

THE NORTHERN JOINT POLICE BOARD

CONTRACT STANDING ORDERS

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CONTRACT STANDING ORDERS

FOR THE NORTHERN JOINT POLICE BOARD

COMMENCEMENT

These Contract Standing Orders shall apply and have effect from 1st July 2007 and shall be subject to annual review. The purpose of this revision is to not only bring Northern Constabulary/Northern Joint Police Board procurement practices into line with the provision set out in the Public Contracts (Scotland) Regulations 2006 but also introduce the accountability and governance structures recommended in the Review of Public Procurement in Scotland (2006). Notably these Standing Orders introduce a scheme of formal Delegated Procurement Authority (DPA).

DEFINITIONS

“Board” means The Northern Joint Police Board constituted under the Police (Scotland) Act 1967 and the Northern Combined Police Area Amalgamation Scheme Order 1995

“Chief Constable” means the Chief Constable of Northern Constabulary, and is taken to include any member of staff delegated by the Chief Constable to undertake tasks relating to Contracts. The authority to undertake these tasks must be documented.

“Clerk” means the clerk to the Northern Joint Police Board, whose function is undertaken by the Head of Committee Services of the Highland Council, Council Buildings, Glenurquhart Road, Inverness, and is taken to include any member of staff delegated by the Clerk to undertake tasks relating to Contracts.

“Officer” means an Officer who has Delegated Procurement Authority (DPA)

“Procurement Department” means the Northern Constabulary Procurement Department

“Procurement Manager” means the Northern Constabulary Procurement Manager

“SME(s)” means a business with less than 250 employees.

“Services” means services as defined by the Public Contract (Scotland) Regulations 2006

“Supplies” means supplies as defined by the Public Contract (Scotland) Regulations 2006

“Treasurer” means the Treasurer to the Northern Joint Police Board, whose function is undertaken by the Director of Finance of the Highland Council, Council Buildings, Glenurquhart Road, Inverness, and is taken to include any member of staff delegated by the Treasurer to undertake tasks relating to Contracts.

“Value for Money” means the optimum combination of whole-life cost and quality (or fitness for purpose) to meet the Board’s requirements

“Works” means works as defined in the Public Contracts (Scotland) Regulations 2006

1. INTRODUCTION

These Contract Standing Orders set out how the Board will invite tenders and award Contracts for goods, services and works.

The purpose of Contract Standing Orders is to ensure that Contracts are appropriate for their purpose, provide the right balance between price and quality and are procured in an open way that demonstrates probity and compliance with the Law and the Board's policies.

Officers responsible for procurement activities must comply with these Standing Orders, which lay down the basic principles which must be applied to all procurement activities conducted on behalf of the Board. In each and every instance the Officer, in conjunction with the requirement owner, must take appropriate steps to ensure that the procurement processes adopted are proportionate to the complexity, value and the risks associated with the procurement exercise in question.

2. COMPLIANCE WITH CONTRACT STANDING ORDERS

Every Contract entered into on behalf of the Board will comply with these Standing Orders and:

- a) The Financial Regulations of the Board
- b) The Scheme of Delegated Procurement Authority
- c) The Requirements of the Public Contracts (Scotland) Regulations (2006)
- d) EC Commission Interpretative Communication on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives
- e) All other relevant legislation
- f) Government procurement initiatives (e.g. those relating to the Suppliers' Charter, sustainable development issues in procurement and steps to remove barriers to the active participation of Small and Medium Sized Enterprises)

3. SCOPE OF CONTRACT STANDING ORDERS

The basic principles, which shall be applied to all procurement activities, are as follows:

- a) Strive to achieve Best Value

- b) Be consistent with the highest standards of integrity
- c) Ensure fairness in the awarding of Contracts
- d) Comply with all legal requirements
- e) Support the Force's corporate objectives

4. RELEVANT CONTRACTS

All Relevant Contracts must comply with these Standing Orders.

A relevant Contract is any agreement made by, or on behalf of the Board for the supply of goods, works and services. These include agreements for:

- a) The supply or disposal of goods
- b) Hire, rental or lease of goods
- c) The execution of works
- d) The delivery of services including those related to the recruitment of staff, land and property transactions and financial and Consultancy services.

Relevant Contracts do not include those which relate to the following:

- a) The employment of staff
- b) The engagement of counsel
- c) The acquisition, disposal or transfer of land

5. THE CONTRACTING AUTHORITY

The Board is the Contracting Authority in all Contracts into which The Northern Constabulary or any part of The Constabulary enters. There are no legal personalities within the Constabulary other than The Board itself, and as such no part of the Force has the legal capacity to enter independently into a Contract. All Contracts awarded and purchases made are therefore made by or on behalf of The Board.

6. REQUIREMENTS IN RESPECT OF THE SCOTTISH PROCUREMENT REGULATIONS

The Public Procurement (Scotland) Regulations 2006 (The "Regulations") apply to the Board. Where contract values exceed the EU thresholds (i.e. £144,371 for Supplies and Services and £3,611,319 for Works), the

Regulations specify a number of procedures available to Contracting Authorities for the award of contracts (i.e. Open, Restricted, Negotiated and Competitive Dialogue procedures). The Procurement Department must be consulted prior to the commencement of any procurement exercise where the estimated value exceeds the EU thresholds for advice and guidance on which procedure is appropriate. Where necessary, the Procurement Department may seek other professional advice to establish the most appropriate procedure to be used.

7. CONTRACTS WHERE THE FULL PROVISIONS OF THE PROCUREMENT REGULATIONS DO NOT APPLY

Even where the estimated contract value does not exceed the EU thresholds there will usually be a need for a contract opportunity to be subject to some form of adequate publicity to meet the basic rules and principles of the EC Treaty requirements such as non-discrimination and equal treatment, transparency, proportionality and mutual recognition. Unless there are compelling business reasons to the contrary, Officers should ensure that adequate publicity is given to all contract opportunities that fall below the OJEU threshold limits or are otherwise exempt from the Scottish Procurement Regulations.

8. IMPLICATIONS OF A FAILURE TO COMPLY WITH THE PROCUREMENT REGULATIONS

Failure to adhere to the provisions set out in the Regulations and to these Contract Standing Orders could result in the Board becoming subject to Court action or enforcement action or claims from potential contractors.

9. SCOPE OF DELEGATED PROCUREMENT AUTHORITY

Contractual commitments made on behalf of the Board should be executed by an Officer with Delegated Procurement Authority (DPA). The Officer should have sole authority to make legal commitments on behalf of the Board.

DPA covers all procurement commitment, including variations to and extensions of contracts and the use of Framework Agreements where mini-competitions are necessary. Only Officers with written Delegated Procurement Authority will be authorised to enter into a legally binding contract/order on behalf of the Board.

DPA is delegated to an Officer by means of written authorisation from the Procurement Manager following a request from an individual's line manager.

DPA is personal to the Officer only whilst occupying their current post. It would not normally transfer to a successor should they leave their current post,

nor would it transfer with them to another post.

DPA should not be confused with financial authority. Financial authority is the authority to allocate money for a procurement from the appropriate cost centre within a business area. There should be a separation of duties between those Officers with DPA and those with Financial Authority where the contractual commitment exceeds £5000 (ex VAT). DPA should, where at all possible, be set aside from financial responsibilities.

The Procurement Manager shall maintain a list of Officers with DPA.

10. DELEGATION PROCUREMENT AUTHORITY – APPLICATION PROCESS

Officers applying for DPA must be able to demonstrate a continuing need to place contracts/orders on behalf of the Board. Applications to facilitate one-off requirements will not normally be authorised.

In cases where DPA is approved, Officers will be expected to agree to the following:

- a) No commitment is to be made without clear written instruction from the Project Sponsor/Budget Holder
- b) If it seems likely that the probable ultimate whole life cost of a contract will exceed the Officer's authority, the case must be referred to an Officer with DPA at the correct level or the Procurement Department
- c) DPA must be exercised with discretion. Any cases involving unusual or important features, policy questions or special difficulty must be referred to the Procurement Department before proceeding. Quite apart from specific cases, the Procurement Department must be consulted on any general or policy matters on which guidance is required
- d) All cases where passing over a lower priced, technically acceptable tender is proposed must be approved by the Procurement Manager. The justification for such a proposal must be recorded and retained on file.
- e) In the case of possible price increases under existing contracts/orders, Officers must obtain prior approval from the budget holder that there is sufficient budget to cover the revised contractual commitment.

11. CIRCUMSTANCES WHERE DPA IS NOT REQUIRED

DPA is **not** required under the following circumstances:

- a) Where existing contracts are already in place (e.g. stationery, travel, office

furniture etc.)

- b) When using a Purchasing Card for low value procurements up to a maximum of £5000 (ex VAT) per transaction, and up to a maximum of £25,000 (ex VAT) per month or the Officer's maximum authorised levels, whichever is lower.

12. QUOTATION THRESHOLDS

Where the contract under consideration does not exceed £50,000 (ex VAT) it will be appropriate to request quotations rather than to undertake a formal tendering process involving sealed bids. The procedures for dealing with quotations must be as rigorous, fair and transparent as those for dealing with formal tenders, the only difference being that the Officer is not obliged to use a formal sealed bid procedure.

The minimum quotation procedure is outlined at Appendix 1. A detailed procedure is set out in guidance issued by the Procurement Department. This guidance is available on the Force Intranet.

13. TENDER THRESHOLDS

Formal sealed bid procedures will apply to all contracts with an estimated whole life cost of greater than £50,000 (ex VAT).

The Scottish Executive Toolkit (to be replaced by the Scottish Public Procurement Toolkit) should always be used as a source of information when seeking formal sealed bids.

14. CONTRACTS NOT TO BE SPLIT

Contracts and Purchase Orders must not be artificially split in order to bring them below any relevant threshold.

15. AUTHORITY TO INVITE QUOTATIONS AND TENDERS

Authority to invite quotations shall rest with those Officers who hold written DPA at the appropriate financial level, and where this is not available, the Procurement Department.

All procurements that require formal sealed bid threshold shall be invited by the Procurement Department. For works, and works related services (e.g. works related consultancy) tenders shall be invited by the Estates Department, working in conjunction with the Procurement Department.

16. TYPES OF TENDER/QUOTATION

Subject to any exceptions to Contract Standing Orders and to any overriding requirements set out in the Regulations, no Contract for goods services or works should be made unless either: -

- a. Quotations with a value of less than £15,000 (ex VAT) – The competition requirements set out in Appendix 2 have been complied with; or
- b. Quotations (with a value of greater than £15,000 ex VAT) and Tenders - Adequate publicity of at least ten days by means of an advertisement placed on a website (e.g. a portal website created specifically for contract advertisements or the Force's own website), national journal specialising in public procurement announcements, newspapers with national or regional coverage or specialist publications has occurred. The advertisement inviting an expression of interest should state the nature and the purpose of the proposed contract and, the award method and state the closing date for the receipt of applications; or
- c. Serial Tenders - where the proposed contract forms part of a serial programme of work, the terms having been agreed with the contractor on the basis of the rates and prices contained in the initial contract awarded competitively following an invitation to quote/tender in accordance with the provisions set out at (a) or (b) above, and provided that the initial tender was stipulated to be the first part of a serial programme; or
- d. Call Off Contracts (Framework Agreements) - the proposed contract consists of a list of supplies or services with the terms and prices having been agreed with the contractor or contractors after competitive quotation/tender in accordance with (a) and (b) above, from which the Board can then purchase over a set period of time; or
- e. Consortia Arrangements – where the Board is a member of a consortium, collaboration or similar body which exists for the purpose of joint procurement 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 as required by these Contract Standing Orders.

The choice of procurement route will be dependent upon matters such as the nature, the complexity and objectives of the procurement and which route offers the best potential for the delivery of value for money. It will be for the Officer, in conjunction with the requirement owner, and where appropriate the Procurement Department, to determine the most appropriate procurement route.

17. EXCEPTIONS TO CONTRACT STANDING ORDERS

Nothing in these Contract Standing Orders will require the full competitive quotation/tendering procedures to be complied with where: -

- a) The amount or value of the contract/purchase order does not exceed £1,000 (£5,000 in the case of Works contracts). In such cases Officers with DPA will have discretion, subject to compliance with guidance issued by the Procurement Department, to dispense with the requirement for a formal assessment of the market;
- b) The supply of goods, services or works are not readily obtainable from other suppliers or are sold at a fixed price and in either case it can be demonstrated that no other equivalent is available;
- c) For work of exceptional urgency caused by unforeseeable circumstances, where competitive tendering would cause unacceptable delay (e.g. after breakdown, storm, fire etc.);
- d) Where the proposed contractor is by recent experience (within 3 months) the best value for money supplier and it can be demonstrated that it would be likely to remain so in another competition;
- e) The work is to be executed to existing plant or equipment and the Board is bound by the terms of an agreement, by insurance requirements or by terms of a warranty to use a specified contractor;
- f) Where the contract is to be awarded under an existing framework, approved list or other qualification system which has itself been the subject of adequate publicity;
- g) For other reasons, where it can be demonstrated that there would be no genuine competition.

18. DISPENSING WITH COMPETITION

It is a fundamental principle of Public Sector procurement that purchases should be made a result of competition.

Dispensing with competition at any level of purchase may amount to unfair discrimination, and is therefore contrary to basis EC Treaty principals. Decisions to proceed with non-competitive action must be recorded, and must only be made within the rules set out in Standing Order 17.

19. APPROVAL FOR EXCEPTIONS

Where exceptions to a quotation/tendering procedure are sought for contracts

between £1000 (ex VAT) and £10,000 (ex VAT), Officers must ensure written approval for the exceptions has been granted by the Head of the relevant Service Unit (or equivalent) and the Procurement Manager for higher value contracts, before the commencement of formal procurement action. The Procurement Manager will report all exceptions above £10,000 (ex VAT) to the Board in accordance with Standing Order 57.

Where in terms of Contract Standing Order 17 formal competitive tenders have not been sought, the Officer purchasing the goods or services must ensure that there is evidence on file to show that value for money has been obtained, and that the transaction has been carried out in the best interests of the Board.

20. IDENTIFICATION OF NEED

For procurements with an estimated value of £15,000 (ex VAT) and above, the procurement process begins with the development of a formal business case to justify the purchase. The business case should be prepared by the requirement owner, seeking advice where necessary, from the Procurement Department. The Business case shall form the basis upon which the Specification is developed.

21. REQUEST FOR PROCUREMENT ASSISTANCE

Where the estimated value of the procurement exceeds £15,000, or in circumstances where DPA at an appropriate level is not available, the requirement owner should submit a completed “request for procurement assistance form” to the Procurement Department.

The request for procurement assistance form will act as the control document which formally triggers the procurement process. It should contain the following:

- a) A business case which should contain sufficient information to demonstrate that the proposed purchase satisfies a business need.
- b) An outline specification which describes the requirement and standards that the product or service should conform to.
- c) Approval from the budget holder to commit expenditure.

The requirement owner is responsible for the main preparation of the request for procurement action.

22. PROCUREMENT STRATEGY

On receipt of a completed request for procurement assistance, the Procurement

Department will be expected to produce a procurement strategy which befits the value and complexity of the procurement. A detailed formal written procurement strategy should be prepared for procurements above £50,000.

23. TENDER RESEARCH AND CONSULTATION

An Officer, in close consultation with the requirement owner may consult with potential suppliers prior to the issue of an invitation to quote/tender in general terms about the nature, level and standard and other relevant matters, provided that this does not prejudice any prospective supplier.

The Officer must not seek or accept technical advice on the preparation of an invitation to quote/tender from anyone who may have a commercial interest in them as this may prejudice the equal treatment of all potential suppliers and could ultimately lead to the distortion of competition.

When conducting pre-tender research it is good practice to consider small and medium sized firms as well as larger organisations. The purpose of pre-tender research and consultation is to identify who and where potential suppliers are, but not how they are likely to perform. This aspect of the procurement process is undertaken at the supplier selection stage.

24. SUPPLIER SELECTION - GENERAL

A process of supplier selection is used to systematically assess whether a supplier is competent and likely to meet the Board's requirements in all key respects throughout the lifetime of the contract. The selection stage aims to produce a short list of the most suitable organisations from those expressing an interest in carrying out the contract. The organisations that are shortlisted will be invited to submit a quotation or tender.

Supplier selection must be conducted against clear and defensible criteria agreed between the Officer and the requirement owner. The depth of the criteria must be proportionate to the value, sensitivity, risk and complexity of the requirement.

The Supplier selection stage will require the Officer and the requirement owner to agree the selection criteria, weightings and threshold for the selection criteria and an appropriate selection mechanism.

25. ESTABLISHING THE SUPPLIER SELECTION CRITERIA

The Officer and the requirement owner will be required to set appropriate criteria for individual projects making sure that they genuinely reflect the supplier's ability to perform the contract.

For low value purchases of standard items, or simple services, supplier

appraisal may be no more complicated than confirming that potential suppliers have the necessary experience to supply the requirement.

Where formal tendering procedures apply, the selection criteria may include matters such as personal standing (e.g. bankruptcy, failure to pay taxes, serious misrepresentation, grave misconduct in the course of business and gathering of details relating to criminal offences), economic and financial standing (e.g. financial status and insurance provisions) and technical capacity (e.g. resources, risk management, health and safety management, references, skills/qualifications profile of workforce).

The selection criteria must be capable of being scored. Consideration will need to be given on how each criterion can be scored.

26. SUPPLIER SELECTION MECHANISM

For procurements up to £50,000, (including those above £15,000 with adequate publicity), a tender list can be agreed upon by the Officer and the requirement owner using the information submitted as part of the expression of interest . However, in compiling such a list the Officer and requirement owner must endeavour, wherever possible, to include a variety of organisations including SMEs and suppliers who are previously unknown.

For procurements above £50,000 the use of the core Scottish Public Sector Questionnaire will be the mandatory selection mechanism.

Detailed guidance on supplier selection is available on the Force Intranet.

27. TENDER AWARD CRITERIA - GENERAL

The tender award stage focuses on the tenderers proposals for the specific contract whereas the selection stage looks back at the potential tenderers' status and past performance.

The award stage of the process must involve a fair, transparent and accountable method of evaluating tender submissions. It should also involve an appropriate balance of quality with price (whole life cost). Establishing typical award criteria will involve agreeing the weightings for the award criteria, the quality/price ratio that should apply, and the Officer, in conjunction with the requirement owner agreeing an appropriate award mechanism.

The award criteria are distinct and separate from the selection criteria. Tenders should normally be awarded on the basis of Value for Money (defined in the Procurement Regulations as most economically advantageous tender).

28. ESTABLISHING THE TENDER AWARD CRITERIA

Before issuing an Invitation to Quote/Tender the Officer in conjunction with the requirement owner must establish the tender award criteria, this is the criterion by which tenders will be evaluated and will normally be based on a quality/price balance.

In establishing the award criteria the Officer and the requirement owner must ensure that the criteria relate to key performance requirements and adherence to the specification. However, the scope of the award criteria will vary according to the complexity and value of the requirement criteria may include any number of the following:

Basic check to ensure validity of tender

- a) Compliance with invitation to tender
- b) Check for arithmetical errors
- c) Acceptance of the Board's or other terms and conditions
- d) Compliance with validity period
- e) Where appropriate, detailed examination of bills of quantities, or price schedules
- f) Check that tender is correct (i.e. no missing pages)
- g) Check for unauthorised amendments
- h) Check that tender has been signed by an authorised person

Quality Evaluation

- a) After sales service
- b) Warranties
- c) Sustainability and environmental issues, where they are relevant to the contract
- d) Operational and maintenance costs
- e) Quality (fit for purpose)

Price Evaluation

- a) Check to establish both the initial purchase price and whole life cost of the procurement

These aspects will be built into the evaluation matrix prior to tender opening. Detailed guidance on establishing tender award criteria is available on the Force Intranet.

29. THE INVITATION TO QUOTE/TENDER DOCUMENT

For each quotation (subject to adequate publicity) and contract, the invitation to quote/tender document should comprise the following:

- a) Covering letter

- b) Instruction to tenderers, including relevant background documents and Information for the tenderers (including date and time of submission and the award criteria)
- c) The Specification (i.e. a description of requirements and standards to which the product, service should conform)
- d) The Board's standard terms and conditions of purchase (and any other conditions of contract that will apply to the resulting contract)
- e) Schedules to tender for completion by the tenderer, including but not restricted to: form of tender; price schedules; technical proposal; tender return label showing the ITT reference number and the tender return date.

The Officer, in conjunction with the requirement owner should ensure that Tender documentation is clear, consistent and complete. All documents should be typed with no manuscript amendments or inserts, all pages should be numbered and where appropriate, there should be an index.

30. ISSUE OF THE INVITATION TO TENDER/QUOTE

The Invitation to Quote/Tender document should normally be sent to all shortlisted companies at the same time (the only exception being where an Open procedure is being used).

The closing date for the receipt of quotations and tenders should not normally be extended and advice from the Procurement Department must be sought if a request has been made to have a tender return date amended. If the date is amended then the new date must be notified to all tenderers. If any tenderer indicates that they have already submitted a tender/quote they should be given the opportunity of withdrawing the original tender and submitting a revised one.

31. RECEIPT AND CUSTODY OF RETURNED TENDERS

Where tenders are invited for contracts, tenders must be submitted using the tender envelope or label provided. All tenders will, as soon as they are received, be endorsed with the date and time of receipt.

32. OPENING OF TENDERS

Tenders will be opened in the presence of at least two Officers, one of which should be a representative of the requirement owner. Tenders relating to the same contract will be opened at one time as soon as practicable after the time and date specified for the return of tenders. No Officer who has a direct or indirect pecuniary interest may attend the opening of tenders.

The tender opening Board is responsible for the opening, checking and

recording the details of the tender one at a time on the Tender opening form. The tender opening board must check that the tenderer's declaration has been signed and dated by the tenderer, the price schedule has been completed and that the Board's conditions of contract and all other conditions have not been amended or altered in any way nor any reference to the supplier's terms and conditions of contract have been made. Any omissions must be recorded in writing on the tender opening form.

33. RECORDING OF TENDERS

Immediately after a tender has been opened, the tender document, or such pages of it are considered relevant (e.g. those pages which contain pricing information), will be date stamped and initialled.

All tenders received will be recorded by the witness present at the opening and signed by the witness and individual opening the tenders.

34. CONFIDENTIALITY

During the period between the opening of the tenders and the stage in the Boards handling of them when the content becomes publicly known, an absolute obligation of preserving confidentiality will rest with Officers.

35. LATE TENDERS

Any tender received after the time and date specified for the opening of tenders will be promptly returned unopened by the Procurement Manager.

However:

a) Tenders apparently submitted after the due date and time may be considered where there is clear evidence that the completed tender documents were received before the tender date and time specified.

b) Tenders submitted after the due date and time may be considered where there are exceptional circumstances that could not have been foreseen by tenderers. The tenderer will be required to justify the circumstance. Late tenders will only be permitted with the formal approval of the Procurement Manager. A written record must be retained on file recording the circumstances and justification for the decision.

36. CHECKING TENDERS

The Officer will examine all tenders for arithmetical errors. If arithmetical errors are found they should be notified to the tenderer, who should be requested to confirm or withdraw the tender.

37. TENDER EVALUATION PANEL

A tender evaluation panel should be established to evaluate tenders. It should comprise the requirement owner, the Officer (s) and any other Officers with sufficient technical ability to evaluate detailed tenders.

38. TENDER CLARIFICATIONS

Between the recorded date, time and receipt of tender and the date on which a decision is taken as to which, if any, tender is to be accepted an Officer may confirm or clarify the terms of the tender. No other information concerning any other tender will be disclosed to the tenderer so contacted. A full written record should be kept of all such contact and will be retained with the original tender documents.

39. TENDER EVALUATION

All tenders will be evaluated in accordance with the agreed contract award criteria agreed (established in accordance with Standing Orders 27 and 28).

For this purpose the following procedure(s) will apply:

- a) Where ICE Tenders are used in connection with the execution of Works, examination of tenders will be carried out in accordance with Part 5 of Guidance on the Preparation, Submission and Consideration of Tenders for Civil Engineering Contracts produced by ICE Conditions of Contracts Standing Joint Committee as in force for the time being.
- b) Where JCT tenders (or equivalent) are issued in connection with the execution of Works, examination of tenders will be carried out in accordance with the principles published by the National Joint Consultative Committee for Building (or equivalent) as in force for the time being.
- c) The evaluation of all other tenders will be carried out in accordance with the award criteria detailed in the Invitation to Quote/Tender documentation (see Standing Orders 27 and 28)

40. POST TENDER NEGOTIATION

Post-tender negotiation means negotiations with any tenderer after submission of a Tender and before the award of the Contract with a view to obtaining adjustments in both price and content. It must not be conducted where this might distort competition.

Where Post-tender negotiation results in a fundamental change to the specification and/or contract terms the contract must not be awarded but re-tendered.

Where post tender negotiations are necessary, then such negotiations shall only be undertaken with the Tenderer who has previously been identified as submitting the best Tender.

Officers appointed by The Chief Constable to carry out post-tender negotiations should ensure that there are recorded minutes of all negotiation meetings and that both parties agree actions in writing.

41. ACCEPTANCE OF TENDERS

Award of Contract should be authorised at a suitable level with the appropriate level of DPA. DPA must not be exceeded. A Contract award is normally awarded by means of a letter accepting a tender or quotation of the winning tenderer. A contract award letter should refer to the documents that make up the Contract (i.e. the form of tender, conditions of contract, the specification, the price schedule, tenderer's proposal and relevant correspondence).

Contract award letters must not be issued by an Officer until all necessary financial and technical clearances have been obtained.

42. PURCHASE ORDERS

Where Contracts are not awarded in accordance with Standing Order 41, every purchase will be accompanied by a valid Purchase Order. Where applicable, the Purchase Order will be in writing and will specify:

- a) the work, materials, matters or things to be furnished or done.
- b) the price to be paid
- c) the times within which the work, materials or things to be furnished or done is to be performed or delivered

43. STANDSTILL PERIOD

Where the full provisions of the Procurement Regulations apply, no tender will be accepted until the mandatory standstill period has expired and no challenge has been received.

44. CONTRACT AWARD NOTICE

In all instances once a contract has been awarded (including part B contracts) the Officer must publish a notice in the OJEU within 48 days of Contract

award.

45. DEBRIEFING OF UNSUCCESSFUL TENDERERS

Officers should always offer a debrief to unsuccessful tenderers in accordance with the provisions set out in the Scottish Procurement Regulations and the Suppliers' Charter.

Debriefing may be undertaken over the telephone, by letter, or face-to-face; which of these methods is most appropriate will be dependent upon the complexity and value of the contract.

The Officer should ensure that:

- a) The tenderer is informed that the weaknesses covered are those as perceived by the tender evaluation team;
- b) It is made clear to the tenderer that it is only their tender that will be discussed and that under no circumstances will such things as commercial terms and innovative ideas that might have been proposed by another tenderer be discussed;

46. CIRCUMSTANCES IN WHICH CONTRACTS MAY BE CANCELLED

A clause will be included in every written contract to ensure that the Board will be entitled to cancel the contract with immediate effect without liability to the contractor at any time if:

- a) the Contractor shall have been guilty of dishonesty or serious neglect of duty or any conduct likely to bring the Board or the Contractor into disrepute; or
- b) the Contractor (being an individual) or any member of Key Personnel is sequestered or apparently insolvent or compounds with or grants a trust deed for the benefit of his creditors; or
- c) the Contractor (being a company) makes a voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or becomes subject to an administration order or goes into liquidation (other than for the purpose of amalgamation or reconstruction);
- d) an encumbrancer takes possession or a receiver is appointed to any of the assets of the Contractor or the Contractor becomes unable to pay its debts (within the meaning of the Insolvency Act 1986); or
- e) the Contractor ceases, or threatens to cease, to carry on business; or
- f) the Board reasonably apprehends that any of the events mentioned in the

preceding sub-paragraphs (a-e) of this Condition is about to occur in relation to the Contractor and notifies the Contractor accordingly; or

- g) the Contractor (being an individual) or any member of Key Personnel shall have become a patient or have become of unsound mind for the purpose of any statute relating to mental health; or
- h) the Contractor shall have omitted or committed any act which constitutes a material or persistent breach of its obligations to the Board; or
- i) the Contractor shall refuse or neglect to comply with any lawful orders or directions given by the Board; or
- j) the Contractor or any member of Key Personnel is convicted of a criminal offence (other than minor road traffic offences); or
- k) the Contractor undergoes a change of control (within the meaning of section 416 of the Income and Corporation Taxes Act 1998); or
- l) the Contractor is a partnership and there is a change in the constitution of that partnership; or
- m) a member of Key Personnel ceases to provide the Services on behalf of the Contractor, for whatever reason, and a proposed replacement for that member of Key Personnel does not obtain the prior written approval of the Board.

47. ASSIGNMENT AND SUB-CONTRACTING

In every contract for the execution of work or for the supply of goods and/or services, a clause will be inserted which reflects the following:

- a) The Contract and each Instruction is personal to the Contractor and the Contractor shall not assign or transfer or purport to assign or transfer to any other person any of its rights or obligations under the Contract or any Instruction.
- b) The Contractor shall not be entitled to sub-contract any of its obligations under the Contract without the prior written consent of the Board and then only to a sub-contractor approved by the Authority in writing in advance. A sub-contractor shall not be entitled to sub-contract any of its obligations. Sub-contracting shall not relieve the Contractor of any obligation or duty attributable to the Contractor under the Contract and the Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own. The Contractor shall procure that any sub-contractor shall be obliged not to do or omit to do anything which could place the Contractor in breach of its obligations in terms of these Conditions or the Contract.

- c) Where the Board has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Contractor to the Authority within 5 Working Days of a request by the Authority for a copy of any sub-contract.

48. DISCRIMINATION

In every contract for the execution of work or for the supply of goods and/or service, a clause will be inserted which reflects the following:

The Contractor shall not and shall procure that all agents, employees and sub-contractors of the Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age; and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Sex Discrimination Act 1975, the Race Relations Act 1976, the Equal Pay Act 1970, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion and Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006, the Human Rights Act 1998 or any other relevant legislation.

49. LIQUIDATED DAMAGES

A contract which is estimated to exceed £500,000 (ex VAT) in value, and is for the execution of works, or the supply of goods and services by a particular date or series of dates, may provide for liquidated damages. The amount and the terms applicable in each such contract will be determined through consultation between the Treasurer and the Procurement Manager, seeking other appropriate specialist advice where necessary (e.g. legal and financial).

50. PERFORMANCE BONDS

Where a contract is estimated to exceed £500,000 (ex VAT), or in exceptional cases is for the execution of works for the supply of goods or services, by a particular date or series of dates, the Procurement Manager, in consultation with the Treasurer will either certify that no such security is necessary or, in consultation with appropriate Officers, will specify in the conditions of tender the nature and amount of security to be given. In the latter event, the Board will require and take a bond of sufficient security for the due performance of the contract.

51. INSURANCE

All specifications issued by and contracts entered into with the Board shall provide that the contractor holds a valid insurance policy, approved by the Board for:

- a) Employer's Liability – the sum insured must be at least £5,000,000 (statutory requirement)
- b) Public Liability – preferably at £5,000,000 (based on current advice from the Board's insurers); however the levels of insurance cover required in the context of each contract should reflect the level of risk involved.

In every contract for the execution of work or for the supply of goods and/or service, a clause will be inserted which reflects the following:

The Contractor shall maintain and shall procure that any sub-contractor shall maintain in force such insurance appropriate to the Contractor's business and any sub-contractor's business (as the case may be) and the Contract, for such minimum level of cover all as may reasonably be required by the Board (including, without limitation, in respect of employer's liability, public liability and professional indemnity insurance as appropriate) and shall provide copies of the relevant policies and receipts for premiums to the Authority on request.

52. SUPERVISION OF CONTRACTS BY CONSULTANTS

It will be a condition of the engagement of the services of any architect, engineer, surveyor or other consultant who is responsible to the Board for the supervision of a contract on its behalf, that in relation to the contract, they will:

- a) Comply with these Contract Standing Orders
- b) At any time during the carrying out of the contract, produce to the Chief Constable or Officer, on request, all relevant records or copies maintained in relation to the contract; and
- c) On completion of a contract, transmit appropriate records to the Chief Constable or Procurement Manager

53. VARIATIONS

Subject to the provisions of the contract in each and every case every variation will, unless otherwise satisfactorily evidenced, be authorised in writing by the Chief Constable, Procurement Manager or an Officer with DPA set at the appropriate financial limit.

54. REPORTING OF VARIATIONS

All such variations will be reported to the Board as soon as possible if the cumulative effect of these is to increase or decrease the value of the contract by 15% or £100,000 (ex VAT) whichever is the lesser.

55. SPECIAL CLAIMS

Claims from contractors in respect of matters not clearly within the terms of any existing contract will be referred to the Procurement Manager for consideration of the Board's legal and financial liabilities before a settlement is reached.

56. REPORTING ARRANGEMENTS FOR SIGNIFICANT SPEND

The Procurement Manager will arrange for all contracts awarded with a value of greater than £100,000 (ex VAT) to be reported to the Board. The report will contain the following information:

- a) The value of each Contract awarded
- b) The identity of the contractor to whom it was awarded
- c) The number of contractors invited to tender
- d) The number of tenders submitted
- e) The criteria adopted for awarding the contract
- f) Such other information (if any) as may be necessary to provide a proper summary of the contract awarded

57. REPORTING ARRANGEMENTS FOR EXCEPTIONS

The Procurement Manager will arrange for all contracts awarded without competition with a value of greater than £10,000 (ex VAT) to be reported to the Board. The report will contain the following information:

- a) The value of each Contract awarded
- b) The identity of the contractor to whom it was awarded
- c) Justification for the exemption
- d) Such other information (if any) as may be necessary to provide a proper summary of the contract awarded

58. GOVERNING LAWS

Except where otherwise agreed by the Procurement Manager (in conjunction with all necessary legal and other specialist advice), all contracts entered into by the Board will be in writing and will be subject to Scots Law and to the exclusive jurisdiction of the Scottish Courts.

The letting of contracts will conform to the Public Contract (Scotland) Regulations 2006. Where any provision or minimum requirement of these Contract Standing Orders conflicts with any provision or minimum requirement of the relevant Regulation then the provisions of the Regulations will be complied with.

59. DECLARATION OF INTERESTS

A member of the Board who has either a financial or non-financial interest in a contract which is being considered must declare an interest as soon as the interest becomes apparent and comply with the Members' Code of Conduct in terms of the Ethical Standards in Public Life (Scotland) Act 2000.

If it comes to the knowledge of an Officer that they have a direct or indirect pecuniary interest in a contract that is being proposed to be entered into by the Board, that Officer will give written notice of the fact to the Director of Finance, who will keep a Register of such interests.

60. OBSERVANCE OF CONTRACT STANDING ORDERS

It will be the duty of the Chief Constable and Director of Finance (in conjunction with the Procurement Manager) to ensure that these Contract Standing Orders are made known to appropriate persons and to ensure that they adhered to.

Any breach or non-compliance with these Contract Standing Orders must, on discovery, be reported immediately to the Director of Finance who, in consultation with the Chief Constable, will determine the appropriate action to be taken.

61. REVIEW OF CONTRACT STANDING ORDERS

These Contract Standing Orders may be varied or revoked subject to a report by the Procurement Manager on any variations and revocations being approved by the Board and, where it affects the interest of the Board.

62. PROCUREMENT GUIDANCE

These Contract Standing Orders may be supplemented by procurement policy guidance issued from time to time by the Procurement Department and published on the Force Intranet. Procurement guidance will be complied with as if they formed part of the Contract Standing Orders.

PROCEDURE FOR PROCUREMENTS UP TO THOSE MEETING OFFICIAL JOURNAL OF EUROPEAN UNION (OJEU) THRESHOLDS

Procurements between £0 and up to £1,000 (ex VAT) (£5,000 ex VAT for works)

For orders up to £1,000 (£5,000 ex VAT for works) with or without a purchasing card, the Officer, whilst expected to ensure any purchase offers value for money, may dispense with the need for a formal assessment of the market, but only if the Officer is satisfied that this is appropriate in the circumstances.

As a guide a minimum of 1 verbal quotation should normally be sought. Sufficient information justifying the decision not to undertake a comparative assessment of the market should be noted on the purchasing card transaction log and/or relevant file.

Procurements between £1,000 and up to £5,000 (ex VAT)

For all orders placed above £1,000 and up to £5,000 and subject to purchasing card transition limits, the Officer should use their best judgement and ensure a qualified assessment of the market is carried out prior to the award of a purchase order/contract.

As a guide, a minimum of 3 verbal/telephone quotations should normally be sought and the details of these must be recorded on the relevant file for value for money and audit purposes. Details should be recorded on the purchasing card transaction log and/or relevant file.

Procurements between £5,000 and up to £25,000 (ex VAT)

For all orders placed above £5,000 and up to £25,000, the Officer should use their best judgement and ensure a qualified assessment of the market is carried out prior to the award of an order/contract.

As a guide, a minimum of 3 written quotations (including e-mail and faxes) should normally be sought and the details of these must be recorded on the relevant file.

Officers must ensure that all procurements with an estimated value of greater than £15,000 (ex VAT) are subject to prior adequate publicity.

Procurements between £25,000 and up to £50,000

Officers should use their best judgement and ensure a qualified assessment of the market is carried out. This should be appropriate to the value and sensitivity of the order/contract.

Under normal circumstances a minimum of 3 written quotations must be recorded on the relevant file. For highly sensitive or strategically important contracts (for example, contracts which are connected to high profile activities which may be subject to particular scrutiny and/or public interest and where the success or failure of

the contract may have a greater significance than its estimated value would normally imply) more rigorous formal procedures should be adhered to i.e. formal sealed bid procedures. Officers should ensure that they develop a procurement strategy ensuring best economical value, scaled as appropriate with regard to the strategic importance and complexity. Sufficient information to justify the final decision should always be retained on file.

Procurements above £50,000 (ex VAT) including contracts meeting OJEU Thresholds

Formal sealed bid procedures and contract award required to provide value for money, fairness, confidentiality, prevention of collusion and provide an audit trail. Officers should ensure that they develop a formal written procurement strategy.

APPENDIX 2

NORTHERN JOINT POLICE BOARD CONTRACT STANDING ORDERS

PRESCRIBED SUMS:

Standing Order Reference		Value (ex VAT)
9	There should be a separation of duties between those Officers with DPA and those with Financial Authority	(Over) £5,000
11 (a)	Use of Purchasing Card for low value ad-hoc purchases	(Below) £5,000
12	Exemption limit for contract using formal tender (sealed bid) procedures	(Below) £50,000
13	Formal tender (sealed bid) procedures apply	(Over) £50,000
16(b)	Quotations and tenders require adequate publicity	(Over) £15,000
17(a)	Exemption limit for quotation requests:	
	Supplies (including lease) and Services	(Below) £1,000
	Works	(Below) £5,000
26	The core Pre-Qualification Questionnaire (PQQ) is mandatory	(Over) £50,000
49	Liquidated Damages	(Over) £500,000
50	Performance Bond	(Over) £500,000
54	The Chief Constable, Procurement Manager or an Officer with appropriate DPA may vary contracts to this limit, above which variations require a report to the Board	£100,000 (or 15%, whichever is lesser)
56	Significant expenditure limits requiring a report to the Board	£100,000
57	Exceptions requiring a Report to the Board	(Over) £10,000