



**Corporate Resources
Legal Services**

Standing Orders on Contracts (Together with Guidance Notes)

Approved by South Lanarkshire Council on 23 May 2007 and revised according to Schedule of Revisions

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STANDING ORDERS ON CONTRACTS

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STANDING ORDERS ON CONTRACTS

1 Definitions

The following words and expressions used in these Standing Orders shall have the meanings hereby assigned to them:-

'Council' means South Lanarkshire Council, constituted by Section 2 of the Local Government etc. (Scotland) Act 1994 and having its principal office at the Council Offices, Almada Street, Hamilton, ML3 0AA.

'Committee' means a Standing Committee of the Council and the expressions 'Chair' and 'Depute Chair' shall be construed accordingly and shall be taken to include any corresponding office known by any other description.

'Chief Executive' means the Head of Paid Service of the Council for the time being and shall be taken to include any corresponding office known by any other description or any substitute(s) authorised in terms of the Council's Scheme of Delegations except in cases where it is stated that substitutes cannot act

'EC Treaty Principles' means the overarching principles of the Treaty of Rome, which are transparency, openness, non-discrimination and equal treatment.

'Equal Opportunity Requirements or amending that Section or related to equality' means the same as in Section L2 of Part II of Schedule 5 to the Scotland Act 1998 or any other legislation replacing of opportunity, namely the requirements of law for the time for.

a) prevention,

b) elimination; or

c) regulation of

discrimination between persons on grounds of

1) sex or marital status,

2) race,

3) disability, age, gender, sexual orientation, language or social origin, or

other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions or lack of such beliefs or opinions.

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| 'European Procurement Regulations' | means the Public Contracts (Scotland) Regulations 2006 or such other Regulations amending, substituting or replacing those Regulations |
| 'E U Thresholds' | means the thresholds in the value of a contract above which make the procurement of the contract subject to the European Procurement Regulations as may be set from time to time. ¹ |
| 'Executive Director' | means an Executive Director of a Resource of the Council for the time being and shall be taken to include any corresponding office known by any other description or any substitute(s) authorised in terms of the Council's Scheme of Delegations except in cases where it is stated that substitutes cannot act. |
| 'Framework agreement' | means any agreement which sets out terms and conditions under which specific purchases (call-offs) can be made throughout the term of the agreement. |
| 'Head of Administration' | means the Head of Administration Services (Corporate Resources) of the Council for the time being and shall be taken to include any corresponding office known by any other description or any substitute(s) authorised in terms of the Council's Scheme of Delegations except in cases where it is stated that substitutes cannot act. |
| 'Head of Legal Services' | means the Head of Legal Services (Corporate Resources) of the Council for the time being and shall be taken to include any corresponding office known by any other description or any substitute(s) authorised in terms of the Council's Scheme of Delegations except in cases where it is stated that substitutes cannot act. |
| 'Scottish Public Authority' | means any body which is listed in Schedule 1 to or is designated by order under Section 5(1) of the Freedom of Information (Scotland) Act 2002 or is a publicly owned company as defined in Section 6 of that Act. |

2 General

Extent

These Standing Orders shall apply to the entering into by the Council or on its behalf of contracts for the supply of goods, plant, equipment, vehicles, furnishings, materials or commodities, contracts for the carrying out of works or contracts for the provision of services.

¹ The thresholds are reviewed in alternate years. The current threshold values prescribed by the European Union as at January 2006 are as follows

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| (a) contracts for the supply of goods or materials | £144,371 |
| (b) contracts for the provision of services | £144,371 |
| (c) contracts for the execution of works | £3,611,319 |

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| Internal Arrangements | 2.2 | <p>(a) Any action taken on the Council's behalf must also be in terms of the Council's Scheme of Delegations and comply with the Council's Financial Regulations.</p> <p>(b) These Standing Orders are intended to comply with and be subject to the Code of Corporate Governance made by the Council from time to time. If there is a discrepancy between the terms of these Standing Orders and those of the Code, the provisions of the Code in force at the time shall take precedence.</p> <p>(c) Where applicable, any action must be in accordance with any authorised Resource Procurement Strategy.</p> |
| Contract Requirements | 2.3 | Unless otherwise authorised by the appropriate Executive Director in consultation with the Head of Legal Services in special circumstances, all contracts entered into in terms of and in accordance with these Standing Orders shall be in writing and shall be subject to the law of Scotland and the exclusive jurisdiction of the Scottish Courts |
| Calculation of Contract Values | 2.4 | <p>(a) Any value of a contract stated in these Standing Orders shall be the total estimated value of the contract and not the estimated annual value of the contract. Where a contract is for the supply of works, goods or services for a continual basis over a number of years then the estimated value of that contract shall be calculated by multiplying the estimated annual value by the number of years of the duration of the contract.</p> |
| Prohibition on Division of Contract Values | | <p>(b) It is not permitted to deliberately divide any procurement exercise into two or more contracts if the intention for doing so is to reduce the total estimated value of the contract in order to avoid the application of any financial thresholds in these Standing Orders or the effect of the European Procurement Regulations.</p> |
| Calculation of Contract Value in respect of Match Funding | | <p>(c) If the cost of a Contract is being met in part only by the Council the total value of the Contract shall be, for the purposes of these Standing Orders, calculated by totalling all the contributions to be made towards the cost.</p> |
| Calculation of Contract Value in respect of funding in kind | | <p>(d) Where a Contract includes the provision of services or other funding in kind to the Contractor by either the Council or a third party, the value of the Contract shall be calculated by including the value of the services being provided or the funding in kind in addition to any monetary consideration.</p> |
| Franchises | | <p>(e) Where a Contract relates to the provision of services to the public under which the Council gives to the Contractor the right to exploit the provision of the services, the total value of that Contract shall be taken as including the value of that right to exploit the provision</p> |

and monetary payments made by the Council to the Contractor. All sums paid by the Contractor to the Council shall be disregarded in connection with the calculation of the value of the Contract.

Signing 2.5 All contracts entered into in terms of and in accordance with these Standing Orders shall be signed by either the appropriate Executive Director of a Resource or a proper officer of the Council authorised to sign contracts on the Council's behalf.

Best Value 2.6 All contracts must secure **Best Value** and maintain an appropriate balance among:-

- ◆ the quality of the performance of the Council's functions
- ◆ the cost to the Council of that performance; and
- ◆ the cost to persons of any Council service provided for them on a wholly or partly rechargeable basis

having regard to:-

- a) efficiency
- b) effectiveness
- c) economy;
- d) the need to meet equal opportunity requirements; and
- e) the need to ensure sustainable development.

Guidance and Practice Notes 2.7 When entering into a contract, due regard must be given to any guidance issued by the Scottish Ministers in terms of the Local Government in Scotland Act 2003.

Further the Head of Legal Services may approve Practice Notes on tendering procedures for any contract or type of contract let by or on behalf of the Council. Any such Practice Notes once approved shall form part of these Standing Orders.

3 Exemptions

Below £2,500 3.1 (a) These Standing Orders shall not apply to any contract for the supply of goods or materials, the provision of services including Consultancy Services and the execution of works where the estimated cost does **not exceed £2,500** including items of a recurring nature the **total** cost of which is no more than that amount, subject always to the need to demonstrate Best Value and compliance with the Council's Code of Corporate Governance when entering into any such contracts.

(b) However regardless of Standing Order 3.1(a) all goods and services the value of which is below the said threshold, must be ordered using the Council's official Purchase Order Form.

Between £2,500 and £50,000 3.2 (a) All contracts for the supply of goods, plant, equipment, vehicles, furnishings, materials or commodities, contracts

for the carrying out of works or contracts for the provision of services, where the total estimated value does **not exceed £50,000**, shall be exempted from these Standing Orders with the exception of **Standing Order 2 (General)**, **Standing Order 6 (Assurances – Tendering)** (where race equality or protection of human rights is a core requirement of the Contract only) and **Standing Order 7 (Confidentiality and Freedom of Information)**. However immediately prior to entering into the contract, at least 3 competitive quotes in writing must be obtained by the Executive Director unless the Executive Director concerned is satisfied that good reasons exist for not doing so and that value for money can be achieved in respect of that contract.

- (b) The contracts referred to in **Standing Order 3.2(a)**, shall be recorded in a Register of Tenders kept and maintained by the appropriate Executive Director, which shall include details of each contract, the number of quotes received in respect of each contract, the name and address of each tenderer, the value or amount of each tender and a statement as to whether and why the quote was accepted.
- (c) Where the appropriate Executive Director has decided that it is justified not to seek competitive quotes, then the reason(s) for reaching that decision must be noted in the Register and a contract awarded to the preferred supplier or contractor as appropriate; however, arrangements for contracts must be reviewed at least annually to ensure **Best Value** as set out in **Standing Order 2.6**. A condition to allow for this must be inserted into any such contracts.
- (d) Once a quote has been accepted, the Register of Tenders shall be made available to the public for inspection during office hours and copies will be provided on payment of a reasonable charge.

Conditions of Funding

- 3.3 (a) Where a public authority or similar body provides funding for a particular project (including the provision of services by the Council to others) and that funding is subject to conditions which specify:-
 - ◆ particular contractors to undertake the services or
 - ◆ a particular class of contractor

with whom/which the Council are required to or restricted to contract in the provision of such services, such contracts may be excluded from **these Standing Orders** in so far as the said condition makes, in the view of the relevant Executive Director, the tendering processes set out in these Orders impracticable or impossible, subject always to the requirements of the European Procurement Regulations.

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| | | (b) All contracts referred to in Standing Order 3.3(a) shall be recorded in the Register of Tenders referred to in Standing Order 3.2(b) and shall include details as to why and to what extent the contract was exempted from these Standing Orders. |
| Employment | 3.4 | These Standing Orders do not apply to any contract of employment. |
| Land | 3.5 | These Standing Orders do not apply to any contract for the acquisition or disposal of heritable property (including leases and licences). However, this does not exempt any acquisition or disposal from any requirements set out in law nor from the Council's Scheme of Delegations or Financial Regulations in relation to the acquisition or disposal of land or buildings. |
| Framework Agreements - General | 3.6 | (a) These Standing Orders do not apply to contracts to be awarded by the Council using framework agreements made by other organisations, including but not restricted to the Authorities Buying Consortium (ABC), the Stationery Office and Government Catalogue, subject to Standing Order 3.6 (b) . The Council shall not seek offers for contracts which these organisations are entitled to seek on the Council's behalf, except in such cases as the Council deems it likely that Best Value (as defined in Standing Order 2.6) will be obtained by seeking tenders by other means, or as otherwise permitted by the framework agreements. All such agreements must permit the Council to obtain tenders independent of the framework agreement if it is likely to be in the interests of Best Value (as defined in Standing Order 2.6) to do so. |
| Framework Agreements – Conditions | | (b) Standing Order 3.6 (a) only applies to framework agreements which have been formed on the basis of competitive tenders and in full compliance with any legal requirements such as the duty to promote Race Equality, EC Treaty Principles, the procedures set down in the European Procurement Regulations (if applicable) and provided that the framework agreement contains or allows any contract awarded under Standing Order 3.6(a) to contain the matters set out in Standing Order 3.6(c) . |
| Framework Agreements – Conditions of Contract | | (c) All contracts entered into in terms of Clause 3.6 (a) must be subject to the requirements of the following Standing Orders 2.5 (Signing), 2.6 (Best Value), 2.7 (Guidance), 7 (Confidentiality and Freedom of Information), 24 (Insurance), 25 (Illegal Practices), 26 (Equal Opportunities), 27 (Race, Disability and Gender Equality), 28 (Human Rights), and 29 (Assigantion) . This does not apply if any of these matters are contained within the framework agreement. |

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| Special Circumstances | 3.7 | The Council or one of its Committees/Sub-Committees may exempt from the terms of these Standing Orders or any part of them any contract as the case may be if they are satisfied that the exemption is justified by special circumstances subject to any requirements in terms of European Procurement Regulations |
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4 Estimates of Values

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| Within Financial Provision | 4.1 | No tender shall be invited or offer made or accepted for any contract for the supply of goods, plant, equipment, vehicles, furnishings, materials or commodities or for any contract for the carrying out of works or for any contract for the provision of services unless either <ul style="list-style-type: none"> (a) appropriate financial provisions have been made and approved by the Council in terms of the Council's Financial Regulations or (b) where funding is provided by a third party for a specific purpose involving the award of contracts on whatever nature, that purpose has been approved by the Council |
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5 Competition Requirement

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| Contracts over £50,000 subject to competition | 5.1 | All contracts where the estimated value is in excess of £50,000 but equal to or below the EU Thresholds may only be awarded after steps have been taken for the purpose of ensuring genuine competition for any such contract by seeking tenders from persons whose names appear for the time being on the relevant approved list(s) of contractors held by the Council for that purpose in terms of Standing Order 8 (List of Approved Contractors) or from persons invited by public advertisement in accordance with the terms of Standing Orders 9 (Restricted Tendering) or 10 (Open Tendering) . |
| Negotiated Procedure – Exceptional Circumstances | 5.2 | (a) The requirement in Standing Order 5.1 does not apply where in the opinion of the appropriate Executive Director, in consultation with the Chair, (or in his/her absence) the Depute Chair of the appropriate Committee, one or more of the circumstances set out in Standing Order 11.3 (a) to (e) (Negotiated Tendering Procedure – General) exist or where in the opinion of the appropriate Executive Director the circumstances set out in Standing Order 11.3 (f) (Negotiated Tendering Procedure – General) exist and that in either case it is in the Council's interest to use the Negotiated Tendering Procedure. |
| Negotiated Procedure - Reporting to Committee | | (b) Where the Negotiated Tendering Procedure has been used, the appropriate Executive Director shall report to the next meeting of the appropriate Committee explaining the circumstances justifying the use of Standing Order 11 (Negotiated Tendering Procedure – General) |

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| Prohibition on Anti-competitive contract terms | 5.3 | In preparation of any contract terms and in the award of any contract, there must be no terms, which are either <ul style="list-style-type: none"> (a) anti-competitive as defined in the Competition Act 1998 (where applicable) or (b) non-compliant with any other legal requirement |
| Compliance with EC Treaty Principles | 5.4 | All contracts, regardless of whether subjected to the procedural requirements of the European Procurement Regulations, must be awarded in compliance with the EC Treaty Principles. |

6 Assurances - Tendering

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| As part of Assessment Process | 6.1 | <ul style="list-style-type: none"> (a) As part of any tendering process, the Council shall obtain from the contractor satisfactory assurances in writing in the form determined by the Head of Legal Services, that <ul style="list-style-type: none"> (i) the contractor has complied with all statutory requirements in respect of observing equal opportunity in employment and, where the contract is for the provision of services and it is relevant for the Council's obligations to their duty to promote racial equality set out under the Race Relations Act 1976, as amended, the previous provision of such services; or (ii) where the contract is for the provision of services of a public nature the contractor has complied with the terms of the Human Rights Act 1998 in relation to the previous provisions of such services; <p>such assurances as may be provided must be supported by satisfactory evidence if required. Where the contractor is a corporate body then the assurances must be provided by a director personally.</p> |
| Selection Criteria - Obtaining Assurances | (b) | All documents detailing the selection criteria will specify that selection will include the obtaining by the Council of satisfactory assurances in terms of Standing Order 6.1(a) . |

7 Confidentiality and Freedom of Information

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| Freedom of Information not to be unreasonably excluded | 7.1 | All tender documentation, agreements or contracts shall not prohibit disclosure of information which would otherwise be disclosed in compliance with the Freedom of Information (Scotland) Act 2002. No tender documentation, agreement or contract should contain a condition that restricts unjustifiably the disclosure of information held by the Council as a Scottish Public Authority in relation to the tender documentation, agreement or contract. |
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8 Lists of Approved Contractors

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| Exclusion of Contracts subject to the European Procurement Regulations | 8.1 | Nothing in this Standing Order shall apply where the contract is governed by the European Procurement Regulations i.e. where the estimated value of the contract is above the relevant E U Threshold. |
| Power to Keep List | 8.2 | (a) Each Executive Director may keep a list of persons to be invited to tender for contracts for the supply of goods, plant, equipment, vehicles, furnishings, materials or commodities, contracts for the carrying out of specified categories and values of works and contracts for the provision of services of specific categories as the case may be and, except as provided for in Standing Orders 9 (Restricted Tendering), 10 (Open Tendering) and 11 (Negotiated Tendering Procedure) , invitations to tender shall be limited to persons whose names appear on the relevant list. |
| Contents of List | (b) | Each list shall:- <ul style="list-style-type: none">(i) be compiled and maintained by the appropriate Executive Director;(ii) contain the names of all persons who wish to be included in it and are approved by the appropriate Executive Director for that purpose;(iii) indicate whether a person whose name is included in it is approved for contracts or jobs as the case may be for all or only some of the specified categories or values; and(iv) no person shall be included in a list unless their technical capability and financial standing have been satisfactorily investigated, and they have given an assurance that they will comply with the appropriate conditions of contract required by the Council in terms of these Standing Orders. |
| Review of Technical Capability and Financial Standing | (c) | Technical capability and financial standing (referred to in Standing Order 8.2(b)(iv) (technical capability and financial standing)) of all persons included in a list must be assessed as part of any tendering exercise to ensure that the persons on the list continue to meet the required standards regardless of the fact that such assessments have already been undertaken in relation to the application to be included in a List. If at any time either at a review or as part of a tendering process review a person does not meet these criteria then that person must not be allowed to tender and must be removed from the List, until such time as they can meet these requirements. |
| Advert | (d) | Except where Standing Order 8.6 applies, not less than four weeks before a list is first compiled, notice by way of |

public advertisement inviting applications for inclusion in such list shall be published in a way which is compliant with the EC Treaty principles and at least in one or more newspapers circulating in the area of the Council and also in such trade journals as the appropriate Executive Director may consider necessary.

Invitation to Tender

- (e) Invitations to tender for a contract shall be sent to at least five persons whose names appear on the appropriate list as being approved for such contract of that category or value or, if there are five or fewer than five approved persons, to all of those persons. If there are more than five such persons, the appropriate Executive Director shall select five or more such persons to whom invitations to tender shall be sent, subject to selection on a rotational basis.

External Lists

- 8.3 As an alternative to maintaining a full in-house list of approved contractors for goods, works or services the appropriate Executive Director may elect to use a list of acceptable contractors maintained by a third party including a List maintained by another Executive Director in connection with his/her Resource) in relation to the assessment of financial or technical standing but only where the selection criteria adopted by that third party are equal to or more stringent than the selection criteria of the Council. However nothing in this Standing Order prohibits the consideration of tenderers who are not members of that third party list, provided the tenderer would have met the selection criteria set out by such third party.

Amendment of List

- 8.4 (a) Each appropriate Executive Director may amend his/her list at any time, including the addition and removal of a person to and from the list. No person shall be added to the list unless they comply with the requirements of **Standing Order 8.1(b)(iv)(technical capability and financial standing)**.

Removal from List

- (b) In the event of a person being removed from the list or having their application to be added to the list refused, the appropriate Executive Director shall keep a record listing the name of that person and explaining the reason why that person has been removed from the list or why that person's application to be added has been refused.

Review of List

- 8.5 The appropriate Executive Director shall in any event review his/her list at intervals of two years or such other regular period as his/her Resource Committee may choose. Not less than four weeks before each review, each person whose name appears on the list shall be asked whether they wish their name to remain thereon, and an advertisement inviting applications for inclusion in the list shall be published in the manner provided for in **Standing Order 8.2(d)**. For the avoidance of doubt those invited to remain on the list will be subject to the requirements of **Standing Order 8.2(b)(iv)**

(technical capability and financial standing) at the time of the review. On completion of a review a list under this **Standing Order 8.5**, the Executive Director must report the membership of the List to the appropriate Committee at the earliest opportunity

Particular Contracts

- 8.6 Where there is no list of approved contractors for a proposed contract and it is the view of an Executive Director that the procedure, including timescales for the creation of a list as set out in terms of this **Standing Order** are impracticable that Executive Director, in consultation with the Chair, or (in his/her absence) the Depute Chair of the appropriate Committee, may compile a list of persons whom he/she considers competent (having regard to the technical capability of such persons) to carry out such a contract. provided that
- the Executive Director is satisfied about the financial standing of any such persons and
 - the tenderer has confirmed that he/she/it will comply with the appropriate conditions of contract required by the Council in terms of these Standing Orders,

An invitation to tender shall be limited to those persons whose names appear on the list compiled for that purpose.

On compilation of a list under this **Standing Order 8.6**, the Executive Director must report the compilation of the List to the appropriate Committee at the earliest opportunity giving the reasons which made it impracticable under the circumstances to comply with the procedure set out in terms of **Standing Orders 8.2 to 8.5**.

9 Restricted Tendering

Exclusion of Contracts subject to the European Procurement Regulations

- 9.1 Nothing in this Standing Order shall apply where the contract is governed by the European Procurement Regulations i.e. where the estimated value of the contract is above the relevant E U Threshold.

Power to use Restricted Procedure

- 9.2 This Standing Order shall apply to all contracts below the thresholds to which the European Procurement Regulations apply and where the appropriate Executive Director, in consultation with the Chair, (or in his/her absence) the Depute Chair of the appropriate Committee, has authorised that invitations to tender for a proposed contract shall not be limited to persons whose names appear on the relevant list kept by that Executive Director under **Standing Order 8 (List of Approved Contractors)**, but shall be limited instead to persons who reply to a public advertisement.

Advert

- 9.3 Notice of the seeking of expressions of interest by way of public advertisement for the purposes of this Standing Order shall be given in a way which is in compliance with the EC Treaty principles and at least in one or more newspapers

circulating in the area of the Council and in such trade journals as the appropriate Executive Director may consider necessary inviting persons interested to apply within such period as may be specified, being a minimum of fourteen days, for permission to tender.

Obtaining Assurances 9.4 At the end of the specified period referred to in **Standing Order 9.3** and prior to issuing any invitations to tender, the Executive Director shall seek the assurances as required by **Standing Order 6.1(a)** but only insofar as they relate to the subject matter of the contract.

Invitation to Tender 9.5 Upon receipt of the assurances required in terms of **Standing Order 9.4**, if more than five persons have applied for permission to tender and have provided satisfactory assurances then invitations to tender shall be sent to five or more such persons selected from those applying by the Executive Director or, if five or fewer than five persons have applied and are considered suitable by the appropriate Executive Director and having provided satisfactory assurances, to all such persons. Provided that no person shall be invited to tender unless they have complied with the terms of **Standing Order 8.2(b)(iv) (technical capability and financial standing)**.

10 Open Tendering

Exclusion of Contracts subject to the European Procurement Regulations 10.1 Nothing in this Standing Order shall apply where the contract is governed by the European Procurement Regulations i.e. where the estimated value of the contract is above the relevant E U Threshold².

Power to use Open Procedure 10.2 This Standing Order shall apply where the appropriate Executive Director, in consultation with the Chair, (or in his/her absence) the Depute Chair of the appropriate Committee, has authorised that invitations to tender shall not be limited in the manner provided for in either **Standing Orders 8 (List of Approved Contractors)** or **9 (Restricted Tendering)** but shall be open to all persons who may wish to tender.

Advert 10.3 Not less than fourteen days notice of the seeking of tenders by way of public advertisement shall be given in a way which is in compliance with the EC Treaty principles and at least in one or more newspapers circulating in the area of the Council and also in such trade journals as the appropriate Executive Director may consider necessary, expressing the nature, purpose and scope of the contract as the case may be, inviting tenders and stating the last date and time (in all cases being 10.00 am) by which tenders must be received.

² See **Definitions**

11 Negotiated Tendering Procedure – General

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| Exclusion of Contracts subject to the European Procurement Regulations | 11.1 | Nothing in this Standing Order shall apply where the contract is governed by the European Procurement Regulations i.e. where the estimated value of the contract is above the relevant E U Threshold. |
| Power to use Negotiated Procedure | 11.2 | The negotiated tendering procedure may be used in the circumstances set out in Standing Order 11.3 where, in terms of Standing Order 5.2 , the appropriate Executive Director, in consultation with the Chair (or in his/her absence) the Depute Chair of the appropriate Committee or where the appropriate Executive Director alone has decided not to seek tenders. |
| Circumstances where Negotiated Procedure is Permitted (Below E U Threshold) | 11.3 | <p>The only circumstances in which the negotiated procedure can be used are:</p> <ul style="list-style-type: none">(a) Where as a result of the invitation of competitive tenders, no offer complying with the specification has been received; or(b) Where the appropriate Executive Director is satisfied that the requirement of the contract is unique or, after research, only one suitable contractor can be identified; or(c) Where the appropriate Executive Director is satisfied that for reasons of technical complexity or compatibility, 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 contract for the supply of goods, 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) Where in the case of a contract for the supply of goods, in the opinion of the Executive Director, it is in the interests of the Council 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(f) When (but only if in the view of the appropriate Executive Director it is strictly necessary to do so) for reasons of extreme urgency brought about by events out with the control of the Council, the other procedures in Standing Orders 8, 9 and 10 cannot be complied with. |
| Written Records | 11.4 | In all cases where the negotiated procedure has been used in |

terms of this Standing Order, a full written record of all contracts, discussions and communications with the prospective contractors shall be kept by the appropriate Executive Director together with a full explanation as to why the Executive Director considered it appropriate to use the negotiated procedure and confirming that the contract secures Best Value (**Standing Order 2.6**)

12 Negotiated Tendering Procedure – Social Care Contracts

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| Exclusion of Contracts subject to the European Procurement Regulations | 12.1 Nothing in this Standing Order shall apply where the contract is governed by the European Procurement Regulations i.e. where the estimated value of the contract is above the relevant E U Threshold. |
| Negotiated Procedure and Social Care Contracts | 12.2 This Standing Order only applies to contracts in relation to the provision of a social care service. |
| | 12.3 If the appropriate Executive Director has decided that the procedures in Standing Orders 8, 9 and 10 would be inappropriate for a particular contract he/she may approve the negotiated procedure for the purpose of seeking offers to enter into contracts from a list maintained by him/her for that purpose. |
| ‘Call Off’ Contracts – Social Care Contracts | 12.4 Where a provider on the appropriate list maintained by the Executive Director for those services offers to provide a social care service, the Executive Director, following consultation with the Chair or (in his/her absence), the Depute Chair of the appropriate Committee, is authorised to receive, negotiate and approve a ‘call off’ contract, provided that such contracts are in standard format approved by the Head of Legal Services and there is no commitment on the Council to use any given level of service. The Executive Director shall report to the appropriate Committee on a quarterly basis those ‘call off’ contracts negotiated with providers. |
| Social Care Services | 12.5 (a) The appropriate Executive Director, following consultation with the Chair or (in his absence) Senior Depute or Depute Chair of the appropriate Committee may also enter into negotiations with one or more providers on the appropriate list maintained by the Executive Director to develop social care services in one or more of the following circumstances, namely if: |
| | <ul style="list-style-type: none"> (i) in the opinion of the Executive Director the needs of the individual(s) concerned would be best met by a particular provider; or (ii) in the opinion of the Executive Director there is only one provider capable of delivering the service to meet the needs of the individual(s) |

concerned; or

- (iii) the nature of the service is such that it should not or cannot be adequately specified in advance because of the nature of the social care needs of the individual(s) concerned; or
- (iv) there are special circumstances such as ownership of land or property, geographic locations or particular skills or experience of providers of social care which limit the choice to one provider.

**Reporting To
Committee**

- (b) On completion of such negotiations, the Executive Director must report the outcome to Committee and advise as to the reasons for entering into negotiations in terms of this **Standing Order 12** and confirming that the negotiations and any contract secures Best Value (**Standing Order 2.6**).

13 Competitive Dialogue Procedure

- 13.1 The Competitive Dialogue Procedure provided for in Regulation 18 of the Public Contracts (Scotland) Regulations 2006 may only be used where the prior approval of Committee has been given to its use.
- 13.2. The use of the Competitive Dialogue Procedure in any contract approved by Committee shall be subject to such guidance and requirements as the Head of Finance and the Head of Legal Services consider appropriate.

14 Extension to Contracts

**Exclusion of
Contracts
subject to the
European
Procurement
Regulations**

- 14.1 Nothing in this Standing Order shall apply where the extension of a contract is governed by the European Procurement Regulations i.e. where the estimated value of the extension is above the relevant EU Threshold.

**Power to Extend
Contracts**

- 14.2 Where an Executive Director considers that an existing contract should be extended and the option to extend is given to the Council in terms of the contract, that Executive Director may authorise the exercise of that option subject to the securing of Best Value (**Standing Order 2.6**). However, no extension of contract awarded in terms of this Standing Order shall be for longer than **3** years.

**Power to extend
using
Negotiated
Procedure**

- 14.3 (a) Where the contract does not make provision for the extension of the contract or the contract has already been extended in terms of **Standing Order 14.2**, an Executive Director shall not extend the contract unless the use of the negotiated procedure can be justified in terms of **Standing Order 11** and provided the conditions

set out in **Standing Order 14.3(b)** are satisfied

Conditions for Extension

- (b) A contract for the supply of any class of goods, plant, equipment, vehicles, furnishings, materials or commodities, contracts for the carrying out of works or contracts for the provision of services may be extended without fresh competition for further goods, plant, equipment, vehicles, furnishings, materials or commodities, contracts for the carrying out of works or contracts for the provision of services of a similar description provided that:-
- (i) the original contract was won in competition; and
 - (ii) unit costs in respect of the supply of further goods, plant, equipment, vehicles, furnishings, materials or commodities or the costs in carrying out the particular works or providing those particular services have not increased by more than 10% (after making allowance for the rate of inflation by use of the Consumer Price Index) over those contained in the original contract; and
 - (iii) the extension proposed is reasonable in all the circumstances; and
 - (iv) the period of extension does not exceed the original period of the original contract or 3 years whatever is the shorter; and
 - (v) the original contract has not been extended previously in terms of **this Standing Order 14.3**

Authorisation of Executive Director (Finance and IT Resources)

- 14.4 No contract shall be extended in accordance with **this Standing Order** except with the prior written authorisation of the appropriate Executive Director either in consultation with the Executive Director (Finance and Information Technology Resources) or with his/her agreement if that is required in compliance with the Council's Financial Regulations) and the Chair (or in his/her absence), the Depute Chair of the appropriate Committee. A copy of the authorisation shall in each instance be retained in the Register of Tenders, and any contract extended in accordance with the terms of **this Standing Order** shall be reported to the first ordinary meeting of the appropriate Committee after the award of the extension.

Social Care Service

- 14.5 Contracts in relation to the provision of a social care service may be exempted from the requirements of Standing Order **14.3(b)(v)**, where the Executive Director considers, in consultation with the Chair, (or in his/her absence) the Depute Chair of the appropriate Committee, that it is appropriate under all of the circumstances that the contract should be extended despite having been previously extended. However no contract shall be so extended unless it complies with the requirements of **Standing Order 14.3(b)(i) to (iv)**.

15 European Procurement Regulations

Application

- 15.1 The European Procurement Regulations apply to contracts over the relevant E U Threshold. These thresholds will depend

upon the subject matter of the contract concerned ie provision of supplies, services or works.

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| Tendering Processes | 15.2 | The procedures set out in the European Procurement Regulations are to be followed in relation to the award or extension of a contract instead of the procedures set out in Standing Orders 9, 10, 11, 12 and 14 insofar as the European Procurement Regulations apply to the subject matter of the contract. |
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16 Submission of Tenders

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| Tenders to be returned to Head of Administration Services | 16.1 | Where an invitation to tender is required or authorised, every notice of such invitation shall state that no tender will be received except in a sealed envelope which shall bear the words 'Tender for ' followed by the contract to which it relates and such envelopes shall be returned to and remain in the custody of the Head of Administration Services until the time appointed for their opening. |
| Information in Tender Documentation | 16.2 | Every set of tender documents shall state the nature and purpose of the contract, specify the last date and time (in all cases being 10.00 am) by which tenders must be received, the address to which tenders must be sent and state also that the tenders shall remain open for acceptance only for the period specified in the tender documents and that the Council reserves the right to accept a tender other than the lowest tender submitted (in a price only tender) or to accept the most economically advantageous tender or to accept a tender in part or no tender at all. |
| Closing Date Final | 16.3 | No tenders received after the closing date and time for submission shall be considered under any circumstances. |
| Electronic Tendering | 16.4 | The use of electronic tendering for any tender shall be carried out in according with the Schedule ("e-procurement") to these Standing Orders. |
| Fax not Permitted | 16.5 | Tenders by fax shall not be considered under any circumstances and this should be made clear in all tender documentation. |

17 Opening of Tenders (other than e-procurement)

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| Lodging of Tenders in terms of Standing Order 15 | 17.1 | Tenders for each contract for the supply of any goods, plant, equipment, vehicles, furnishings, materials or commodities, each contract for the carrying out of any works and each contract for the provision of any services shall be lodged for opening only in accordance with Standing Order 16 . |
| Head of Administration Services to open Tenders | 17.2 | All such tenders shall be opened only by the Head of Administration Services in the presence of an Official from a Resource of the Council, not being an Official of the Resource issuing the tender documents and who is authorised for that purpose and selected on such rotational basis as may be |

agreed by the Head of Administration Services from time to time.

Head of Administration to maintain Register of Tenders

- 17.3 A Register of Tenders shall be kept by the Head of Administration Services in which shall be entered:-
- (a) the number of tenders received in respect of each contract for the supply of any goods, plant, equipment, vehicles, furnishings, materials or commodities, each contract for the carrying out of any works and each contract for the provision of any services;
 - (b) the date and time of opening of such tenders and the Officials present;
 - (c) the name and address of each person making a tender, the value or amount of each tender and as intimated in terms of **Standing Order 18** a statement as to the acceptance or otherwise of the tender;
 - (d) a statement of the names and addresses of persons to whom tender documents were issued but who declined or failed to submit a tender; and
 - (e) any tenders which have been withdrawn before the award of the contract.

Initialling of Tenders

- 17.4 The Register of Tenders and the opened tenders shall be initialled and the date and time of opening noted by the Head of Administration Services and the Official present at the time the tenders were opened.

Request of Tenders - Public Documents

- 17.5 Upon notification of a statement as to the acceptance or otherwise of the tender, the Head of Administration Services shall make the Register of Tenders available to the public for inspection during office hours. Copies may be provided on payment of a reasonable charge.

18 Checking of Tenders

Executive Director to Check Tenders

- 18.1 All tenders received shall, after opening in accordance with **Standing Order 16**, be returned to the appropriate Executive Director for checking.

Clarification of Tenders

- 18.2 (a) 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 appropriate Executive Director may contact a person making a tender in respect of any contract in cases where it may be necessary to validate or clarify the terms of the tender or to make any necessary arithmetical adjustments, but not for any other reason. A full written record shall be kept by the Executive Director of all such contacts and the adjustments made as a consequence.
- (b) Where there is a necessity for clarification with any

person making a tender. all matters of clarification (other than arithmetical adjustments or clarification of a matter relating to any of individual tenders) must be notified to all persons making a tender.

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| <p>No fundamental Changes to Tender Conditions Permitted</p> | <p>18.3</p> | <p>Standing Order 18.2 does not permit the making of fundamental changes to the tender specifications as a result of clarification or negotiation with a person making a tender. Where there is a necessity for clarification with more than one person making a tender, these discussions should not be confined to the person making the tender most likely to win the contract. Where significant changes to the specification would be advantageous to the Council, the tendering process must be cancelled by the appropriate Executive Director. If the tendering process is cancelled, it shall be re-started from the beginning in relation to the seeking of tenders.</p> |
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19 Acceptance of Tenders and Reporting

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| <p>£200,000 and Below – Executive Director</p> | <p>19.1</p> | <p>Where the estimated value of any contract for the supply of any goods, plant, equipment, vehicles, furnishings, materials or commodities, any contract for the carrying out of any works or any contract for the provision of any services does not exceed £200,000,</p> <ul style="list-style-type: none"> • the lowest tender (in a price only tender) or • the most economically advantageous tender |
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may be accepted by the appropriate Executive Director and a contract acceptance issued to the successful contractor.

However the tender may only be accepted where the cost of the tender is within the financial provisions which have been made and approved by the Council in terms of the Council's Financial Regulations or funding is provided by a third party which has been approved by the Council.

A copy of the contract acceptance must be sent to the Executive Director (Finance and Information Technology Resources) and the Head of Administration Services.

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| <p>Over £200,000 – Executive Director in Consultation with Members</p> | <p>19.2.</p> | <p>Where the estimated value of any contract for the supply of any goods, plant, equipment, vehicles, furnishings, materials or commodities, any contract for the carrying out of any works or any contract for the provision of any services exceeds £200,000,</p> <ul style="list-style-type: none"> • the lowest tender (in a price only tender) or • the most economically advantageous tender |
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may be accepted by the appropriate Executive Director, following consultation and agreement with the Chair or (in his/her absence) the Depute Chair of the appropriate Committee, together with one ex officio Member of that Committee. Where no such agreement can be reached then the tender can only be accepted on the authority of the

appropriate Committee following consideration of a written report specifying reasons for the failure to agree and the details of the relevant tenders.

However the tender may only be accepted where the cost of the tender is within the appropriate financial provisions which have been made and approved by the Council in terms of the Council's Financial Regulations or funding is provided by a third party which has been approved by the Council.

A copy of the contract acceptance must be sent to the Executive Director (Finance and Information Technology Resources) and the Head of Administration Services.

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| Not accepting the Lowest Tender (in a price only tender) or where the Cost of the tender exceeds the Financial provision | 19.3 | Where it is proposed to accept a tender which is either not the lowest submitted (in a price only tender) or the cost of the tender is in excess of the financial provisions which have been made and approved by the Council in terms of the Council's Financial Regulations or funding is provided by a third party which has been approved by the Council then such tender shall only be accepted by the appropriate Executive Director on the authority of the appropriate Committee following consideration by that Committee of a written report advising of that fact and the likely additional costs and where applicable, the reason(s) for not accepting the lowest tender submitted. |
| No Tender Being Accepted | 19.4 | If the appropriate Executive Director decides that none of the tenders submitted should be accepted, then that Executive Director shall notify all persons making tenders accordingly. |
| General Conditions | 19.5 | <p>No tender shall be accepted unless:-</p> <ul style="list-style-type: none"> (a) the appropriate Executive Director and the Executive Director (Finance and Information Technology Resources) are satisfied as to the current technical capability and financial standing respectively of the person making the tender in question; (b) where the tender is not within the financial provisions which have been made and approved by the Council in terms of the Council's Financial Regulations or funding is provided by a third party which has been approved by the Council, the additional cost has received prior approval from the appropriate Committee; (c) the contractor/sub-contractor/consultant agree to comply with the terms of Standing Orders 7, 24, 25, 26 and where relevant 28; and (d) where a contract is of a type referred to in the Local Government Contracts Act 1997 (a contract of services lasting or intended to last for a period of 5 years or longer or a financial arrangement relating to such a contract) the contract shall not be entered into by the Council until a certificate in compliance with the Act is issued by the Council where it is requested by the |

Contractor.

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| Notification of Award Committee | 19.6 | The acceptance of all tenders, naming the successful tenderer and detailing the value of the tenders submitted must be notified to the first ordinary meeting of the relevant Committee for noting or on such other regular period as may be agreed with the Head of Administration Services. |
| | 19.7. | Where the EU Procurement Regulations apply to any contract no acceptance of a successful tender shall be made by the Council unless and until the procedure set out in Regulation 32 of the Regulations (10 day pre-notification to unsuccessful tenderers of intention to award) has been followed. |

20 Trading Operations

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| Exemption of trading Operations | 20.1 | Where the Council can provide a trading operation which provides the works, goods, services or supplies sought, then the Council can carry out work or arrange for the provision of the services or supplies without the requirement to seek competitive tenders, if in the opinion of the appropriate Executive Director in consultation with the appropriate Chair, or (in his/her absence) the Depute Chair, Best Value can be demonstrated. To ensure that Best Value is achieved in relation to cost and quality all awards will require to be negotiated and agreed. In instances where, considering the Best Value Requirement in Standing Order 2.6 , no agreement can be reached, then the contract is to be awarded subject to competitive tendering procedures as specified in Standing Orders 8, 9 and 10 or the negotiated procedure if permitted in terms of Standing Order 10 . Nothing in this Standing Order will affect the right of any trading operation from being included in the tendering process in terms of Standing Order 20.2 |
| Inclusion of Trading Operations in Tendering Process | 20.2 | Where tenders are being sought in relation to any contracts for the supply of any goods, plant, equipment, vehicles, furnishings, materials or commodities, any contract for the carrying out of any works or any contract for the provision of any services for the carrying out of any works of new construction or for the carrying out of any works of maintenance are sought from approved list(s) of contractors or are invited by public advertisement, the appropriate section of the Council providing a similar trading operation or commercial service, may in all instances be included in the approved list(s) of contractors from whom tenders may be sought for any such contract and may tender for all such contracts advertised by public advertisement, provided that tenders are also sought from at least three other persons who are not local authorities or development bodies and that the number of persons invited to tender shall in any event be sufficient to ensure genuine competition. |
| Statutory Requirements | 20.3 | All trading operations and commercial services must be carried out in accordance with the requirements of the Local |

Authorities (Goods and Services) Act 1970 and/or the Local Government in Scotland Act 2003 (as applicable) or any statutory modification or re-enactment thereof and any Regulations made and Guidance given by the Scottish Ministers.

21 Partnering

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| Application | 21.1 | This Standing Order applies where the Council is entering into partnering arrangements ³ . |
| Non-partnership Clause | 21.2 | It shall be an essential express condition in every such partnering arrangement that the arrangement (and any partnering charter) that it is not intended that there is a legal partnership being created. |
| Tendering | 21.3 | (a) Where in terms of the partnering arrangements consultants/specialists or other third parties are to be appointed by either the Council or by the other lead partner then such appointment is to be awarded subject to competitive tendering procedures the same as those procedures specified in Standing Orders 8, 9 and 10 . |
| In-house/Direct Labour Packages | | (b) Despite the terms of Standing Order 21.2(a) , where the partnership arrangement allows for the other lead partner to offer to provide an in-house or Direct Labour Package, then that in-house service may be viewed as to be treated as if they are a Trading Operation in terms of Standing Order 20 . |
| European Procurement Regulations | | (c) However Standing Order 21.3 (b) will not apply if the estimated value of the works/goods or services would exceed the thresholds set for the application of the European Procurement Regulations. In that case any contract to be awarded shall need to be awarded in terms of Standing Order 15 regardless of whether it is the Council or another lead partner seeking to award the contract in terms of the partnering arrangements. |

22 Nomination of Sub-Contractors

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| Tendering for Sub-Contractors | 22.1 | Where a contract provides for the nomination by an Executive Director of a sub-contractor for the supply of goods, plant, equipment, vehicles, furnishings, materials or commodities, or for the carrying out of works or for the provision of services as the case may be, the following provisions shall apply:- (i) tenders shall be invited by the Executive Director from not less than five persons whom he/she considers competent (having regard to the technical capability and financial standing of such persons) for the purpose unless, in consultation with the Chair, (or in his/her absence) the Depute Chair of the appropriate Committee, he/she considers that less than five persons are competent in which case he/she may |
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³ such as those set out in PPC2000 Standard Form of Contract for Project Partnering.

invite tenders from such lesser number of persons; and

- (ii) all tenders shall then be submitted, opened, checked and accepted in accordance with **Standing Orders 16, 17, 18 and 19.**

23 Sub-Contractors

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| Obligations on Sub-Contractors | 23.1 | All conditions to be observed by contractors in terms of these Standing Orders shall equally apply to sub-contractors, and all contractors shall be responsible for the observance of such conditions by such sub-contractors. |
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24 Contract Terms – Insurance

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| Contractor must have Insurance to specified level | 24.1 | <p>All specifications issued by and contracts entered into with the Council in connection with the carrying out of works or the provision of services or supplies shall provide that the contractor shall be insured with an Insurance Company approved by the Council against:-</p> <ul style="list-style-type: none">(i) liability at common law and/or under any legislation including but not restricted to liability under Employer's Liability Compulsory Insurance.(ii) liability to third parties; and(iii) any relevant professional indemnity cover |
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to such levels as may be specified from time to time by the Executive Director (Finance and Information Technology Resources) or by law.

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| Proof of Insurance – Contract Term | 24.2 | <p>It shall be a condition of every contract entered into with the Council for the carrying out of works for, or the provision of services or supplies to, the Council, that</p> <ul style="list-style-type: none">(a) current certificates of insurance shall be exhibited to the Council prior to the commencement of every contract;(b) any new policy of insurance (under which circumstances Standing Order 24.1 shall apply to that new insurance policy) shall be exhibited to the Council prior to or at its commencement; and(c) on demand any renewal receipts shall be exhibited during the period of the contract. |
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| To be a Contract Condition | 24.3 | <p>It shall be a condition of every contract entered into with the Council for the carrying out of works for, or the provision of services or supplies to the Council, that the contractor shall require to deal with any claim, potential claim or complaint arising from the carrying out of said works or the provision of said services or supplies, made by the Council, any of its tenants or any other person deriving right or benefit therefrom,</p> <ul style="list-style-type: none">(a) by providing in writing within fourteen days of such claim, potential claim or complaint first having been intimated to the contractor, details of the name and address of their |
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Insurance Company, together with the relevant policy number, to enable such claim, potential claim or complaint to be intimated to their Insurance Company by the Council, any such tenant or any such other person;

- (b) declaring that the contractor shall be obliged thereafter to provide timeously to their Insurance Company all relevant details to enable such claim, potential claim or complaint to be processed with the minimum delay and
- (c) binding the contractor to update the Council on the progress and outcome of any claim submitted by any of its tenants or any other person deriving right or benefit from the Council.

25 Contract Terms - Illegal Practices

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| Cancellation of Contract | 25.1 | Every contract entered into by the Council shall contain a clause entitling the Council to cancel the contract and to receive from the contractor the amount of any loss resulting from such cancellation if the contractor or any of their representatives (whether with or without the knowledge of the contractor) shall have practised collusion in tendering for the contract or any other contract with the Council or shall have employed any corrupt or illegal practices, including offering or giving or agreeing to offer or give any gratuity, bonus, discount, consideration or bribe of any kind whatsoever to the Council or any Member or Official of the Council, either in obtaining or carrying out the contract or any other contract with the Council. |
| Removal from Providers List | 25.2 | Where a contract is cancelled in terms of Standing Order 25.1 , the Council shall immediately remove that contractor from the list of persons who will be considered for tenders including the List of Approved Contractors compiled in terms of these Standing Orders, and such contractor shall be liable for any loss or damage which the Council may thereby sustain. |

26 Contract Terms - Equal Opportunities

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| To be in compliance with Equal Opportunities Requirements | 26.1 | Where the contract relates to the discharge of a Council function, the contractor shall be bound to discharge that function in a manner which encourages equal opportunities and, in particular, the observance of the equal opportunity requirements. |
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27 Contract Terms – Race, Disability and Gender Equality

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| Undertaking in relation to No Racial Discrimination | 27.1 | Where the contractor is undertaking a function of the Council on its behalf, any contract must contain an undertaking by the contractor, when carrying out that function, not to do any act which constitutes racial discrimination. Further the contract must contain such provision(s) as is/are necessary, having due regard to the need to:- |
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- ◆ eliminate unlawful discrimination; and
- ◆ promote equality of opportunity and good relations between persons of different racial groups to ensure that the Council can comply with its statutory duties under the Race Relations Act 1976, as amended.

Undertaking in relation to No Disability Discrimination

27.2. Where a contractor is undertaking a function of the Council on its behalf, any contract must contain an undertaking by the contractor, when carrying out that function, not to do any act which constitutes discrimination on grounds of disability. Further the contract must contain such provision(s) as is/are necessary, having due regard to the need to:-

- ◆ eliminate unlawful discrimination;
- ◆ eliminate harassment of disabled persons that is related to their disabilities;
- ◆ promote equality of opportunity between disabled persons and other persons;
- ◆ take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favourably than other persons;
- ◆ promote positive attitudes towards disabled persons; and
- ◆ encourage participation by disabled persons in public life,

to ensure that the Council can comply with its statutory duties, and where appropriate to ensure that the contractor will comply with its statutory duties, under the Disability Discrimination Act 1995 as amended

Undertaking in relation to Gender Equality

27.3. Where a contractor is undertaking a function of the Council on its behalf, any contract must contain an undertaking by the contractor, when carrying out that function, not to do any act which constitutes discrimination on the ground of gender. Further the contract must contain such provision(s) as is/are necessary, having due regard to the need to:-

- ◆ elimination unlawful discrimination and harassment; and
- ◆ promote equality of opportunity between men and women,

to ensure that the Council can comply with its statutory duties, and where appropriate to ensure that the contractor will comply with its statutory duties, under the Sex Discrimination Act 1975 as amended.

28 Contract Terms - Human Rights Act 1998

To be in compliance with the Human Rights Act 1998

28.1 Where appropriate, any contract must contain an assurance in writing, in the form determined by the Head of Legal Services, that the contractor will comply with the requirements of the Human Rights Act 1998 in so far as they are carrying out a function for the Council and that the contractor will indemnify the Council against any and all claims that may be made

against the Council due to a breach of the Act which is caused by, or arises out of, the contract or any actions or omissions of the contractor under the contract.

29 Contract Terms - Assignment

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|--------------------------------|---|
| No Assignment Permitted | 29.1 Unless specifically permitted in a contract, a contractor shall not assign or sub-let the contract or any part thereof except with the prior written consent of the Council. |
|--------------------------------|---|

30 Responsible Third Parties

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|-------------------------------------|--|
| Obligations of third parties | 30.1 Any third party or person (not being an Official of the Council) who is responsible to the Council for a contract on its behalf shall in relation to that contract:- <ul style="list-style-type: none">(i) comply with these Standing Orders as though he were an official of the Council;(ii) at any time during the carrying out of the contract produce on request to the appropriate Executive Director all records maintained by him in relation to that contract; and(iii) on completion of the contract, transmit to the appropriate Executive Director all such records relating to that contract including information relevant to the Transfer of Undertaking Regulations or amending legislation, where appropriate or applicable. |
| To be a contract Condition | 30.2 A condition to this effect shall be included in any appointment of the third party. |

Schedule

E-Procurement

1. Introduction

- 1.1. This Schedule shall apply to any tendering procedure or contract entered into using electronic means ("e-procurement") including, but not restricted to, electronic auctions and dynamic purchasing systems.
- 1.2. All provisions of the foregoing Standing Orders shall apply to contracts tendered or entered into via e-procurement except to the extent that they are inconsistent with the following provisions of this Schedule.

2. **Use of e- Procurement**

2.1. An Executive Director may conduct any tendering exercise or enter into any contract using e-procurement where:-

- (a) the prior approval of each of the Head of Administration Services, the Head of Finance and the Head of Legal Services has been obtained;
- (b) the e-procurement is to take place using a system approved by the Council; and
- (c) to do so would not significantly restrict or distort competition.

3. **Verification and Authentication**

3.1. Where an Executive Director decides to use e-procurement that Executive Director must consider whether it is appropriate to impose any specific requirements regarding the verification and authentication of the tender submission and the signature of the person making the submission.

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

4. **Receipt and Custody**

4.1. This paragraph 4 shall replace **Standing Order 16.1** where e-procurement is used.

4.2. No tender submitted using electronic means will be considered unless:-

- 4.2.1. it is received in the format specified in the tender documents;
- 4.2.2. at the electronic address specified by the Council; and
- 4.2.3. the entire electronic submission has been received by the time and date specified as the tender deadline

4.3. The Head of Administration Services 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.

4.4. E-procurement must not allow the identity of the tenderer to be revealed prior to the tender being opened after the deadline for the receipt of tenders.

4.5. The Head of Administration Services shall ensure that for each e-procurement 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.

4.6. Late tenders or tenders received in the wrong format or not at the notified address will not be considered under any circumstances and they shall be returned to the tenderer with an explanation as to why that tender has not been considered.

5. **Opening of Tenders**

5.1. All tenders submitted using e-procurement shall be opened one after the other during a time period set aside for that purpose.

5.2. The Head of Administration Services shall ensure that for each e-procurement there shall be kept and, if required, produced a record showing the particulars of each tender received and the date and time when those tenders were opened.

5.3. All such tenders shall be opened only by the Head of Administration Services in the presence of an Official from a Resource of the Council, not being an Official of the Resource issuing the tender documents and who is authorised for that purpose and selected on such rotational basis as may be agreed by the Head of Administration Services from time to time.

6. **Register of e-tenders**

6.1. In addition to the register of tenders kept in accordance with **Standing Order 17.3**, the Head of Administration Services 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.

7. **Acceptance**

7.1. Acceptance of tenders received by e-procurement shall be in accordance with **Standing Order 19**.

8. **Electronic Auctions**

8.1. For the purpose of these Standing Orders, the expression "electronic auction" means:- *"a repetitive process, involving an electronic device for the presentation of new prices, revised downwards or upwards 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 the stated evaluation methods"*.

8.2. The Head of Administration Services, Head of Finance and the Head of Legal Services may authorise the carrying out of an electronic auction where satisfied that:-

- (a) it is the interests of the Council to do so and where they are satisfied with the electronic auction is in accordance with the EU Procurement Rules; and
- (b) that the likely benefit of an electronic auction will outweigh the costs of undertaking the electronic auction.

8.3. An electronic auction may only be carried out where the possibility of the use of an electronic auction has been stated in OJEU notice (if applicable), the contract advertisement and the tender documents issued to tenderers.

8.4. Before proceeding with an electronic auction the Executive Director of the Resource which requested the electronic auction 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.

8.5. Prior to the commencement of any electronic auction, the Council 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 the duration of the electronic auction.

8.6. Throughout each phase of an electronic auction the Council shall instantaneously communicate to all tenderers involved at least sufficient information to enable them to

ascertain their relative rankings at any moment. During the electronic auction information relating to all tenderer's new prices and their ranking on price will be instantaneously available to all tenderers electronically. The Council may also, at any time, announce the number of participants in that electronic auction. In no case may the Council disclose the identities of the tenderers during any phase of an electronic auction.

8.7 Prior to the commencement of any electronic auction, the Council 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 the duration of the electronic auction.

8.8 Any electronic auction will be subject to such additional procedural requirements as the Head of Administration Services, the Head of Finance and/or the Head of Legal Services consider necessary.

9. **Dynamic Purchasing System**

9.1. For the purpose of these Standing Orders the expression "dynamic purchasing system" shall mean such a system as defined in the Public Contracts (Scotland) Regulations 2006 being:-

"a completely electronic system of limited duration which is –

(a) established by a contracting authority to purchase commonly used goods, work, works or service;; and

(b) open throughout its duration for the admission of economic operators which-
i. satisfy the selection criteria specified by the contracting authority; and
ii. submit an indicative tender to the contracting authority or the person operating the system on its behalf which complies with the specification required by that contracting authority or person".

9.2. The intention to use a dynamic purchasing system for any procurement shall be notified in advance to the Head of Administration Services, Head of Finance and Head of Legal Services. Such a dynamic purchasing system will be subject to such additional procedural requirements as the Head of Administration Services, Head of Finance and Head of Legal Services consider necessary.

Standing Orders on Contracts
Approved by South Lanarkshire Council on 23 May 2007

Schedule of Revisions

| | Date | Committee | Revision |
|---|-------------|------------------|-----------------|
| 1 | | | |
| 2 | | | |
| 3 | | | |