

## **Scotland Excel**

**To: Executive Sub Committee**

**On: 16<sup>th</sup> September 2016**

**Report  
by  
the Clerk**

### **Demolition Services Contract**

#### **1. Introduction**

- 1.1 On 4 March 2016 the Head of Strategic Procurement advised that following a tender exercise, challenges had been received from two partially successful bidders. It was determined that the contract be not awarded and that the contract be re-tendered.
- 1.2 The contract was duly re-tendered with a closing date of 14 April 2016 at 12 noon.
- 1.3 In the course of assessing the tenders received, Scotland Excel had to advise a tenderer that its tender could not be processed further and a judicial challenge was then received to that decision which has suspended the award process.

#### **2. Present Position**

- 2.1 In accordance with the standing arrangements the proceedings raised in the Court of Session have been dealt with by solicitors acting for the insurers providing Scotland Excel with the policy cover for claims of this nature.
- 2.2 Members will recall that the policy cover is subject to an excess of £50,000 for which the Member Councils will be liable if the Council's case is unsuccessful.
- 2.3 The tenderer's case is considered to be weak in the light of the EU procurement rules and previous similar cases taken to court.
- 2.4 The raising of the proceedings has delayed the award of the framework already beyond its scheduled date and further delays are anticipated.

#### **3. Conclusion**

- 3.1 That the position be noted and the Sub-Committee await a further report in due course.

#### **4. Background Information**

- 4.1 At the closing date of 14 April 2016 a total of 31 offers were received of which 29 were complete and compliant to be further assessed. Two offers were discovered to be fundamentally incomplete in failing to provide pricing information at all at the appropriate place in the tender documents.
- 4.2 Clear warnings had been given in the documents that a failure to complete a commercial offer would result in an incomplete offer and the tender not being considered.
- 4.3 One tenderer, Dem-Master Demolition Ltd, having failed to provide any pricing information at all in its tender has decided to challenge the Scotland Excel decision to exclude it from further evaluation by raising proceedings in the Court of Session and, by that action, has triggered an automatic suspension of the contract award process until the court determines the issue.
- 4.4 Taking into account the relevant procurement rules and the previous court decisions on challenges in similar circumstances it is considered that the legal position of Scotland Excel is strong and the challenger's position is correspondingly weak.
- 4.5 Many other tenderers in this and previous tendering exercises have had no difficulty in supplying the pricing information requested by Scotland Excel.
- 4.6 It is a fundamental principle that a tenderer cannot be allowed to remedy a blank in its tender submission after the tender closing date (the equivalent of a late offer) as this would give it an unfair advantage over other bidders who, having submitted a complete, compliant offer, are entitled to be treated fairly and transparently by the authority inviting tenders.

4 August 2016