

HIGHLAND AND ISLANDS FIRE BOARD

10 September 2009

CONTRACT STANDING ORDERS

Report by Chief Fire Officer

Agenda Item	
Report No	

Background

In accordance with the Service's Contract Standing Orders and, in consultation with the Treasurer, the Service's Contract Standing Orders have been reviewed and updated (see attached).

Action Required

The changes to the Contract Standing Orders are as follows: -

1. The addition of an Executive Summary
2. Advertising of tenders, sections 15, 16, 17 and 18, now include the wording "advertised on the Service's website and via the Public Contracts Scotland portal (PCS)"
3. The addition of sub-section 23 viii (see below) which addresses the comments received in the "Highlands and Islands Fire Board Report to Members and Controllers of Audit on the 2007/08 Audit" governing advance payments to contractors:

"23 Risk management Procedures

viii Payment in Advance: Where a contractor requires a payment in advance the amount shall be limited to £10,000. In circumstances where the advanced payment required is in excess of £10,000 explicit approval from the Treasure to the Fire Board must be sought before any payment is made."

Recommendation

That the Board approve the changes to Contract Standing Orders

**BRIAN A MURRAY
CHIEF FIRE OFFICER**

31st August 2009

THE HIGHLANDS AND ISLANDS FIRE AND RESCUE SERVICE

AND

THE HIGHLAND AND ISLANDS FIRE BOARD

CONTRACT STANDING ORDERS

**THE HIGHLANDS AND ISLANDS FIRE AND RESCUE SERVICE/ HIGHLAND
& ISLANDS FIRE BOARD**

CONTRACT STANDING ORDERS

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1. EXECUTIVE SUMMARY

Responsibility and accountability for all procurement within the Service shall lie with the Chief Fire Officer (CFO), who shall have the authority to determine all matters relating to procurement subject to compliance with legal requirements. The CFO may at his discretion delegate areas of procurement to Heads of Departments and to specified officers of the Service.

Requirements for goods and services with a value in excess of £5,000, and requirements for works with a value in excess of £10,000, shall be subject to requests for competitive quotations, unless they are covered by one or more of the exceptions or exemptions noted below. Requirements for goods, services, or works with a value in excess of £30,000 shall be subject to formal tendering procedures unless they are covered by one or more of the exceptions or exemptions noted below. These Prescribed Sums are set out at Appendix 1 to these Orders.

Advertising will take place as follows as a minimum:

- Requirements with a value in excess of £30,000: Service's own Website via the Public Procurement Portal: www.publiccontractsscotland.gov.uk
- Requirements with a value in excess of € 211,000 (Supplies and Services) or €5,278,000 (Works)¹: Official Journal of the European Union (first)², Council's own Website via the Public Procurement Portal, and Government Opportunities.

No transactions or commitments made or costs incurred may be split to avoid the necessity of appropriate calls for competition.

In all commitments made in the commissioning of consultancy services, regardless of value, Statements of Requirement and Terms of Engagement shall be documented in every case.

Procurement via collaborative contracts such as those awarded by Procurement Scotland, Scotland Excel or the Office of Government Commerce (OGC) may be undertaken without further competition depending on the particular procedure recommended by the Agency concerned at the discretion of the CFO. In all cases periodic 'value for money' checks involving other alternatives should be carried out as such agencies do not guarantee or always offer best value.

¹ Variable equivalents in Sterling are set out from time to time in the Official Journal of the EU and shall be used as a basis, and advice on the current Sterling value can be obtained from Procurement.

² EU tender threshold values are revised every two years, and will be valid until 1st January 2010.

CONTRACT STANDING ORDERS

FOR HIGHLANDS AND ISLANDS FIRE AND RESCUE SERVICE/HIGHLAND AND ISLANDS FIRE BOARD

PRELIMINARIES

1. Commencement

These Orders (“the Contract Standing Orders”) shall apply and have effect as from 1st October 2009 and shall be subject to annual review. The purpose of this revision is to bring Highlands and Islands Fire and Rescue Service/Highland and Islands Fire Board into line with the Public Contracts (Scotland) Regulations 2006.

1.2 Definitions

In these Contract Standing Orders, the following words and expressions shall have the meanings hereinafter assigned to them, that is to say:-

“the 1973 Act” means the Local Government (Scotland) Act 1973;

“Board” means The Highland and Islands Fire Board established under the Local Government etc (Scotland) Act 1994;

“Contract” means an agreement between the Board and another legal entity having the following characteristics: offer and acceptance (alternatively known as agreement or consensus in idem), intention to form legal relationships, capacity (of the parties to enter such an agreement, and legality. A contract is not required to be concluded in writing in order to be binding but may be either verbal or implied by the actions of the parties. As such, an agreement to work in partnership with a third party to achieve an end required by the Board is liable to be held to be a contract, and the output required by the Board will be subject to the same rules of competition and commercial conduct as any other requirement.

“Contracting Authority”: In the context of these orders, The Highland and Islands Fire Board is the Contracting Authority in all Contracts into which the Service or any part of the Service enters.

“Chief Fire Officer” means the Chief Fire Officer of Highlands and Islands Fire and Rescue Service, and is taken to include any member of staff delegated by the Chief Fire Officer to undertake specific tasks relating to contracts. The authority to undertake these tasks must be documented within the Fire Service and be acknowledged by the relevant officer.

“Head of Corporate Services” means the Head of Corporate Services of Highlands and Island Fire and Rescue Service.

“Most economically advantageous tender” means that tender giving maximum value for money over the lifetime of the contract for the goods, services or works delivered thereby, taking into account all material matters, visible or invisible, including but not being limited to quality and price. Other than “lowest price” it is the only acceptable means of deciding which tenderer should be awarded a contract in terms of the public procurement regulations. It must be noted that in assessing the most economically advantageous tender, the costs taken into account must be material to the purposes of the contract³. In other words, the cost must bear upon a significant measurable characteristic of the requirement being procured.

“Partners” are defined as any organisations with which an organisation works to deliver their objectives, with a formal agreement of roles (contract, funding agreement, Service Level Agreement etc). Partnerships are defined by the agreements between the partners⁴.

“Partnering” means a form of collaborative working between partners and in contrast with traditional ‘arms length’ procurement and contract-management approaches, partnering is characterised by a greater degree of openness, communication, mutual trust and sharing information. The aims of partnering arrangements are often expressed in terms of business outcomes rather than specific outputs or improvements; their success is particularly dependent on the people and relationship aspects. There may often be a long-term relationship which requires clear roles and responsibilities for decision making, and effective performance reporting⁵.

“Prescribed amount” means the amount or category as prescribed by the Resources Committee and approved by the Board from time to time;

“Quality” in this context means fitness for purpose as defined in the Specification or Statement of Requirements.

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

³ Previously, award criteria had to be materially linked to the subject matter of the contract and to costs borne directly by the Contracting Authority; however case ECJ C-513/99 (Concordia Bus) shows that award criteria need only to be materially relevant, objectively quantifiable, previously advertised, and respect Community law: the case therefore allows for matters such as the measurable output of pollutants to form part of the award criteria even though they are costs borne by the environment rather than directly by the Contracting Authority.

⁴ HM Treasury, “Managing Risks With Delivery Partners” 2004

⁵ Ditto

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

“Works” means works as defined by the Public Contract (Scotland) Regulations 2006.

1.3 Extent and Introduction

These Contract Standing Orders are made under section 81 of the 1973 Act. They shall apply to the entering into by the Board, or on its behalf, of contracts for the supply, or lease, of Supplies, Services, and Works, as the case may be, unless classified as being exemptions or exceptions from these Contract Standing Orders. For the avoidance of doubt, these orders do apply to PFI/PPP and similar contracts.

They shall be implemented by application of the standards and procedures set out in the Highlands and Islands Fire and Rescue Service Procurement Strategy.

1.4 EU, UK and Scottish Legislation

These Contract Standing Orders will be operated in such manner as will comply in all respects with the requirements of European Community Law, United Kingdom and Scottish legislation. There should be no conflict between these Orders and the legislation, but for the avoidance of doubt, in all cases EU law takes precedence, followed by UK and Scots law.

1.5 Breach of Contract Standing Orders

Any breach or non-compliance with these Contract Standing Orders must on discovery be reported immediately to the Head of Corporate Services for appropriate action.

POLICY STATEMENTS

2. Exemptions from Standing Orders

There will be exempted from the provisions of these Standing Orders:

- (i) all contracts with a total estimated cost not exceeding the sums set out at Appendix 1, in respect of the type of contract under consideration;
- (ii) any contract of employment;
- (iii) any contract excluded under the terms of the Public Contract (Scotland) Regulations 2006;
- (iv) any contract relating to the disposal or lease of land.

3. Exceptions from Standing Orders

Nothing in the remainder of these Standing Orders shall apply if:

- (i) (a) the Chief Fire Officer has certified that the requirement is not readily obtainable from more than one supplier and it can be demonstrated that no equivalent is available; or that

(b) the prices of the goods, materials or specialist services are wholly controlled by trade organisations or government order and it can be demonstrated that no equivalent is available; or that

(c) the requirements are subject to intellectual property rights and it can be shown that either no suitable alternative is available, or that exposure to competition of an item covered by copyright, patent, or trademark would breach such rights. Note that where an item is described by a reference to a trade name, it must be followed by the phrase “or equivalent”;

Board approval shall be required before any contract award under (a) to (c) above; or
- (ii) there is an existing contract for the supply of the requirement being considered and which was won in competition. The award of contract shall be reported to the next available meeting of the Board. Note that any variation which constitutes a material alteration of the original contract by nature or extent must be the subject of fresh competition; or
- (iii) the demand is for the execution of work or the supply of goods, materials or specialist services, certified by the Chief Fire Officer as being required as an

emergency measure so as not to permit the invitation of tenders. "Emergency" means **only** an event which could not reasonably have been foreseen. Each case must be reported to the Head of Corporate Services and next meeting of the Board; or

- (iv) the work to be executed or the goods or materials to be supplied consist of repairs to or the supply of parts for existing proprietary machinery or plant and the Board is bound by the terms of an agreement, by insurance requirements or by the terms of a warranty to use a specified contractor (the contract to be reported to the next available meeting of the Board); or
- (v) an offer is made on an ad-hoc basis for the supply of goods or materials certified by the Chief Fire Officer as exceptionally available for purchase at advantageous rates in circumstances where a real and immediate need is demonstrated and the advantage to the Board would be lost by delay in inviting tenders. Such offers to be reported to the next available meeting of the Board and must not form the basis of ongoing contractual relationships; or
- (vi) the contract is for the supply of goods acquired on the Commodities Market (the contract to be reported to the next available meeting of the Board only if it is not the lowest tender).

4. Budgetary Provision and Precautionary Tendering

- (i) The Chief Fire Officer must ensure that sufficient funds exist prior to the commencement of any contracting action. If the cost of the requirement is not known when it arises, similar requirements elsewhere may be used as a baseline. Informal consultation with potential providers, without making any commitment, may also be used. Precautionary formal tendering aimed solely at establishing costs must not take place. The only exception to this is when external funding is anticipated which must be used within the current financial year. In those circumstances tendering in advance of final agreement is acceptable, but the situation must be made clear to all potential bidders.

5. Business Cases

- (i) Before committing funds to any commercial arrangement in excess of the prescribed sum for formal tenders, the Chief Fire Officer must ensure that a business case has been established. This must examine all possibilities for meeting the requirement. It must also show that no other contract which could be used already exists within the Board.

6. Dispensing with Competition

- (i) It is a fundamental principle of Public Sector procurement that purchases should be made as a result of competition.
- (ii) Dispensing with competition at any level of purchase, which may amount to unfair discrimination, is contrary to the provisions of the Treaties of Amsterdam and Rome. Decisions to proceed with a non-competitive purchase above the prescribed sum for the obtaining of quotations must be recorded, and must only be made within the rules set out in Orders 2 and 3 above.
- (iii) Purchasing from Government central purchasing agencies such as the Office of Government Commerce (OGC) may be undertaken without further competition depending on the particular procedure recommended by the Agency concerned. In all cases periodic 'value for money' checks involving other alternatives should be carried out as such agencies do not guarantee or always offer best value.
- (iv) Breaking down or disaggregating requirements in order to avoid the necessity of exposing them to competition is contrary to public procurement regulations and must not be entered into under any circumstances.

7. Periodic Supplies and Framework Agreements

- (i) Where a contract is for the supply of goods or materials or the provision of services by means of a call off contract or framework agreement, formal tendering shall be carried out only once prior to the commencement of such period.

8. Aggregation of Demand and Partnership Working

- (i) Where requirements arise in more than one establishment, unit, or other part of the Service, or where requirements are shared between such parts of the Service, then those requirements shall be aggregated for the purposes of procurement, and no part of the Service shall operate independently of any other.
- (ii) Once a Contract or set of Contracts for any category of supply or service has been let corporately on behalf of the Board, it shall be a requirement for all parts of the Service to use the Contract for the provision of the Supplies, Services, or Works concerned.

- (iii) In accordance with the principles of the Egan Report on Rethinking Construction, aggregation of demand shall also apply to works procurement⁶. In areas in which strategic partnerships are used, the rules of open competition and equality of opportunity must be applied to Board business.
- (iv) Partnership arrangements are a valid means of achieving best value through procurement. The establishment of partnerships must be subject to formal competition and must protect the interests of the Board, by the use of formally agreed and written terms and conditions.

9. Requirement Planning and Freedom of Information

- (i) The Board shall treat its commercial and contractual relationships as confidential to the extent allowed by the Freedom of Information (Scotland) Act 2002.
- ii) To allow for the operation of Freedom of Information and the EU Procurement Directives, a Contracts Register must be developed. Managers shall ensure that the Head of Corporate Services is provided with sufficient information to enable this to be kept up to date.
- (iii) This register shall be published on the Service's Website to act as the Service's Customer Profile.

10. Specifications

- (i) Formal Specifications or statements of requirement shall be developed for all tendered or quoted requirements for supplies, services (including each and every consultancy regardless of value), or works, which will fully define what the Contractor is to provide.

11. Sustainability and Equal Opportunities

- (i) To the full extent permitted under legislation at the time of undertaking the Contract, the Board shall take full account of the issues of social/economic and environmental sustainability wherever it is material to the purposes of the Contract⁷.

⁶ The report states that: "Increased use of partnerships and long term framework agreements will help drive continuous improvement. The major long-term benefit from integrated team working is the potential for relationship continuity. Integrated teams should be based, wherever possible, on strategic partnering. Knowledge and expertise can then be transferred more effectively from one project to the next."

⁷ EU Commission SEC (2004) 1050, Buying Green, A Handbook On Environmental Public Procurement

- (ii) In any Service functions carried out by an external supplier, the Board remains responsible for meeting its duty of ensuring equality of opportunity. As such the Board must build relevant equality considerations into appropriate contracts to ensure each function meets its statutory requirements, regardless of who is carrying it out.⁸

12. Procurement and Contract Risk

- (i) The Board's exposure to commercial risk is minimised by adherence to the terms of these Orders, and as such, adherence will constitute a reasonable level of protection for the Board in its commercial activities. No protection can be offered in cases where these orders are breached.

13. Reporting of Contracts and Contract Expenditure

- (i) Prior to the commencement of any formal tender exercise, the project sponsor must establish a budget forecast for the requirement and shall certify that sufficient funds exist to cover this in accordance with paragraph 4 of these Orders.
- (ii) On award of contract the subject of the contract, successful tenderer, budget figure and actual forecast expenditure shall be reported by the project sponsor to the Head of Corporate Services.
- (iii) Where the forecast expenditure figure exceeds the budgetary figure, the project sponsor must produce a plan for either managing the cost down to the level of budgetary provision or for making additional funds available, and this plan must also be reported to the Head of Corporate Services.
- (iv) Where the forecast expenditure equals or is lower than the budgetary figure, but in implementation exceeds this, this must also be reported to the Head of Corporate Services as and when it arises, with a plan for dealing with the overspend.

PROCEDURES

14. Authority to Invite Tenders

- (i) Tenders for the provision of requirements shall be invited by the Chief Fire Officer.

⁸ Public Procurement and Race Equality, Guidelines for Local Government, Commission For Racial Equality 2002, considerations to be based on relevance, proportionality, accountability, transparency, mainstreaming, appropriateness, legality, and risk assessment.

- (ii) Tenders in respect of goods or equipment to be supplied by way of a lease arrangement may only be invited following approval from the Head of Corporate Services.
- (iii) Tenders with a value in excess of the prescribed sums must be dealt with in accordance with the EU Open, Restricted, Negotiated, or Competitive Dialogue Procedures.

15. Advertising of Tenders

- (i) All requirements subject to formal tendering must be advertised. As a minimum, all tenders will be advertised on the Service's website and via the Public Contracts Scotland portal (PCS). Any other media such as newspapers, trade magazines, Government Opportunities etc may be used additionally at the discretion of the project sponsor, but sponsors should have due regard to the requirement to minimise tendering costs through advertising electronically and through free of charge media such as Government Opportunities. Tenders with values in excess of the EU threshold for advertising via OJEU must be advertised there before any advertisement is placed anywhere else.

16. Tendering via Maintained Lists

- (i) The Chief Fire Officer may decide to keep a standing list of interested parties to be invited to tender for contracts for the provision of goods, materials, services or works of specified categories. If so, invitations to tender for such contracts shall be limited to persons whose names appear on that list.
- (ii) Expressions of interest in being included in any such list must be sought via public advertisement via the Service's website and PCS as a minimum, at least four weeks prior to its compilation. No such list may have a lifetime of greater than two years. Only one maintained list shall be compiled within the Board in respect of any category of goods, services or works, and in each case its compilation and maintenance shall be the responsibility of the Chief Fire Officer for that category.
- (iii) Invitations to tender must be sent to at least six participants on the list unless there are fewer than six on the list, in which case all shall be invited. If the membership of the list falls to less than three, it shall be set aside and open tendering shall be used.
- (iv) Invitations to tender may not be sent to the same set of potential bidders in any maintained list on consecutive occasions, and inclusion in the list of those invited must be on a fair basis such as by rotation.

17. Tendering via Restricted/Two Stage Procedures and ad-hoc Lists.

- (i.) Should the Chief Fire Officer choose to use ad-hoc lists or restricted procedure tendering, then the requirement shall be advertised publicly via the Service's website and PCS as a minimum and expressions of interest invited. After the expiry of the period specified in the public notice, a select list of tenderers will be drawn up from the list of applicants returning questionnaires or providing other evidence of competence as set out in the advertisement.

18. Open Tendering

- (i) Should the Chief Fire Officer choose to use an open tendering procedure, then the requirement shall be advertised publicly, via the Service's website and PCS as a minimum, and expressions of interest invited. All persons responding must then be invited to tender as detailed in The Highlands and Islands Fire and Rescue Service Procurement Manual.

19. Content Of Invitations To Tender

- (i) For each contract the potential tenderers shall be issued a formal invitation to tender, detailing at least the following:
 - the nature and purpose of the contract and detailed requirement specification
 - the last date and time when Tenders will be received
 - the return address
 - that the Board is not bound to accept the lowest or any tender
 - the evaluation criteria to be used in priority order and with any weightings given.
 - the draft contract document
 - the no collusion certificate
 - the certificate of bona fide tendering.
- (ii) Tenderers will be required to return their tenders by either hard copy or via the Board's electronic tendering system. Tenderers must be advised that open e-mail is not an acceptable method for returning tender documents. Late tenders may not be considered and must be returned unopened to the tenderer.
- (iii) The confidentiality of tenders must be respected, and no details may be disclosed to any tenderer regarding any tender other than their own during the conduct of a tender. No officer who has direct or indirect personal pecuniary interest may participate in any tendering procedure, and all such interests must be declared prior to commencement of the tender exercise.

20. Evaluation Criteria

- (i) Prior to the publication of any notice or invitation to tender, the Chief Fire Officer must decide on the objective evaluation criteria to be used in assessing both pre-qualification questionnaires (if a two stage process is involved) and tenders. Pre-qualification involves the selection of tenderers who are qualified to tender, and award of contract involves the selection of the most appropriate tender put forward in response to the invitation. These criteria must be weighted according to the needs of the contract, and both the criteria and their weightings must be published in the pre-qualification/tender documentation. In the case of tenders carried out in accordance with EU tendering procedures, the criteria and weightings must be set out in the OJEU notice. Criteria must include technical capability and compliance with any relevant health and safety requirements. Where these criteria are not met, tenders must be rejected.
- (ii) Pre-qualification questionnaires and tenders must be checked and evaluated only on the basis of the published criteria, and no others, and contract awards must be made solely on the basis of that evaluation. Evaluation matrices are available within the procurement manual. Evaluation of pre-qualification questionnaires must be based on assessment of demonstrated capabilities and achievements already delivered, and tender evaluation criteria must be based on assessment of actual proposals and supporting evidence of tenderers' ability to deliver them successfully. The same criteria may not be used twice and they must be distinct from each other.

21. Handling of Tenders

- (i) Upon receipt, all tenders must be retained unopened and secure until the advertised time of opening. A record of each tender received, showing the name of the tenderer, date received, date of tender, and value of tender must be retained on file. Where prices are submitted as a schedule, the pricing field on the tender recording form tender form may be endorsed "see attached schedule" and a copy of the tender's pricing pages attached to the form and retained with it.
- (ii) Tenders must be opened at the advertised time of opening or as soon as possible thereafter, simultaneously, by at least three persons, one of whom must be entirely independent of the exercise.

- (iii) Tenders which include Bills of Quantities must be checked for arithmetical accuracy, and, where inaccuracies are found, the tenderer must be given the opportunity to correct them in accordance with any relevant Code of Practice (e.g. ICE or JCT) that is appropriate for the contract. If no particular code applies, the same opportunity must be afforded to such tenderers on the understanding that none of the individual figures constituting the wrongly calculated cost may be altered.
- (iv) Tenders must be evaluated by a panel of at least three persons (the Tender Evaluation Panel: further details are set out in the procurement manual) which must record how the evaluation criteria were used, tenders scored, and the award decision arrived at.

22. Award of Contract

- (i) Awards may be made by the Chief Fire Officer in all cases, subject to the remaining provisions of this Order.
- (ii) Board authority shall be required prior to acceptance of tenders, in such circumstances where the revised TOTAL net estimated costs, including the tender, exceeds the amount provided in the original Capital Plan, or Revenue Budget.

NOTE: This requirement may be excepted under the following conditions:

(a) When the revised TOTAL net cost (including fees) exceeds the original amount in the Capital Plan or Revenue Budget by less than 10% - subject to a prescribed upper limit – the Chief Fire Officer may authorise acceptance of the Tender.

or

(b) When the revised TOTAL net cost (including fees) exceeds the original amount in the Capital Plan or Revenue Budget by more than 10% but less than 15% - subject to a prescribed upper limit - the Chief Fire Officer may approve acceptance in consultation with the Convener or Vice-Convener, and the detail must be reported to the next available meeting of the Board.

In both of the above situations, acceptance may only be agreed where such additional costs can be met from identified savings within the Service Capital Plan or Revenue Budget.

- (iii) A contract shall not be awarded in favour of any other than the most economically advantageous or lowest priced tender unless the Board has considered a written report from the Chief Fire Officer which so recommends.

In circumstances where, due to the timing of the Board meeting, the Chief Fire Officer may proceed with award after consulting the Convener or Vice-Convener. However, if this practice has been adopted the detail must be reported to the next available Board meeting.

- (iv) If the Chief Fire Officer recommends that none of the tenders submitted be accepted, the matter shall be referred to the Board for decision.
- (v) Contracts for leases above a prescribed sum shall not be accepted unless the Head of Corporate Services is satisfied that the arrangement to be concluded is the most advantageous to the Service.
- (vi) Copies of letters to both successful and unsuccessful tenderers must be retained in accordance with the document retention schedule set out in the manual in the formal file relating to the tender and the contract.
- (vii) Contracts must be awarded in accordance with the published criteria and no others.
- (viii) Tenders may be rejected immediately where they fail to meet the published criteria or where alternative terms and conditions are put forward which are unacceptable to the Board.
- (ix) Following evaluation, notification of intention to award a contract and rejection of tenders on the basis of the evaluation criteria must be issued simultaneously; however a period of at least ten days must elapse between this date and contract commencement in order to allow unsuccessful tenderers to appeal. This must be explained to the successful contractor in the letter of award.

23. Risk Management Procedures

- (i) The Chief Fire Officer will assess the level of risk he wishes to undertake and that which he wishes to transfer to a Contractor when setting the appropriate detail of the specification, the particular terms and conditions which will form the basis of the Contract, levels of insurance, and performance bonds⁹. Risk management tools include the following and further advice can be obtained from Internal Audit and Risk Management:

⁹ As per Scottish executive Guidance Note LAPC (08)2004 Risk Assessment in the procurement process, and the Department of the Environment Report "Use of Performance Bonds in Government Construction Contracts"

(ii) Insurance

(a) Employers' Liability Compulsory Insurance (ELCI): The sum insured must be at least £5 million. The Board should ask to see a copy of the ELCI insurance policy and/or a copy of the certificate of insurance.

(b) Public Liability and All Risks/Professional Indemnity: The levels of insurance cover required in respect of each project should be set by the Board in the context of the contract and reflecting the level of risk involved.

(iii) Financial Vetting: In respect of a Contract with a value in excess of the prescribed sum, or in respect of contracts which the Chief Fire Officer views as exposing the Board to excessive risk, a formal financial assessment of the potential tenderers' financial standing shall be undertaken prior to shortlisting of tenderers or at pre-qualification stage, depending upon the procedure used.

(iv) Liquidated Damages: Dependent on the terms of the contract document, where a breach, default or negligent act on the part of the Contractor results in direct losses to the Board, it will be the duty of the Chief Fire Officer to take appropriate action. This includes deducting pre-estimated liquidated damages and making any appropriate retentions where such retentions are agreed as genuine pre-estimates of loss and may not be construed as unenforceable penalty clauses,

(v) Conditions of Contract: These ensure clear contract arrangements and should contain clauses that will protect the Board against a variety of risks, and the Chief Fire Officer should ensure that the conditions of contract are sufficient to deal with the risks involved in the project/contract.

(vi) Contingency Planning: Depending upon the Chief Fire Officer's assessment of risk, a contingency plan may be produced that provides an outline of decisions and considers the programme's effects on public services and ensures that decisions are taken about those for which contingency arrangements will be needed. These can be complex and time consuming to produce and may only be appropriate when a high level of risk is envisaged¹⁰.

(vii) Forms of Security: Where a contract pre-tender estimate exceeds the prescribed sum, or where the Chief Fire Officer ascertains that the Board is exposed to sufficient risk, he shall consider whether the Board should require security for its due performance. He shall either certify that no such security is necessary or will decide what form of security may be appropriate. Forms include Parent Company Guarantees, Escrow Agreements, or Performance Bonds for the due performance of the

¹⁰ as per Scottish Executive LAPC 008(2004)

contract. **Note: where Performance Bonds are considered, separate guidance on the particular alternatives is available, but “On Demand” Bonds are deemed unfair and should not be used. Where bonds are required, they should be from reputable UK based issuers.**

- (viii) Payment in Advance: Where a contractor requires a payment in advance the amount shall be limited to £10,000. In circumstances where the advanced payment required is in excess of £10,000 explicit approval from the Treasure to the Fire Board must be sought before any payment is made.

24. Quotations

- (i) Where the estimated value of a requirement falls between the prescribed sum for the invitation of quotations and the prescribed sum for formal tendering, it will be appropriate to request quotations rather than to undertake a formal tendering process.
- (ii) The procedures for dealing with quotations must be as rigorously fair and open as those for dealing with tenders, the only differences being that the Chief Fire Officer is not obliged to use a sealed bid procedure, may advertise in a more restricted manner, or may rely upon at least three reputable providers known to be competent to provide quotations. Reliance on the same providers for the provision of quotations may not be continued for any longer than one year.

25. Contract Documents

- (i) Every contract subject to these Orders shall be in writing in an approved form, and shall specify all the applicable terms and conditions, drawn from the Highlands and Islands Fire and Rescue Service/Highland and Islands Fire Board Standard Terms and Conditions of Contract or other specialist or professional bodies' terms and conditions as appropriate, including a statement to the effect that:
- (a) those terms and conditions shall apply, and that no others shall apply unless issued as a formal variation by the Contracting Authority's representative, and;
- (b) that the Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract and supersedes all prior negotiations, representations and undertakings, whether written or oral, except that such Condition shall not exclude liability in respect of any fraudulent misrepresentation.

26. Termination etc of Contracts

- (i) No contract may be terminated, or materially altered, on behalf of the Board without the prior approval of the Chief Fire Officer.

27. Engagement of Consultants

- (i) Consultancy is subject to the full rigour of public procurement regulations. In all cases, regardless of value, a formal Statement of Requirements and Terms of Engagement must be documented by the Chief Fire Officer. Where in his opinion it is likely that a former employee of the Board may be interested in undertaking the work, then in addition to the safeguards outlined in these Standing Orders, quotations or formal tenders shall be invited regardless of contract value. No contract shall be awarded to a former employee without the specific approval of the Chief Fire Officer.
- (ii) It will be a condition of the engagement of the service of any architect, engineer, surveyor or other consultant who is to be responsible to the Board for the supervision of a contract on its behalf, that in relation to that contract they will:
 - (a) comply with these Contract Standing Orders in full;
 - (b) at any time during the carrying out of the contract, produce to the Chief Fire Officer, on request, all relevant records or copies maintained in relation to the contract; and
 - (c) on completion of a contract, transmit appropriate records or copies to the Chief Fire Officer.

28. Procedures for the Procurement of Part B¹¹ Services

28.1 Authorised List of Providers of Services

- (i) On the understanding that wherever possible the use of free and open competition shall be encouraged, the Chief Fire Officer may prepare and maintain a list of approved providers of the required Services only, when the requirements to be provided fall within the Part B categories set out in SSI 2006 No 1.
- (ii) The list shall be continuously monitored and amended as necessary.

¹¹ As defined in SSI 2006 No 1, the Public Procurement (Scotland) Regulations 2006

- (iii) No provider shall be included in a list unless their:
 - (a) technical ability is certified as satisfactory by the Chief Fire Officer;
 - (b) financial standing is satisfactory; and
 - (c) compliance with Health and Safety legislation has been evidenced.

28.2 Procurement of Services

- (i) The Board may enter into a negotiated contractual agreement with a provider appearing in the authorised list for the provision of services falling within the categories Part B categories set out in SSI 2006 No 1 subject to:-
 - (a) a need being established by the Service;
 - (b) the service required corresponding with the Board's Strategic Plans;
 - (c) consultation with the Convener and Vice-Convener.

APPENDIX 1

PRESCRIBED SUMS:

Section		£000
2(i)	Exemption limit for contract using formal tender documents.	(Below) 30
	Exemption limit for contract using quotations:	
6(ii) & 24	Supply (including lease) of goods, services and materials	(Below) 5
	Maintenance/works contracts.	(Below) 10
14(iii)	EU tendering threshold in respect of goods and services	144
14(iii)	EU tendering threshold in respect of works	3,611
22 (ii)(a)	The Chief Fire Officer may accept tenders in excess of the original amount to this upper limit (subject to a 10% excess limit)	100
22(ii)(b)	The Chief Fire Officer may accept tenders in excess of the original amount to this upper limit, subject to consultation with the Convener or Vice-Convener and a full report being prepared for the next available Committee meeting (subject to a 15% excess limit)	150
22 (v)	Exemption limit for leases to be approved by the Head of Corporate Services.	(Below) 75
23(iii)	Exemption limit for financial vetting	(Below) 500
23(iv)	Estimated contract value for application of liquidated and ascertained damages	(Over) 500
23(vii)	Contract limit for performance bonds	(Over) 500

APPENDIX 2

RETENTION PERIOD SCHEDULE

Document	Retention Period
Contract documents (per Limitations Act 1980)	Current + 5 Years
Evaluation reports	"
Hire/Rental Agreements	"
HM Revenue and Excise Import documentation	"
Maintenance/Software licence agreements	"
Purchase Orders	"
Specifications	"
Successful Tenders	"
Successful Quotations	"
Variation Orders	"
Unsuccessful Quotations	Current + 1 Year
Unsuccessful Tenders	"
Tender Envelopes (from award)	1 Month