contracts to which standing order 10.1 a applies shall be advertised using the Public Contracts Scotland website..
- c In addition to advertising on the Public Contracts Scotland website, the Strategic Development Plan Manager may choose to advertise the contract in any other way such as in trade journals or newspapers.
- d The Strategic Development Plan Manager shall ensure that the Joint Committee's own website contains links to the Public Contracts Scotland website.

10.2 This standing order does not apply where an exemption under standing order 9 applies; or use can be made of the Negotiated Procedure without Publication of a Notice under standing order 14; or the contract is for Social Care and other Specific Services or for Health or Social Care Services and one to which Schedule 1 applies.

## **11. Procedures**

11.1 Where the estimated value of any contract is likely to equal or exceed the thresholds for the application of the EU Procurement Rules, the Strategic Development Plan Manager 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 Strategic Development Plan Manager in determining whether the EU Procurement Rules apply to the contract and ensuring that the various requirements of the EU Procurement Rules are followed.



- 11.2 Where it is established that the EU Procurement Rules apply to any contract, the Strategic Development Plan Manager 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 these standing orders may only be used where the Joint Committee is not required to use the equivalent procedures in the EU Procurement Rules.
- 11.3 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 these standing orders.
- 11.4 The procedure to be used and the reasons for selecting that procedure shall be recorded by the Strategic Development Plan Manager..
- 11.5 The ESPD shall be used in all procedures.

## **12. Restricted Procedure**

- 12.1 The Strategic Development Plan Manager may approve the use of the restricted procedure which shall be conducted in accordance with this standing order.
- 12.2 Where the Strategic Development Plan Manager approves the use of the restricted procedure, he shall issue a notice on the Public Contracts Scotland website. In addition the Strategic Development Plan Manager may also publicise the contract more widely.
- 12.3 The notice must contain the same information as would be required under the EU Procurement Rules..
- 12.4 All applicants responding to the notice issued in terms of standing order 10 shall be required to provide a completed ESPD by the date and time specified in the notice. This date and time shall be determined by the Strategic Development Plan Manager taking into account factors such as the complexity of the subject matter of the contract and the time needed to prepare the ESPD.
- 12.5 At the same time as a notice is issued in terms of standing order 12.2 the Strategic Development Plan Manager shall make the Contract Documents available electronically.
- 12.6 No contractor may be invited to tender unless they have successfully complied with the technical and financial checks in standing order 24 and have met the criteria to be invited to tender set out in the notice and Contract Documents.

- 12.7 The Strategic Development Plan Manager must select a sufficient number of applicants to be invited to tender. To ensure genuine competition the number of applicants selected shall not be fewer than five. However, in any circumstances where fewer than five applicants express an interest, all those applicants meeting the minimum selection criteria, must be invited to tender.
- 12.8 The Strategic Development Plan Manager shall send invitations to tender simultaneously to each contractor selected to tender for a contract and the invitation to tender shall be accompanied by a link to the Contract Documents which shall have been made available under standing order 12.5.
- 12.9 The invitation to tender shall also include the final date and time for the receipt of tenders by the Joint Committee and the criteria to be used in evaluating the tenders.

### **13. Open Procedure**

- 13.1 The Strategic Development Plan Manager may approve the use of the open procedure which shall be conducted in accordance with this standing order.
- 13.2 Where the Strategic Development Plan Manager approves the use of the open procedure, the Strategic Development Plan Manager shall issue a notice on the Public Contracts Scotland website. In addition, the Strategic Development Plan Manager may choose to publicise the contract more widely.
- 13.3 The notice must contain the same information as would be required under the EU Procurement Rules..
- 13.4 The date and time stated in the notice by which tenders must be received must be no sooner than 5 working days from the date the notice is published.
- 13.5 At the same time as the notice is issued in terms of standing order 13.2, the Strategic Development Plan Manager shall make the relevant Contract Documents available electronically.

### **14. Negotiated Procedure without Prior Publication of a Notice**

- 14.1 The negotiated procedure without prior publication of a notice is only available in very limited circumstances. Where it is used, a record including a full explanation as to why the Strategic Development Plan Manager considered it appropriate shall be retained.
- 14.2 Where the EU Procurement Rules do not apply, the negotiated procedure without prior publication of a notice may only be used in the circumstances stated in the Procurement Reform Rules (Regulation 6 of the Procurement (Scotland) Regulations 2016).:-

- 14.3 Where the EU Procurement Rules apply, the negotiated procedure without prior publication of a notice may only be used on any ground specified in those Rules.
- 14.4 For the purposes of these standing orders the negotiated procedure without prior publication of a notice means 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 with that contractor.
- 14.5 Where the negotiated procedure without prior publication of a notice has been used and the estimated value of the proposed contract is £50,000 or more but does not exceed the Threshold, the contract shall be awarded by the Strategic Development Plan Manager.
- 14.6 Where the negotiated procedure without prior publication of a notice has been used and the estimated value of the proposed contract exceeds the Threshold, the contract shall be awarded by either the Strategic Development Plan Manager or the Clerk on the prior authority of the Joint Committee.
- 14.7 In all cases where negotiated procedure without prior publication of a notice is 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 Strategic Development Plan Manager.
- 14.8 A minimum of two officers, one of whom to be of at least salary grade GRN, must be present at all times during any discussions with prospective contractors.
- 14.9 The Strategic Development Plan Manager must ensure that records of all discussions with prospective contractors are signed as such by all participants.
- 14.10 The Treaty Principles will be observed at all times during the negotiations.

## **15. Competitive Procedure with Negotiation**

- 15.1 The Strategic Development Plan Manager may choose to use the competitive procedure with negotiation where, in the Strategic Development Plan Manager's view, the restricted and open procedures in these standing orders are not appropriate for a contract.
- 15.2 The competitive procedure with negotiation may only be used on one of the following grounds:
- a Where the needs of the Joint Committee cannot be met without adaptation of readily available solutions;
  - b Where the contract includes design or innovative solutions;

- c Where the requirement is complex in nature, in its legal and financial make-up or because of its risks;
  - d Where the technical specifications cannot be established with sufficient precision; or
  - e Where unacceptable or irregular tenders have been received following a restricted or open procedure.
- 15.3 The Strategic Development Plan Manager shall ensure that the justification for use of the competitive procedure with negotiation is recorded.
- 15.4 Where the Strategic Development Plan Manager elects to use the competitive procedure with negotiation, the rules for such a procedure set out in the EU Procurement Rules shall be followed. However, where the EU Procurement Rules would not otherwise apply to the contract, the Strategic Development Plan Manager shall determine the timescales that are to apply to the procedure taking into account factors such as the complexity of the subject matter of the contract.
- 15.5 In all cases where the competitive procedure with negotiation is used, a full written record of all contacts, discussions and communications with tenderers shall be kept by the Strategic Development Plan Manager.
- 15.6 A minimum of two officers, one of whom to be of at least salary grade GRN, must be present at all times during any discussions with tenderers.
- 15.7 The Strategic Development Plan Manager must ensure that records of all discussions with tenderers are signed as such by all participants.
- 15.8 The Treaty Principles will be observed at all times during the negotiations.

## **16. Competitive Dialogue Procedure**

- 16.1 The Strategic Development Plan Manager may choose to use the competitive dialogue procedure where, in the Strategic Development Plan Manager's view, the restricted and open procedures in these standing orders are not appropriate for a contract.
- 16.2 The competitive dialogue procedure may only be used on one of the grounds set out in standing order 15.2.
- 16.3 The Strategic Development Plan Manager shall ensure that the justification for use of the competitive dialogue procedure with is recorded
- 16.4 Where the Strategic Development Plan Manager elects to use the competitive dialogue procedure, the rules for such a procedure set out in the EU

Procurement Rules shall be followed. However, where the EU Procurement Rules would not otherwise apply to the contract, the Strategic Development Plan Manager shall determine the timescales that are to apply to the procedure taking into account factors such as the complexity of the subject matter of the contract.

- 16.5 In all cases where the competitive dialogue procedure is used, a full written record of all contacts, discussions and communications with tenderers shall be kept by the Strategic Development Plan Manager.
- 16.6 A minimum of two officers, one of whom to be of at least salary grade GRN, must be present at all times during any discussions with tenderers.
- 16.7 The Strategic Development Plan Manager must ensure that records of all discussions with tenderers are signed as such by all participants.
- 16.8 The Treaty Principles will be observed at all times during the competitive dialogue.

## **17. Innovation Partnerships**

- 17.1 The Strategic Development Plan Manager may choose to use the innovation partnership procedure where, in the Strategic Development Plan Manager's view, there is a need for innovative works, products or service which cannot be met by solutions already available on the market.
- 17.2 The aim of the innovation partnership will be the development of the required innovative works, products, or services and the subsequent purchase of the resulting works, supplies, or services.
- 17.3 The estimated value of the works, supplies or services must not be disproportionate in relation to the investment required for their development.
- 17.4 Where the Strategic Development Plan Manager elects to use the innovation partnership procedure, the rules for such a procedure set out in the EU Procurement Rules shall be followed. However, where the EU Procurement Rules would not otherwise apply to the contract, the Strategic Development Plan Manager shall determine the timescales that are to apply to the procedure taking into account factors such as the complexity of the subject matter of the contract.

## **18. Quick Quotes**

- 18.1 Where a contract is for works, and the estimated value is below the Threshold, the Strategic Development Plan Manager may elect to use the quick quote procedure.

## **19. Extensions to Existing Contracts**

- 19.1 Where the Strategic Development Plan Manager considers that an existing contract should be extended and the option to extend is given to the Joint Committee in terms of the contract, the Strategic Development Plan Manager may authorise the exercise of that option on behalf of the Joint Committee provided that the value stated in the report under which approval to award the contract was granted was the estimated total value of the entire contract including any period of extension.
- 19.2 Where the contract does not make provision for extension, the Strategic Development Plan Manager shall not extend that contract. However, a new contract may be entered into if the use of the negotiated procedure without publication of a notice can be justified in terms of these standing orders in which case the procedure in standing order 14 shall be followed.
- 19.3 For the purposes of standing orders 19.1 and 19.2 an extension of a contract includes the option to increase the amount of supplies, services or works as well as the option to increase the duration of the contract.
- 19.4 Where in terms of standing orders 19.1 and 19.2 the contract does not make provision for extension 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 Threshold.

## **20. E-Procurement**

- 20.1 This standing order shall apply to any tendering procedure or contract entered into using electronic means.
- 20.2 Unless, in exceptional circumstances, the Strategic Development Plan Manager as agreed otherwise, all tendering exercises shall be conducted using electronic means ("e-procurement").
- 20.3 The Strategic Development Plan Manager 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. Any such requirements must be stated in the Contract Documents.
- 20.4 No tender submitted using electronic means will be considered unless it is received in the format requested and prior to the deadline for the receipt of tenders, as stated in the Contract Documents and is submitted via the Joint Committee approved electronic tendering system.

- 20.5 The Strategic Development Plan Manager 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.
- 20.6 The Strategic Development Plan Manager 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.
- 20.7 The Strategic Development Plan Manager shall ensure that for each procurement exercise the system used shall keep and, if required, produce a record showing the time and date of receipt of all tenders received.
- 20.8 The system used must not allow late tenders or tenders sent to the wrong address to be received.
- 20.9 Late Tenders must be clearly identified as such by the system and shall be recorded as rejected on the system with the tenderer being notified to this effect.
- 20.10 Any questions as to whether a tender is late shall be determined by the Strategic Development Plan Manager.
- 20.11 The Strategic Development Plan Manager shall extend the deadline for submission of tenders:
- (i) Where additional relevant information, although requested by a potential tenderer in good time, is not supplied at least six days before the deadline; or
  - (ii) Where significant changes are made to the Contract Documents.
- 20.12 The Strategic Development Plan Manager may also elect to extend the deadline for submission of tenders where it is considered appropriate to do so.
- 20.13 Where the deadline for submission of tenders is extended by the Strategic Development Plan Manager in terms of standing orders 20.11 or 20.12, the Strategic Development Plan Manager shall notify all potential tenderers of the extension and any tenderers who have already submitted tenders shall be given the opportunity to re-submit their tenders.
- 20.14 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.

## **21. Opening of Tenders**

- 21.1 All tenders for a procurement exercise shall be opened immediately one after the other during one session.
- 21.2 A minimum of two officers at a level not lower than salary grade GRN shall be present when the tenders for each contract are opened and a record shall be kept of the officers present.
- 21.3 The Strategic Development Plan Manager shall keep a record showing the particulars of each tender received; the date and time the tenders were opened; and who was present when the tenders were opened. The officers present shall complete and sign the record to show who opened the tenders and who witnessed the process.

## **22. Electronic Auctions**

- 22.1 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 the tenders, enabling them to be ranked using automatic evaluation methods.
- 22.2 The Strategic Development Plan Manager may authorise the carrying out of an electronic auction where satisfied that it is in the interests of the Joint Committee or any of the Member Authorities to do so and that the electronic auction is in accordance with the EU Procurement Rules.
- 22.3 The Strategic Development Plan Manager may only authorise the carrying out of an electronic auction where he is satisfied that the likely benefit of an electronic auction will outweigh the costs of undertaking the electronic auction.
- 22.4 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 the EU Procurement Rules apply, in the contract notice published in OJEU.
- 22.5 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.
- 22.6 Before proceeding with an electronic auction, the Strategic Development Plan Manager 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.



- 22.7 At least two working days must elapse between the date on which the invitations referred to in standing order 22.6 are sent and the date of the electronic auction.
- 22.8 Throughout each phase of an electronic auction the Joint Committee shall instantaneously communicate to all tenderers involved at least sufficient information to enable them to ascertain their relative rankings at any moment. The Joint Committee may also, at any time, announce the number of participants in that electronic auction. In no case, however, may the Joint Committee disclose the identities of the tenderers during any phase of an electronic auction.
- 22.9 Prior to the commencement of any electronic auction, the Joint Committee shall intimate to all tenderers involved the date and time fixed for the carrying out of the electronic auction and the proposed duration of the electronic auction together with any proposals for the extension of its duration.
- 22.10 Any electronic auction will be subject to such additional procedural requirements as the Strategic Development Plan Manager considers necessary.

### **23. Submission of In-house Tenders**

- 23.1 Where the Joint Committee 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.

### **24. Technical and Financial Checks**

- 24.1 No tenderer 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 Strategic Development Plan Manager 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 Resources of Renfrewshire Council, the financial standing of the proposed contractor.
- 24.2 The financial standing of proposed contractors shall be assessed using the most up to date Financial Appraisal Guidelines approved by the Director of Finance and Resources.
- 24.3 It shall not be necessary to review the financial standing of proposed contractors where:-
- a the Strategic Development Plan Manager has ascertained that the estimated aggregate value of the contract and all other current contracts

between the Joint Committee and the proposed contractor is £100,000 or below; or

- b it has been reviewed in the preceding 12 months from the date of invitation to tender.
- 24.4 Assessment of a tenderer's technical capacity shall include a determination by the Strategic Development Plan Manager as to whether:
  - a the tenderer meets the selection criteria; and
  - b any exclusion grounds under the Procurement Reform Rules, or where appropriate the EU Procurement Rules, apply to the tenderer.
- 24.5 The assessment under standing order 24.4 shall be based initially on the ESPD submitted by the tenderer but, at any moment during the procedure, the Strategic Development Plan Manager may require the tenderer to submit all or any of the supporting documents where the Strategic Development Plan Manager considers this is necessary to ensure the proper conduct of the procedure.
- 24.6 Where a procedure requires a shortlist of participants to be prepared, before a participant may be included on the shortlist the Strategic Development Plan Manager shall:-
  - a verify that the participant whom he intends to shortlist meets all relevant criteria; and
  - b require the participant to submit such means of proof and supporting documents that the Strategic Development Plan Manager considers to be necessary.
- 24.7 Before preparing any report to seek approval to award a contract, except a contract which is a direct award under a framework, the Strategic Development Plan Manager shall:-
  - a verify that the participant who is the proposed contractor meets all relevant criteria; and
  - b require the participant who is the proposed contractor to submit such means of proof and supporting documents that the Director considers to be necessary.
- 24.8 Where the Strategic Development Plan Manager is unable to verify that a participant meets all the relevant criteria, or where a participant fails to submit such means of proof as required by the Strategic Development Plan Manager in

terms of this standing order, the participant shall be excluded from the procedure.

- 24.9 The Strategic Development Plan Manager shall keep a record showing the results of each check of the technical capacity and financial standing of proposed contractors.

## **25. Checking of Tenders & Post Tender Negotiations**

- 25.1 All tenders shall be subject to checking by the Strategic Development Plan Manager who shall, if required by standing order 26.4, prepare and submit a written report in respect of all the tenders received in a form that complies with standing order 27 and containing a specific recommendation as to the acceptance of the successful tender or tenders and the reasons therefor.
- 25.2 Where the Strategic Development Plan Manager considers that a tender may be abnormally low, the procedures in the EU Procurement Rules shall be followed.
- 25.3 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 Strategic Development Plan Manager may instruct members of staff or consultants to enter into post tender negotiations. Post tender negotiations shall only be used in circumstances where the Strategic Development Plan Manager has identified a tenderer who has submitted the best price or the most economically advantageous tender to the Joint Committee for a contract or part of a contract and where the Strategic Development Plan Manager 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 the Joint Committee. Post tender negotiations may only be used with that tenderer so identified. The post tender negotiations shall not be used to put other tenderers at a disadvantage or to distort competition.
- 25.4 Where it is considered possible that post tender negotiations might apply, a clear indication will be given to prospective contractors in the tender documents that post tender negotiations might be considered.
- 25.5 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 Strategic Development Plan Manager may instruct members of the Strategic Development Plan Manager'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.

- 25.6 Notwithstanding the other terms of this standing order 25, 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.
- 25.7 A full written record shall be kept by the Strategic Development Plan Manager 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 the Joint Committee.

## **26. Acceptance and Giving Reasons for Decisions**

- 26.1 Where the Joint Committee wishes to award a contract following a procurement exercise involving more than one tenderer, the Joint Committee shall award the contract to the tenderer that has submitted the most economically advantageous tender based on an evaluation by the Strategic Development Plan Manager of the criteria set out in the tender documents.
- 26.2 The Strategic Development Plan Manager shall, in relation to any contract awarded following the evaluation of criteria set out in the Contract 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.
- 26.3 In cases where the value of the contract exceeds £50,000 but does not exceed the EU Threshold, the successful tender shall be accepted by the Strategic Development Plan Manager.
- 26.4 In cases where the value of the contract exceeds the EU Threshold, the successful tender shall be accepted by either the Strategic Development Plan Manager or the Clerk on the authority of the Joint Committee. However, in circumstances where the Joint Committee has undertaken work on behalf of a

third party who is not a member of the Joint Committee for contracts where the value exceeds the Threshold the Strategic Development Plan Manager may accept the contract, providing that he is satisfied that he 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 Joint Committee as soon as reasonably practicable thereafter.

- 26.5 In exceptional cases where the value of the contract exceeds the Threshold and in the opinion of the Strategic Development Plan Manager, urgency precludes obtaining the approval of the Joint Committee, the contract may be accepted by the Strategic Development Plan Manager on the authority of the Convenor and Vice-Convenor, provided always that the acceptance of a contract in such circumstances is subject of a report to the next meeting of the Joint Committee.
- 26.6 Member Authorities may request the Joint Committee 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 standing orders 26.3, 26.4 and 26.5 do not apply to the award of that contract.
- 26.7 The Strategic Development Plan Manager may terminate any tendering or negotiated procedure at any time up to the award of the contract where he believes that justification exists for that course of action. Where the Strategic Development Plan Manager does decide to terminate a tendering or negotiated procedure the Strategic Development Plan Manager shall write to all tenderers involved in that procedure informing them of his decision and the reasons for that.
- 26.8 In accordance with the Procurement Reform Rules, where a participant is excluded from a procedure at any stage before submitting a tender, the Strategic Development Plan Manager shall notify the participant in writing and provide reasons as soon as reasonably practicable.
- 26.9 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 26.4, the Strategic Development Plan Manager shall be responsible for writing to tenderers.
- 26.10 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 Strategic Development Plan Manager is satisfied that no valid challenge has been received to the contract award decision.

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 26.9 and the date when it is proposed to enter into the contract.

26.11 Where during the mandatory standstill period referred to in standing order 26.10 a valid challenge is made to the contract award decision, the Strategic Development Plan Manager, in consultation with the Clerk if appropriate, shall prepare a report for the next meeting of the Joint Committee setting out the nature of the challenge made and an explanation as to why the challenge is valid. The report shall also make a recommendation regarding the award of the contract or, if the contract cannot be awarded, what further procedure, if any, is required.

26.12 The Strategic Development Plan Manager 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 Strategic Development Plan Manager considers to be material.

## **27. Content of Reports on Contracts**

27.1 For all contracts requiring the approval of the Joint 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.

## **28. Nomination of a Sub-Contractor**

- 28.1 Where a contract provides for the nomination of a sub-contractor, the appointment of a nominated sub-contractor shall comply with these standing orders.

## **29. Framework Agreements**

- 29.1 The Strategic Development Plan Manager 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 the Joint Committee and the contractors for the purchase by the Joint Committee of goods, services and works. The procedure for setting up a Framework shall comply with the following requirements:-
- a Where the EU Procurement Rules apply, the Strategic Development Plan Manager shall establish the Framework in accordance with those Rules.
  - b In all other circumstances:-
    - (i) The suppliers to be invited to tender will be selected from those who have responded to a notice.
    - (ii) The notice shall be published in accordance with standing order 10.
    - (iii) The notice shall mention:-
      - A that the Joint Committee wishes to establish a Framework;
      - B a description of the goods, service or works which are to be purchased under the Framework;
      - C a period being not less than 10 days from the date of publication of the Notice, within which prospective participants may apply to be sent the tender documents; and
      - D a closing date for expressions of interest to be submitted to the Joint Committee.
    - (iv) at least five suppliers shall be invited to tender. If fewer than five tenderers apply to participate in the Framework, all of those tenderers meeting the evaluation criteria shall be invited to participate.
  - c Where a Framework is to be established, the Contract Documents must contain the procedures to be used for the award of contract under the Framework.
  - d The establishment of the Framework shall comply with standing order 26.

- 29.2 Where a Framework has been established in accordance with standing order 29.1 the Strategic Development Plan Manager may award a contract under the Framework without being required to seek further competition amongst the contractors on the Framework. However, the contract must be awarded in accordance with the terms and procedures for award of contracts laid down in the Framework and in compliance with standing order 26.
- 29.3 Where a Framework has been established but it does not lay down all the terms of a proposed contract including, for example, where a new item can legitimately be added to the Framework, the Strategic Development Plan Manager shall hold a mini-competition procedure under the Framework in accordance with standing order 29.4 below.
- 29.4 Any mini-competition procedure in terms of standing order 29.3 shall be conducted in accordance with the procedures laid down in the Framework and the following:-
- a every contractor on the Framework capable of performing the contract shall be issued with an invitation to take part in the mini-competition. All invitations shall be issued at the same time.
  - b the invitations shall specify the closing date and time for submission of tenders under the mini-competition. The time limit fixed for the return of tenders shall take into account factors such as the complexity of the subject matter of the contract and the time needed to prepare a tender, but in any event shall not be less than 4 working days from the date the invitations are issued.
  - c each tender shall be kept confidential until the expiry of the time limit for the receipt of tenders;
  - 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; and
  - e Any award of contract following a mini-competition procedure shall comply with standing order 26.
- 29.5 The Strategic Development Plan Manager may elect to enter into contracts under an existing Framework that has been properly constituted by another local authority, by the Scottish Government; the Crown Commercial Service, or any other agency of the UK government; Scotland Excel and all other Scottish Centres of Procurement Expertise; local authorities; and other collaborative bodies. Any such contracts must be entered into in accordance with the



conditions applicable to the relevant Framework and in compliance with standing order 26.

- 29.6 Where a Regulated Contract is awarded following a call-off or mini-competition under a Framework, the Strategic Development Plan Manager shall publish an award notice on the Public Contracts Scotland website.
- 29.7 Where, in order to participate in an existing Framework of the type described in standing order 29.5 above, the Joint Committee is required to enter into a participation agreement or other similar agreement regulating the use of the Framework by the Joint Committee, the Strategic Development Plan Manager shall have the authority to enter into the agreement on behalf of the Joint Committee.
- 29.8 Standing order 29.7 shall not apply where any fees or charges are payable by the Joint Committee to enable participation in an existing Framework of the type described in standing order 29.5 above. In such circumstances, prior approval of the Joint Committee is required before any participation agreement, or other similar agreement, may be entered into.

### **30. Dynamic Purchasing Systems**

- 30.1 The Strategic Development Plan Manager may elect to establish and use a Dynamic Purchasing System (“DPS”) if satisfied that:
- a it is in the interests of the Joint Committee to do so;
  - b the DPS will only be used for commonly used purchases the characteristics of which, as generally available on the open market, meet the Joint Committee’s requirements; and
  - c the costs of the DPS will not outweigh the likely benefits of using the DPS.
- 30.2 Any DPS established under this standing order shall be operated as a completely electronic process and, throughout its period of validity, shall be open for the admission of any suppliers who meet the selection criteria set by the Strategic Development Plan Manager.
- 30.3 Where the Strategic Development Plan Manager elects to establish and use a DPS, the rules for such a procedure set out in the EU Procurement Rules shall be followed.

### **31. Concessions**

- 31.1 Where the Joint Committee intends to grant a services concession contract or a works concession contract (“concession”), the Strategic Development Plan

Manager shall be responsible for determining a best estimate of the financial value of the concession which shall be in accordance with the EU Procurement Rules, if applicable.

- 31.2 Based on the best estimate of the financial value of the concession, the Strategic Development Plan Manager shall determine the procedures that require to be followed in terms of these standing orders and, where applicable, the EU Procurement Rules.

## **32. Design Contests**

- 32.1 Where the Strategic Development Plan Manager considers it appropriate to do so he may hold a design contest, which shall be a competitive procedure in which the Strategic Development Plan Manager 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.
- 32.2 Where a design contest is to be held, a notice shall be placed in the Public Contracts Scotland website and in addition, may be placed in one or more national newspapers and also in such Trade Journals as the Strategic Development Plan Manager 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 intimate, in writing, their interest in being involved in the contest.
- 32.3 After the expiry of the period specified in the notice, invitations to tender shall be sent to at least three persons selected by the Strategic Development Plan Manager. 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 Strategic Development Plan Manager 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 without Prior Publication of a Notice in contract standing order 14.
- 32.4 The prior approval of the Joint Committee is required before a design contest in terms of this standing order is commenced.

- 32.5 For the purposes of these standing orders a design contest means a competition in which the Joint Committee:-
- 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.

### **33. Specification of Standards**

- 33.1 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.

### **34. Assignment, Sub-Contracting, Termination and Modification**

- 34.1 In every contract, there shall be 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 the Joint Committee. The Strategic Development Plan Manager shall have the power to consent on behalf of the Joint Committee to the assignment of a contract.
- 34.2 The sub-contracting of any part of a contract except to the extent permitted in writing by the Strategic Development Plan Manager shall be prohibited.
- 34.3 The Strategic Development Plan Manager may exercise any power on behalf of the Joint Committee to terminate any contract or part of a contract or to terminate the Joint Committee'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 Strategic Development Plan Manager and the Clerk being satisfied that it is reasonable and in the interests of the Joint Committee to exercise that power.
- 34.4 Where it is proposed to modify a contract or framework, the Strategic Development Plan Manager, taking advice from the Clerk where appropriate, shall determine whether the proposed modification would require a new procurement procedure. For the avoidance of doubt, modification includes any changes to the scope; terms and conditions; value; or parties to the contract or framework.

- 34.5 Where the Strategic Development Plan Manager determines that a modification would not require a new procurement procedure, the procedures under standing order 38 shall be followed if the contract is a schedule of rates contract.

### **35. Liquidated and Ascertained Damages**

- 35.1 Where the Strategic Development Plan Manager deems it to be appropriate following consideration of the risks involved, the Strategic Development Plan Manager 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 Strategic Development Plan Manager.

### **36. Prevention of Collusion and Corrupt or Illegal Practices**

- 36.1 In every written contract a clause shall be inserted to secure that the Joint Committee 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 the Joint Committee 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 the Joint Committee or any Member Authority.

### **37. Health and Safety**

- 37.1 No contract to which these standing orders apply will be accepted unless the contractor satisfies the Joint Committee that the contractor is operating health and safety policies which conform with current government legislation.

### **38. Schedule of Rates Contracts**

- 38.1 In every works contract which is a schedule of rates contract, the Strategic Development Plan Manager 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 Joint Committee concerning the contract in question.
- 38.2 Where it becomes apparent to the Strategic Development Plan Manager that the indicative total value is likely to be exceeded the Strategic Development Plan Manager shall ensure that a report on the matter is submitted to the next meeting of the Joint 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.

- 38.3 The Strategic Development Plan Manager 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 the Joint Committee.

## **39. Sustainable Procurement**

- 39.1 The Strategic Development Plan Manager shall be responsible for ensuring that the Joint Committee fulfils its Sustainable Procurement Duty.
- 39.2 The Strategic Development Plan Manager shall ensure that the Sustainable Procurement Duty is considered in the development of every Regulated Procurement and shall take into account how the Regulated Procurement can
- a improve the economic, social and environmental wellbeing of the Joint Committee's area;
  - b facilitate the involvement of small and medium enterprises, third sector bodies and supported businesses in the Regulated Procurement; and
  - c promote innovation.
- 39.3 Where improvements in terms of standing order 39.2 a have been identified, the Strategic Development Plan Manager shall ensure that the Regulated Procurement is carried out with a view to securing such improvements.

## **40. Consultants**

- 40.1 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 the Joint Committee.
  - b that at any time during the performance of the contract the consultant shall, on a request by the Strategic Development Plan Manager produce all records maintained by them in relation to the contract and on completion of the contract transmit all such records to the Strategic Development Plan Manager, if so required.
- 40.2 All contracts for consultancy services must set out clear output targets for performance by the consultant under the contract.

## **41. Records and Registers**

- 41.1 The Strategic Development Plan Manager shall maintain a contracts register in accordance with the Procurement Reform Rules.

- 41.2 Where these standing orders require that records or registers are kept, the Strategic Development Plan Manager shall obtain the approval of the Joint Committee prior to making arrangements for the disposal of any such records or registers.
- 41.3 The contracts register kept in accordance with standing order 41.1 is to be regarded as a permanent record of the Joint Committee and is not to be destroyed or disposed of.

## Schedule 1

### **Special Arrangements for Contracts for Social and Other Specific Services and for Health or Social Care Services**

Unless varied by the special arrangements set out in this Schedule 1, the foregoing standing orders apply to contracts for Social and Other Specific Services and contracts for Health or Social Care Services. The special arrangements are as follows:

#### **A. Procedures for the Award of Contracts for Social and Other Specific Services**

- A.1 Where a contract is for Social and Other Specific Services and the estimated value of the contract is equal to or greater than the threshold for Social and Other Specific Services, the Strategic Development Plan Manager shall follow the relevant procedures for such services set out in the EU Procurement Rules and the Procurement Reform Rules.

#### **B. Procedures for the Award of Contracts for Health or Social Care Services**

- B.1 Where a contract is for Health or Social Care Services and the estimated value of the contract is less than the threshold for Social and Other Specific Services, instead of using the procedures set out in the foregoing standing orders, the Strategic Development Plan Manager may elect to follow the procedures set out in the Procurement Reform Rules. In such circumstances, the Strategic Development Plan Manager may decide, that offers shall not be sought for example where:
- (a) it can be demonstrated that the contract is of no interest to service providers in other EU member states; and/or
  - (b) the total sum to be paid under the contract is so low that service providers located in other EU member states would not be interested in bidding for the contract; and/or
  - (c) the service is of such a specialised nature that no cross-border market of suitable service providers exists; and/or
  - (d) advertising the contract would result in the loss of a linked service; and/or
  - (e) the services are required by a service user and can best be provided by the service user's existing service provider.
- B.2 Where a decision is taken under paragraph B.1 above that offers shall not be sought, the Strategic Development Plan Manager shall decide if and how the contract shall be advertised.
- B.3 Where a decision is taken under paragraph B.2 above not to advertise the contract, the Negotiated Procedure without Prior Publication of a Notice set out in standing order 14 shall be followed.

C. Guidance from the Scottish Government

- C.1 Subject to standing order , contracts for Health or Social Care Services shall be procured in accordance with the Scottish Government's Guidance on the Procurement Reform (Scotland) Act 2014 and Guidance on the Procurement of Care and Support Services 2016 (Best-Practice) issued under Scottish Procurement Policy Note SPPN 7/2016(as such may be amended or replaced).
- C.2 In the event of any conflict between these standing orders and the Guidance referred to in paragraph C.1 above, the Guidance shall prevail.

D. SCSWIS and other Mandatory Registration

- D.1 All Contractors providing Health or Social Care services must be registered with Social Care and Social Work Improvement Scotland (SCSWIS) (commonly known as the Care Inspectorate) and/or any other regulatory bodies relevant to the service provided.

E. Review of Decisions

- E.1 Any decision taken under paragraph B.1 or B.2 shall be reviewed at regular intervals by the Strategic Development Plan Manager.