

PART IV

STANDING ORDERS RELATING TO CONTRACTS

1. COMPLIANCE WITH STANDING ORDERS

- (1) Every order placed or made by or on behalf of the Board and every contract, with the exception of contracts for acquisition or disposal of heritable property, or any interest therein and contracts for the disposal of moveable property shall comply with these Contract Standing Orders and no exception from any of the provisions shall be made otherwise than by the direction of the Board, or in the case of an emergency, in which event the Assessor shall consult, unless it is totally impractical for him/her to do so, with the Convener and Depute Convener of the appropriate Board before any action binding on the Board is taken.
- (2) Every exception so made on behalf of the Board shall be reported to the Board, with a statement of the reasons that justified the exception being made.

2. TENDERING PROCEDURES.

- (1) Subject to Contract Standing Order 1 and to any over-riding requirements of the European Community, no contract for civil engineering works, building and construction works, the purchase of goods and/or materials, the provision of services, the hire of plant or vehicles or equipment shall be made unless either:-
- (2) (i) **Ad Hoc Tenders**

At least ten days' public notice has been given in one or more of the local newspapers circulating in the area of the authority and in such trade journals as the Assessor has considered desirable, stating the nature and purpose of the contract, inviting expressions of interest or tenders for its execution, and stating the last date when tenders will be received. It is anticipated, in this instance, that all parties expressing an interest will be invited to tender and that all tenders will be considered;

OR

- (ii) **Standing Approved List for Selective Tenderers**

Tenders have been invited from amongst a list of persons who have been invited by public notice given in the manner described in (2)(i) above to have their names placed on a list of persons able and willing to tender for contracts for the supply of goods or materials of specified categories, values or amounts or for the execution of specified categories of works. This list shall -

- (a) be compiled and maintained by the Assessor concerned (with a copy passed to the Clerk and Treasurer respectively);

- (b) contain the names of all persons accepted by the Board as having the appropriate expertise and resources to undertake the necessary work in terms of paragraphs (2)(iii) and (iv) hereof;
 - (c) indicate whether a person is included in it for contracts for all, or only some of the specified values or amounts of categories; and
 - (d) be updated at six-monthly intervals and reviewed following public notice in the manner described in (2)(i) above at intervals not exceeding three years;
- (iii) no contractor will be included on the list unless
- (a) the Assessor is satisfied that the contractor has the expertise and resources to undertake the works for which the contractor wishes to be considered, and
 - (b) The Treasurer is satisfied as to the contractor's financial standing.
- (iv) Each contractor on the list will, at annual intervals or as required by the Treasurer, submit a copy of audited accounts together with such other information pertinent to the management or operations of the company as the Treasurer may reasonably require.

OR

(3) **Ad Hoc Approved List**

Public notice has been given in respect of a particular contract in the manner described in (2)(i) above, inviting applications from persons who undertake such contracts to be placed on a list to be approved by the Board on the recommendation of the Assessor from which contractors selected by the Assessor will be invited to submit tenders for the execution of the work;

- (i) no contractor will be included on the list unless
 - (a) the Assessor is satisfied that the contractor has the expertise and resources to undertake the works for which the contractor wishes to be considered, and
 - (b) the Treasurer is satisfied as to the contractor's financial standing.
- (ii) Each contractor on the list will, at annual intervals or as required by the Treasurer, submit a copy of audited accounts together with such other information pertinent to the management or operations of the company as the Treasurer may reasonably require.

OR

(4) Serial Tenders

- (i) The proposed contract for the execution of work forms part of a serial programme of work, the terms having been negotiated with the contractor on the basis of the rates and prices contained in an initial contract awarded competitively following an invitation to tender in accordance with the provisions of (2) or (3) above and the initial tender having been stipulated to be the first part of a serial programme;

OR

(5) Tenders for Specialised Work

- (i) In the case of tenders for specialised work (including the supply and installation of specialised equipment), the Assessor in respect of contracts up to £50,000 or the Board in cases above that amount, considers it in the best interests of the Board that tenders be invited for the execution of such work from a contractor or contractors selected, or negotiated with a contractor already engaged by the Board in terms of these Contract Standing Orders;

OR

(6) Consortium Arrangements

- (i) Where the Board is a member of a consortium or similar body which exists for the purposes of joint purchasing arrangements, and such body has invited tenders for the supply of goods or services, the Board may treat the arrangements entered into by that body as a tender required by these Contract Standing Orders;
- (ii) It is expressly specified that none of the above provisions applies to contracts covered by the provisions of the Local Government, Planning and Land Act 1980 or the Local Government Act 1988 as amended, or the Local Government Act 1992, or any regulations made thereunder.
- (iii) In the anticipation of any applicable public supply contract, public works contract or public service contract exceeding the EC limit at any time fixed by Directive from the European Commission, the Board will comply with all requirements as specified in appropriate Directives and Regulations
- (iv) In respect of all contracts entered into by the Board, or the selection process for inclusion in lists of approved contractors, the contractor shall be obliged to exhibit evidence satisfactory to the Board that the following policies are in place, are operational and are being adhered to:-
 - (a) a Health and Safety Policy
 - (b) an Equal Opportunities Policy

- (v) It shall be a condition of the engagement of the services of any architect or of any engineer, surveyor or other consultant (not being an officer of the Board) who is to be responsible to the Board for the supervision of a contract on its behalf, that in relation to that contract he/she shall:-
 - (a) comply with these Standing Orders subject to the modification that the procedures to be followed in inviting and opening tenders shall be approved in advance by the Assessor;
 - (b) at any time during carrying out of the contract, produce to the Assessor, or his representative, on request, all the records maintained by him/her in relation to the contract; and
 - (c) on completion of a contract, transmit all such records to the Assessor.

3. EXCEPTIONS TO TENDERING PROCEDURES FOR PROPRIETARY, ETC. ARTICLES

- (1) Nothing in these Contract Standing Orders shall require competitive tenders to be invited if:-
 - (i) in the case of contracts for the supply of goods, materials or services -
 - (a) the goods or materials are proprietary articles or are sold only at a fixed price and no reasonable satisfactory alternative is available; or
 - (b) the prices of the goods or materials are wholly controlled by trade organisations or Government Order and no reasonable satisfactory alternative is available; or
 - (c) for other reasons, there would be no genuine competition.
 - (ii) the work to be executed or the goods, materials or services to be supplied constitute an extension of an existing contract, provided that the original contract contains provision for extension in which case the extension must be approved by the Board if the total value of the contract including the extension exceeds £25,000 and in all other cases the extension shall be reported to the Board;
 - (iii) the contract is for the execution of work or the supply of goods, materials or services certified by the Assessor as being required so urgently as not to permit the invitation of tenders, such certificate to be reported to the next meeting of the Board;
 - (iv) the work to be executed or the goods, materials or services to be supplied consist of repairs to or the supply of parts of existing proprietary machinery or plant;

- (v) the estimated expenditure is less than £25,000 and it is not considered reasonably practicable in the Board's interest to invite tenders;
 - (vi) the Assessor concerned deems it desirable to negotiate with a Direct Service Organisation of one of the constituent Councils or other Council Services, subject always to the provisions of all relevant legislation;
- (2) However, in any case where competitive tenders are not sought, the Assessor will ensure that good value for money is obtained and that his operations can be shown to be conducted in the best interests of the Board.

4. TENDERING PROCEDURES - CONTRACTS TO BE IN WRITING

- (1) Every contract will be in writing unless the Clerk specifies otherwise and will specify:-
- (i) the work, materials, matters or things, to be furnished, had, or done, (including any appropriate technical specification(s));
 - (ii) the price to be paid with a statement of discounts or other deductions; and
 - (iii) the time or times within which the contract is to be performed.

5. APPOINTMENT OF NOMINATED SUB-CONTRACTORS

- (1) Where the contract provides for the appointment of a nominated sub-contractor or supplier for the execution of work or the supply of goods or materials, the following provisions will apply:-
- (i) tenders will be invited in accordance with Contract Standing Orders-
 - (ii) the procedure for receipt, custody and opening of tenders and the procedure for dealing with late tenders and the alteration of tenders will conform to Contract Standing Orders;
 - (iii) the lowest tenderer will be nominated as the sub-contractor or supplier unless consent will have been obtained to the acceptance for some good and sufficient reason of a tender other than the lowest in accordance with Contract Standing Orders.

6. SUB-CONTRACTS AND NOMINATED SUPPLIERS

- (1) Where approval exists for a contract which encompasses work contained within the sum authorised by committee, for which a nominated sub-contractor or supplier is responsible. The Assessor shall notify the Board of:

- (i) the lowest/successful quotation is in excess of the "Provisional" or "Prime Cost" sum contained within the contract documents or Assessor's Service estimate, as the case may be; and
- (ii) it is likely to cause the final contract sum to exceed that originally authorised by committee.

7. RECEIPT AND CUSTODY OF TENDERS

- (1) Where tenders are invited, no tender will be considered unless contained in a plain envelope which shall be securely sealed and shall bear an approved label, provided by the Board, which shall bear the word "Tender" followed by the subject to which the tender relates. The envelopes shall not bear any distinguishing mark or matter intended to indicate the identity of the sender and prospective tenderers shall be notified accordingly. Such envelope shall be addressed impersonally to the Assessor.
- (2) Until the time appointed for its opening, the tender shall remain in the custody of the Assessor.
- (3) The recipient of the envelope containing the tender must:-
 - (i) mark the time and date of receipt on the approved label;
 - (ii) record the receipt of the envelope in the designated triplicate receipt book, recording all the required information;
 - (iii) hand the top copy of the receipt to the person delivering the envelope and attach the second copy to the tender envelope; and
 - (iv) give the envelope to the officer designated by the Assessor as custodian of tenders, and ensure that that officer initials and dates the third copy of the receipt as confirmation that he/she has custody of the envelope.

8. OPENING OF TENDERS

- (1) Tenders shall be opened at one time by an employee designated for the purpose by the Assessor and at least one other employee representing the Assessor. There must also be present a person designated by the Clerk and/or Treasurer.
- (2) No officer who has an interest in any company may attend the opening of tenders where that company has been invited to tender.
- (3) Immediately after a tender has been opened, it shall be stamped and/or perforated, where appropriate, with the official stamp and persons in attendance shall sign the relevant page of the tender document.

9. LATE TENDERS

- (1) Any competitive tender received after the time specified for the receipt of tenders will be considered if no other tender has been opened, and, in the opinion of the Assessor in consultation with the Clerk.
 - (i) there are good and sufficient reasons for the late receipt of the tender, and
 - (ii) the late receipt of the tender does not place any tenderer at an advantage over any other tenderer.
- (2) Any competitive tender received after the official opening has commenced, or rejected under the provisions above, will be promptly returned to the tenderer by the Assessor and may be opened to ascertain the name of the tenderer but no details of the tender shall be disclosed.
- (3) During the period between the opening of tenders and the stage in the handling of them when the content becomes publicly known an absolute obligation of preserving secrecy will rest with Members and employees.

10. ALTERATIONS/CORRECTIONS TO TENDERS

- (1) An appropriate employee shall examine all tenders for arithmetical errors, correct the tenders where necessary and notify the tenderers concerned of any such corrections. The revised arithmetically corrected figure will become the tender amount.
- (2) Thereafter, the three lowest, or highest if appropriate, tenders determined in ascending order on the result of the foregoing examination, shall be examined for the purpose of identifying technical, professional and other non-arithmetical errors in order to establish the lowest tender. For this purpose the following procedure shall apply:-
 - (3) (i) **Building Works**

The examination of tenders shall be carried out in accordance with the principles of the Code of Procedure for Single Stage Selective Tendering 1989 published for the National Joint Consultative Committee for Building in force for the time being;
 - (ii) **Civil Engineering Works**

The examination of tenders shall be carried out in accordance with Part 5 of Guidance on the Preparation, Submission and Consideration of tenders for Civil Engineering Contracts produced by the I.C.E. Conditions of Contract Standing Joint Committee in force for the time being.
- (4) Where examination of tenders reveals errors or discrepancies which would affect the tender figure(s) in an otherwise successful tender, the tenderer is to be given details

of such errors and discrepancies and, after consideration by the Board, afforded an opportunity of confirming or withdrawing his offer. If the tenderer withdraws, the next tender in competitive order duly examined in the same way and considered by committee will become the successful tender. Any exception to this procedure may be authorised only by, the Board after consideration of a report by the Assessor.

11. ACCEPTANCE OF TENDERS UNDER £50,000 IN VALUE

- (1) Contracts for amounts not exceeding £50,000 may be entered into by the Assessor, subject to compliance with the remainder of these Contract Standing Orders where applicable.

12. ACCEPTANCE OF TENDERS OVER £50,000 AND UNDER £100,000 IN VALUE

- (1) Contracts for amounts exceeding £50,000 but not exceeding £100,000 including sub-contracts may be entered into by the Assessor, having first received the approval of the Clerk, subject to (i) compliance with the remainder of these Contract Standing Orders, where applicable, and (ii) his actions being reported to the Board for information.
- (2) Notwithstanding the foregoing provisions of this paragraph in the event that the tender which the Assessor intends to accept is a tender other than the lowest, if payment is to be made by the Board, or the highest, where payment is to be received by the Board, or otherwise if the amount of the tender shall fall short of or exceed, as appropriate, the amount contained in the relevant budget, the matter shall be referred to the Board for consideration. The Assessor shall only enter into said contract with the express consent of the Board.

13. ACCEPTANCE OF TENDERS OVER £250,000 IN VALUE

- (1) All contracts for amounts exceeding £250,000 shall only be accepted by the Assessor with the express consent of the Board after it has considered the matter.

14. TENDERS - GENERAL

- (1) Approved tendering procedures which require contractors to submit percentage variations against a priced Schedule of Rates will, in the interest of fair competition, only permit the disclosure of the list of contractors who were invited to tender along with identification of the successful tenderer.

15. ASSIGNATION

- (1) In every written contract for the execution of work or the supply of goods or materials the following clause shall be inserted:-

- (2) The contractor shall be prohibited from transferring or assigning, directly or indirectly, to any person or persons whatever, any portion of his contract without the written permission of the Board. Sub-letting of any part(s) of the work, except to the extent permitted in writing by the relevant officer, shall be prohibited.

16. LIQUIDATED DAMAGES

- (1) Where possible, contracts estimated to exceed £100,000 in value or amount for the execution of works (or for the supply of goods or materials by a particular date or series of dates) shall provide for liquidated damages. The amount to be specified in each such contract shall be determined in consultation with the Clerk and the Treasurer.
- (2) Dependent on the terms of the contract documents, where completion of a contract is delayed by more than two twelfths of the contract period, it will be the duty of the Assessor to take appropriate action in respect of any claim for liquidated damages.

17. PERFORMANCE BONDS

- (1) Where a contract is estimated to exceed £200,000 in value or amount and is for the execution of works (or for the supply of goods or materials by a particular date or series of dates) the Board shall require and take a Bond or other sufficient security for the due performance of the contract. The Assessor, in consultation with the Treasurer and other appropriate officers, shall specify in the conditions of tender the nature and amount of the security to be given.

18. SPECIFICATIONS AND STANDARDS

- (1) All tenders for the execution of works or the supply of goods or materials shall, except to the extent that the Board in a particular case or specified categories of contract otherwise decides, be based on a definite specification.
- (2) All written contracts where a specification issued by the British Standards Institution or the Agreement Board of the European Committee is current at the date of the tender and is applicable, shall require, as a minimum, that goods and materials used in their execution shall be in accordance with that specification.

19. PREVENTION OF FRAUD

- (1) In every written contract, a clause shall be inserted to secure that the Board shall be entitled to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation:-
 - (i) if the contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to

obtaining or executing the contract or any other contract with the Board, or for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Board; or

- (ii) if the like acts shall have been done by any person employed by him/her or acting on his/her behalf (whether with or without the knowledge of the contractor); or
- (iii) if in relation to any contract with the Board the contractor or any person employed by him/her or acting on his/her behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or any amendment of them, or shall have given any fee or reward, the receipt of which is an offence under Section 68 of the Local Government (Scotland) Act, 1973.

20. INDEMNITIES

- (1) The contractor shall be required to indemnify the Board against:-
 - (i) any claim which may be made in respect of Employers' Liability against the Board or the contractor by any workers employed by the contractor or any sub-contractor in the execution of the works; and
 - (ii) any claim for bodily injury or damage to property of third parties, and the contractor shall, when required by the Treasurer, produce satisfactory evidence that he/she is insured against any such claim.

21. FINAL CERTIFICATES

- (1) The final certificate of payment of a contract should not be issued by the Assessor for a period of three weeks (or such shorter period as the Treasurer may specify in any particular case) after he/she has produced to the Treasurer a detailed statement of account, with all vouchers and documents as the Treasurer may reasonably require, relating to prime cost items and particulars of additions, deductions, omissions and price variations.

22. CONTRACT PAYMENTS AND OTHER PROVISIONS

- (1) Where contracts provide for payment to be made by instalments, the Treasurer shall arrange for the keeping of a contract register or registers to show the state of account on each contract between the Board and the contractor together with any other payments and the related professional fees.
- (2) Payments on account of the contract sum shall be made by the Treasurer within the time specified in the contract upon receipt of authorised certificates of the Assessor. Such certificates shall be in a form approved by the Treasurer.

- (3) Any material variation to a contract, whether it be by an addition or an omission, shall be authorised by the Assessor who shall:-
- (i) Notify the contractor in writing by issuing an official variation order specifying the addition or omission, the basis of charge and financial effect of such variation;
 - (ii) Send copies of the variation order to the Treasurer; and
 - (iii) Include the financial effect of any variation order on the contract price in any progress reports on that contract submitted to the Board.
- (4) Subject to the provisions of the contract, in each case variation shall, unless otherwise evidenced to his satisfaction, be authorised in writing by the Assessor (or private architect, engineer or consultant) as may be appropriate or by his depute or other officer nominated by him/her.
- (5) All such variations shall be reported to the Board as soon as practicable if the cumulative effect of these is to increase or decrease the value of the contract by 10% of the contract price or £10,000, whichever is the greater.
- (6) Exceptional claims from contractors in respect of matters not clearly within the terms of any existing contract shall be referred to the Clerk for consideration of the authority's legal liability and, where necessary, to the Treasurer for financial consideration before a settlement is reached.

23. INDEX RELATION OF FIGURES

- (1) The sums of money referred to in these Contract Standing Orders shall be automatically adjusted, without recourse to the Board, by application from time to time of the Retail Price Index or Building Cost Index (as appropriate). The Clerk will notify the Board of any change made in this respect and of any increase in the amounts referred to in these Contract Standing Orders, which amounts shall be reviewed on an annual basis, with effect from 1st April in each year.

