

CONTRACT STANDING ORDERS

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1. STATUS OF CONTRACT STANDING ORDERS

- 1.1 The Council's Contract Standing Orders are a requirement of section 81 of the Local Government (Scotland) Act 1973. They exist to ensure that uniform contracting procedures are laid down for use throughout the Council. Compliance with the Orders is mandatory. Use of the Orders promotes consistency, transparency, fair opportunity and equality of treatment. Proper application of the Orders affords protection to those dealing with contracts.
- 1.2 All contracts let by or on behalf of the Council, regardless of whether any such contracts are otherwise exempted from the application of the Orders, shall be subject to an obligation on the relevant Chief Officer to seek Best Value for the Council and to be able to demonstrate fairness and transparency in the contract procedure chosen to all parties having an interest in that procedure.
- 1.3 The Procurement Board will issue Corporate Procurement Procedures ("Procedures" – see definition in paragraph 2.2) which should be read alongside the Orders. The Procedures shall be reported to the Council for noting. The Procurement Board will from time to time issue best practice guidance which should be read alongside the Orders.
- 1.4 Chief Officers must ensure that all officers involved with contracts within their Service understand the Orders and Procedures and have this confirmed in writing by them. Chief Officers must ensure that such officers are properly trained to undertake procurement in accordance with the Orders and Procedures. Chief Officers must ensure that such officers follow any best practice guidance on training issued by the Procurement Board.
- 1.5 In interpreting the Orders, reference should be made also to the Council's Policies and Procedures and, in particular, to the Falkirk Council Code of Conduct for Members and Officers.
- 1.6 The Orders shall be applied in such manner as will comply with European Community Law, UK and Scottish Law.

2. DEFINITIONS

2.1 The Interpretation Act 1978 will apply to the interpretation of these Contract Standing Orders as it applies to the interpretation of an Act of Parliament.

2.2 These definitions should be read in conjunction with those at paragraph 2 of Standing Orders Relating to Meetings. In the Contract Standing Orders the followings words and phrases shall be given the meanings stated hereafter.

“Best Value” shall be interpreted by reference to the Local Government in Scotland Act 2003 (*see para. 10*).

“Chief Officer” means a Director or a Head of Service with specific delegated authority to act on behalf of a Director in relation to the Orders, or the Chief Executive.

“Community Benefits in Procurement” includes (but is not limited to) targeted recruitment and training, equal opportunities, training for the existing workforce, supply-chain initiatives, community consultation, “considerate contractor” schemes, contributions to education and resources for community initiatives. (*see paragraph 10*)

“Contract Value/s” has the meaning given in para. 9.

"contracts" includes arrangements for the execution of works, the supply of goods or the provision of services “in-house” by significant trading activities of the Council.

“contractor” includes supplier and service provider.

“Contracting Service” is the Service directly letting a particular contract.

“EC Directives” means Directives 2004/17/EC and 2004/18/EC.

“European Rules” means the requirements of the public procurement regime of the European Community, including (a) the principles of transparency, equal treatment and non-discrimination, proportionality and mutual recognition set out in the EC Treaty of Rome, (b) the detailed procedural rules set out in the EC Directives applying to higher value contracts, as implemented in Scotland by the Procurement Regulations and (c) relevant European Court of Justice and national case-law.

“Information Bulletin” means the standing item on the Council’s agenda where, among other things, contract decisions taken under delegated authority are reported for information.

“Orders” means these Contract Standing Orders unless the context indicates otherwise.

“Procedures” are the Corporate Procurement Procedures relating to the Orders issued, and updated from time to time, by the Procurement Board. The Procedures explain and expand upon the context in which procurement is carried out within the Council, and include detailed procedures and best practice guidance.

“Procurement Board” means the group of Chief Officers, which reports to the Council’s Chief Executive, responsible for championing procurement best practice across the Council and ensuring the necessary availability of resources, support and commitment.

“Procurement Team” means the team of officers within the Council’s Corporate and Neighbourhood Services responsible for developing best practice procurement guidance and providing professional procurement advice and support across the Council.

“Procurement Regulations” means the Public Contracts (Scotland) Regulations 2006 as amended from time to time.

3. SCOPE OF CONTRACT STANDING ORDERS

The Orders do not apply to:

- 3.1 Contracts of employment.
- 3.2 Contracts for the funding of external organisations (e.g. voluntary/charitable organisations). These are situations where the Council provides funding to an organisation to assist them to operate on their own account. These funding situations are governed by the Financial Regulations (Regulation 10 – Following the Public Pound). Normally this will require the use of an Joint Working Agreement which will set out the conditions for the funding and the objectives to be achieved. This is distinct from the organisation providing goods, services or works for the Council or on behalf of the Council which will be subject to the Orders.
- 3.3 Contracts for the engagement of the services of artists (including performing artists).
- 3.4 Contracts where the Chief Officer certifies it is necessary to enter into a contract urgently for the prevention or alleviation of an emergency situation.
- 3.5 In addition to procurement the Council will on occasion require to sell. Surplus moveable property will be disposed of by competitive tender, public auction or equivalent as detailed in Para 19.4 of Financial Regulations.
- 3.6 Contracts where the Policy and Resources Committee decide that there are special circumstances for some or all of the Orders not applying.

4. COMPETITION

- 4.1 Provision for securing competition is required by s.81(3) of the 1973 Act. Competition is a fundamental principle of public sector procurement. Through competition the Council can demonstrate fairness and transparency in its

procurement activities. Through competition the Council can demonstrate Best Value. Standard procurement will normally be through competition.

- 4.2 There will be circumstances where competition is not necessary or appropriate. Procurement without competition will be the exception and may only be done in accordance with the Orders.

5. EXCEPTIONS TO COMPETITION

Nothing in the Orders shall require competitive tenders to be invited in any of the following situations provided the Chief Officer ensures that Best Value is obtained and the use of an exception is made in the best interests of the Council. The Chief Officer must clearly document in an auditable form their reasons¹ for using a particular exception and how they can nonetheless demonstrate Best Value (e.g. through benchmarking). These exceptions do not apply where the European Rules regime requires competition.

- 5.1 The estimated value of the contract is less than £50,000.
- 5.2 The Chief Officer of the Contracting Service deems it desirable to negotiate with an in-house service provider.
- 5.3 The contract consists of repairs to, or the supply of parts for, existing plant or equipment where the original contract of supply or hire does not permit maintenance by a body other than the supplier or his nominee.
- 5.4 The contract is an extension of one year or less of an existing contract and the consequential increase in value is 10% or less of the Contract Value of the original contract, up to a maximum increase of £100,000.

¹ That an exception exists is not necessarily a reason for using an exception. For example, competition will still be the norm for contracts below £50,000 in value and the fact that a contract is specialised does not mean there is only one specialised contractor.

- 5.5 Where the proposed contract forms part of a serial programme of work, the terms may be negotiated with the contractor on the basis of the rates and prices contained in an initial contract awarded competitively following an invitation to tender in accordance with of the Orders, the initial tender having been stipulated to be the first part of a serial programme.
- 5.6 The contract is one for specialised work or the supply and installation of specialised equipment, where the Chief Officer of the Contracting Service in respect of contracts up to £100,000, or the Policy and Resources Committee in cases above that amount, considers it in the best interests of the Council.
- 5.7 The contract is for the supply of goods or materials up to a Contract Value of £50,000 and is certified by the Chief Officer as exceptionally available for purchase at advantageous rates in circumstances where the advantage to the Council would be lost by delay in inviting tenders (such contracts to be reported in the next Information Bulletin). Such contracts may not give rise to a continuing relationship between the Council and the supplier.
- 5.8 The Chief Governance Officer in consultation with the Chief Finance Officer and the Chief Executive gives specific exemption on the basis of special circumstances. If this exemption is employed, a report must be made to the next meeting of the Policy and Resources Committee detailing the reasons for the exemption being made.

6. AWARD OF CONTRACTS

- 6.1 No contract shall be awarded unless:
- (i) There is an approved budget for the expenditure (whether from an approved general budget for certain types of expenditure or from a budget specifically approved by Committee for any particular procurement).

- (ii) The Chief Officer is satisfied as to the technical capability and/or professional competency of the contractor.
- (iii) Where the Contract Value is £1 million or more (or where the Chief Officer considers it appropriate) the Chief Finance Officer is satisfied as to the financial standing of the contractor.
- (iv) The Chief Officer is satisfied that the contractor is adequately insured with an approved insurance company in respect to employers' liability, public liability, product liability and/or professional indemnity as may be required.

6.2 Authority for the award of Contracts, including (a) framework agreements and (b) call-offs under framework agreements, shall be provided as follows

(i) **Chief Officer**

Where the Contract Value **does not exceed £100,000²**.

(ii) **Chief Officer in consultation with the Chief Governance Officer**

Where the Contract Value **does not exceed £350,000²**.

(iii) **Chief Officer in consultation with the Convenor or Depute of the Policy and Resources Committee and the Chief Governance Officer**

Where the Contract Value is **£350,000 or over²** and it is necessary to expedite the contractual process between committee cycles and/or during the summer recess. The contract shall be reported to the next appropriate meeting of the Committee for information.

(iv) **Council/Policy and Resources Committee**

All other cases outwith (i), (ii) and (iii) above.

In all cases the Chief Officer shall properly document the procurement process, the basis of the evaluation and the reasons for the selection of the successful tender. This information shall be incorporated into a report format appropriate to

² This includes contracts where Best Value dictates acceptance of a tender other than the lowest (provided the economically most advantageous tender has been the evaluation method chosen).

the level of authority required. All delegated decisions, other than those with a Contract Value of less than £10,000, shall be reported in the next Information Bulletin unless already reported to Committee as in (iii) above and notified to the Procurement Team for inclusion in the contracts register.

- 6.3 Where the appropriate authority for the award of any contract has been obtained, the contract may be signed by the Director or a Head of Service of the Contracting Service (or of the client Service, if different), the Chief Executive, the Chief Governance Officer and the Depute Chief Governance Officer.
- 6.4 If the Procurement Regulations apply, a standstill period must be imposed between the notification of the decision to award the contract and the contract being entered into. Further detail can be found in the Procurement Regulations.

7. ADVERTISING

- 7.1 Advertising is encouraged to promote competitiveness, fair opportunity and transparency.
- 7.2 If the Procurement Regulations apply, contracts must be advertised in the Official Journal of the European Union (OJEU). OJEU adverts may be supplemented by advert in newspapers, trade journals and websites as the Chief Officer considers necessary. In this case such adverts must not precede or contain additional information to that contained in the OJEU advert.
- 7.3 Even if the Procurement Regulations do not apply, the Chief Officer must consider, on a case-by-case basis, the need to advertise contracts. If it is estimated that the Contract Value will be £50,000 or more, and the contract is for goods or services, the contract must be advertised on the Public Contracts Scotland website, unless there is a strong business case for not advertising. The Chief Officer must clearly document in an auditable form their reasons for not advertising a goods or services contract with a Contract Value of £50,000 or more.

- 7.4 In all cases, advertising should be sufficient to ensure competition and may include use of local and national newspapers, trade journals and websites.

8. TENDERING PROCEDURES

8.1 Contracts above European thresholds

If it is estimated that the Contract Value will equal or exceed the monetary limits fixed from time to time under the EC Directives and as set out in the Procurement Regulations, the Council must comply with all requirements specified in the European Rules, and in particular the Procurement Regulations. The relevant thresholds (January 2012)³ at the date of the making of these Contract Standing Orders are:

- | | |
|----------------------|---------------|
| • supplies contracts | - £ 173,934 |
| • services contracts | - £ 173,934 |
| • works contracts | - £ 4,348,350 |

The types of tendering procedures are:-

- **open procedure** - where all contractors who have responded to an advert are invited to tender.
- **restricted procedure** - where a selection process is applied to those who have responded to an advert in order to restrict the numbers that are invited to tender.
- **negotiated procedure** - where a selection process is applied to those who have responded to an advert and the Council is permitted to enter into negotiations with those selected to finalise the contractual arrangements.
- **competitive dialogue procedure** – where a selection process is applied to those who have responded to an advert and the Council is permitted to enter into dialogue on all aspects of the proposed contract with the

³ These are generally updated every two years. Therefore, next expected date for revised figures is January 2014. The Procurement Team will advertise current figures on the website.

selected contractors with the aim of working up solutions with each contractor.

The Council will normally use either the open or restricted procedure. The negotiated procedure and the competitive dialogue procedure can only be used in very limited circumstances and only with the approval of the Chief Governance Officer.

Framework agreements may also be set up under the Procurement Regulations. A framework agreement is an agreement between a supplier or suppliers on the one hand and a contracting authority or authorities on the other which sets out the terms and conditions under which call-off contracts can be made through-out the term of the agreement. This will normally involve use of the open or restricted procedures but the negotiated and competitive dialogue procedures are also permitted where the conditions for their use are met. Further information is included in the Procurement Regulations and Procedures.

8.2 **Contracts below European thresholds**

Where the estimated Contract Value is **below** the European limits the following tendering procedures may be adopted as an alternative to the European procedures.

- **open tenders** - similar to the European open procedure but with reduced requirements in relation to advertising and timescales.
- **restricted tenders** - similar to the European restricted procedure but with reduced requirements in relation to advertising and timescales.
- **framework agreements** - Similar to framework agreements under the European Rules.

Use may also be made of externally maintained lists of contractors where approved by the Chief Officer, the Chief Finance Officer and the Chief Governance Officer. An example is Constructionline maintained by the Department for Business Innovation and Skills.

8.3 Contracts below £50,000

For contracts below £50,000 there is the option to invite tenders under the Orders, seek quotations under Financial Regulation 13 or use Quick Quote, the online quotation facility on the Public Contracts Scotland website.

8.4 External Frameworks

Where approved by the Chief Officer, the Chief Finance Officer and the Chief Governance Officer, procurement may be through Government central purchasing agencies. Such agencies allow contractors to be selected direct from an existing framework arrangement which has already been subject to competition in compliance with European Rules. Purchasing through such agencies may or may not require further tendering depending on the particular contract. In all cases value for money checks should be considered as Best Value cannot be assumed. Consultation with the Procurement Team is required.

8.5 Scottish Procurement and Scotland Excel

Scottish Procurement is part of the Scottish Procurement Directorate of the Scottish Government and puts in place national contracts which can be used by Scottish public authorities.

Scotland Excel is the centre of procurement expertise for the local government sector. It is run by Joint Committee and the Council is a member. It puts in place contracts which can be used by Scottish local government authorities.

The Council may procure supplies, services and works via Scottish Procurement and Scotland Excel where this offers Best Value for the Council and where authority to award the contract has been obtained pursuant to paragraph 6.2 of the Orders.

8.6 Consortia

Where the Council participates in a Council-approved buying consortium with other local authorities and the tendering process has followed one of the other authority's contract standing orders, compliance with that other authority's orders

will be deemed compliant with the Orders. It will still be necessary to obtain authority to award the contract pursuant to paragraph 6.2 of the Orders and the signing of any contract binding upon the Council shall still require to be by, or authorised by, a Chief Officer of the Council in terms of paragraph 6.3 of the Orders.

8.7 Nomination of Sub-Contractors

Where a contract provides for the nomination by the Council of a sub-contractor, the Orders shall apply to the selection for nomination in the same ways as for the award of contract. That is, tenders or quotations must be invited or sought for the nomination.

8.8 Special Arrangements

Separate procedures will apply for contracts in the following areas. These procedures will be developed by the relevant Service Director in consultation with the Chief Governance Officer. The procedures will be reported to Policy and Resources Committee for approval. Compliance with the procedures is mandatory. The Orders shall apply in so far as not amended or excluded (expressly or impliedly) by the special arrangements.

- (1) Interests in land: sale, acquisition and lease – Director of Development Services
- (2) Appointment of Consultants – Chief Governance Officer

8.9 Social Care Procurement

Social care procurement is an evolving area. Tendering procedures for social care should be in line with best practice guidance. Advice should be obtained from the Procurement Team.

9. CONTRACT VALUES

- 9.1 The values stated in the Orders are the total estimated value of the contract concerned and not the estimated annual value of the contract. Where it is likely

that a supply of goods or services will be required on a continuing basis over a number of years, for example with maintenance contracts, the Chief Officer shall take into account the anticipated duration of the continuing supply when estimating the value of the contract for the purposes of the Orders, including any options for extension of the contract period beyond its original duration.

9.2 It is not permitted to deliberately divide any procurement exercise or disposal into two or more contracts if the intent in doing so is to avoid the application of any financial thresholds in the Orders or the Procurement Regulations.

9.3 The values stated are exclusive of any Value Added Tax that may be levied.

10. EVALUATION

10.1 The Council has a duty to secure Best Value by virtue of the provisions contained in Part 1 of the Local Government in Scotland Act 2003. Best Value represents continuous improvement in the performance of the Council's functions and in securing Best Value the Council must maintain an appropriate balance among –

- (a) the quality of its performance of its functions;
- (b) the cost of the Council of that performance; and
- (c) the cost to persons of any service provided by it for them on a wholly or partly rechargeable basis.

In maintaining that balance, the Council shall have regard to -

- (a) efficiency;
- (b) effectiveness;
- (c) economy; and
- (d) the need to meet the equal opportunity requirements.

The Council must also discharge its duty to secure Best Value in a way which contributes to the achievement of sustainable development. Sustainable development includes sustainable procurement, one element of which is

Community Benefits in Procurement to which Falkirk Council has committed in its Strategic Community Plan. Chief Officers should consider whether such benefits could be achieved through the procurement process and seek advice from the Procurement Team.

- 10.2 Evaluation will be based on the concept of Best Value and will normally be on the basis of the economically most advantageous tender. This allows quality as well as price to be considered and may mean acceptance of a tender other than the lowest priced.

Tenders must be evaluated fairly and objectively in accordance with pre-determined criteria. There is an overriding obligation of equal treatment between tenderers. This might require non-compliant bids to be rejected.

- 10.3 In relation to Works, officers should comply, to the extent compatible with the Orders and the European Rules, with either the NEC Engineering and Construction Contract Guidance Notes or the JCT Practice Note 6, Main Contract Tendering..

11. RECEIPT, CUSTODY AND OPENING OF TENDERS

11.1 Receipt of Tenders

Where tenders are invited, no tender will be considered unless:

- contained in a plain envelope which is securely sealed.
- bearing an approved label, provided by the Council which shows the word “Tender” followed by the subject to which the tender relates.
- the envelopes has no distinguishing mark intended to indicate the identity of the sender, and prospective tenderers shall be notified accordingly.
- the tender envelope is addressed impersonally to the Chief Governance Officer.

The member of staff receiving the envelope containing the tender must:-

- mark the time and date of receipt on the approved label;
- record the receipt of the envelope in the designated triplicate receipt book recording all the required information;
- where possible hand the top copy of the receipt to the person delivering the envelope and attach the second copy to the tender envelope; and
- give the envelope to the Officer designated by the Chief Governance Officer as custodian of tenders, and ensure that that Officer initials and dates the third copy of the receipt as confirmation that he/she has custody of the envelope.

Until the time appointed for its opening, the tender shall remain in the custody of the Chief Governance Officer.

11.2 Opening of Tenders

Tenders shall be opened at one time by two Officers designated for the purpose at least one of whom shall be so designated by the Chief Governance Officer.

No Officer who has an interest in any company may attend the opening of tenders.

Immediately after a tender has been opened, it shall be stamped and/or perforated, where appropriate, with the official stamp and the Officers in attendance shall sign the relevant page of the tender document.

The tender opening form, stamped and initialled by the Officers present, shall be retained by the Chief Executive Office - Governance. A copy of the form shall be held by the Contracting Service.

A register of all tenders opened stating:

- date,

- contract description,
- names of tenderer, and
- tender prices,

shall be kept by the Chief Executive Office - Governance.

11.3 Late Tenders

Any tender received after the time specified for the receipt of tenders will be considered if no other tender has been opened, and in the opinion of the Chief Governance Officer there are good and sufficient reasons for the late receipt of the tender, provided the late receipt of the tender does not place any tenderer at an advantage over any other tenderer.

Any tender received after the official opening has commenced, or rejected under the provisions above, will be returned to the tenderer by the Chief Governance Officer. It may be opened to ascertain the name of the tenderer but no details of the tender shall be disclosed.

11.4 Confidentiality

During the period between the opening of tenders and any report on the award of the contract being made public, an absolute obligation will lie with Members and officers not to disclose any details regarding the tenders and the possible outcome of the tendering process.

11.5 Eprocurement

Eprocurement via the Public Contracts Scotland website is permissible. Other eprocurement is permissible to the extent that the system used contains sufficient safeguards to protect the integrity of the tendering process and, in particular, in relation to the issue and return of tenders. Any systems will require to be agreed by the Chief Governance Officer

12. CONTENT OF TENDER DOCUMENTS

Unless the Chief Governance Officer, on the submission of a Chief Officer, approves otherwise the following information must be contained in all tender documents:-

- (1) the **nature and purpose** of the contract for which tenders are invited;
- (1a) the **selection and award criteria** for the award of the contract
- (2) the **last date and the time** by which tenders should be **lodged**;
- (3) the **Officer** to whom and the **address** to which tenders are to be **returned**;
- (4) that the Council reserves the right to accept a tender **other than the lowest tender** or **not to accept any tender** at all;
- (5) **details of the specification** relating to the contract. Where there is an appropriate European Standard current at the date of the tender, the specification must require the tenderer to meet the requirements of the European Standard. Where there is no such European Standard then if there is an equivalent International Standard that shall be used. In the absence of either a European or an International Standard an appropriate British Standard “or equivalent” shall be used;
- (6) provision for the insertion by the tenderer of **the price** to be paid with a statement of discounts or other deductions;
- (7) the date of **commencement** of the contract or provision for the insertion of such date by the tenderer, as appropriate;
- (8) the **time or times within which the contract is to be performed** or provision for the insertion of such information by the tenderer, as appropriate;

- (9) that the Council will be entitled to **cancel** the contract and to recover from the tenderer the amount of any loss resulting from such cancellation if the tenderer or their representative (whether with or without the knowledge of the tenderer) shall have practised **collusion** in tendering for the contract or any other contract with the Council or shall have employed any **corrupt or illegal** practices either in the obtaining or execution of the contract or any other contract with the Council or shall have provided **misleading or inaccurate** information in tendering for the contract or any other contract with the Council; (10) that the tenderer shall be **prohibited from transferring or assigning** directly or indirectly, to any person or persons, whomsoever, any portion of the contract without the written permission of the Council and that sub-letting of any part of the contract, except to the extent permitted in writing by the relevant Head of Service, shall be prohibited;
- (11) in the case of contracts where the Chief Officers deem that the date of completion or the date of delivery is of importance, that specified **liquidated damages** will be payable for failures to comply with the date of completion or delivery;
- (12) that before entering into a contract, the tenderer shall give an assurance, in writing, that to the best of their knowledge and belief they have complied with all statutory requirements in respect of ensuring **equal opportunity** in employment;
- (13) that before entering into a contract, the tenderer shall give an assurance, in writing, that to the best of their knowledge and belief they are **not unlawfully discriminating** within the meaning and scope of the equal opportunity requirements;
- (13a) that before entering into a contract, the tenderer shall give an assurance, in writing, that (i) any **payments to the tenderer's sub-contractors** (if any) in respect of the contract will be paid timeously and that, as a minimum, invoices rendered by sub-contractors will be paid within 30 days of receipt, unless formally disputed and (ii) the tenderer will impose a similar condition on its sub-contractors in respect of payments due to sub-sub-contractors (if any),
- (14) that the contract will be **subject to the law of Scotland**;

- (15) in the case of contracts where the Chief Officer deems it appropriate tenderers shall be required to enter into a **Bond** with a Bank or Insurance Company for a sum as stipulated by the Chief Officer for the due performance of the contract and/or in such circumstances as the Chief Officer may decide, a **parent company guarantee**. In the case of works contracts, a bond and/or parent company guarantee shall be obtained where the Contract Value is **over £1 million** unless the Chief Officer considers it unnecessary.
- (16) that the tenderer shall be **adequately insured** with an approved Insurance Company in respect of Employers Liability, Public/ Products Liability and/or Professional Indemnity as may be required. Copies of the relevant policies and premium renewal receipts shall be produced by the tenderer whenever required for inspection by the Council;
- (17) that, before entering into a contract, satisfactory evidence has been exhibited to confirm a **Health and Safety Policy** is in place and operational within the contractor's organisation.
- (18) that all contracts made with the Council shall provide that the conditions and obligations to be observed by contractors shall likewise apply to any permitted **sub-contractor** and that a tenderer shall be responsible for the observance of such conditions by any sub-contractor;
- (19) that the contractor shall confirm an awareness of the Council's **Environmental Policy** (or any other policy adopted by the Council) and intimated to the contractor) and adhere to the philosophy of that policy;
- (20) that, in so far as carrying out functions of the Council, the contractor will comply with the **Human Rights Act 1998** and will indemnify the Council in respect of any claims arising due to a contractor's breach of that Act;

- (21) where a contract requires data processing on the part of a contract it will be a condition of the contract that the contractor complies with the security obligations of the **Data Protection Act 1998**.
- (22) that the contract is subject to the requirements for disclosure under the **Freedom of Information (Scotland) Act 2002**. Acceptance of conditions which unreasonably restrict disclosure is prohibited. In dealing with FOI requests, the Council subscribes to the guidance of the Scottish Procurement Directorate on Scottish Public Sector Procurement and Freedom of Information.
- (23) where the **Transfer of Undertaking (Protection of Employment) Regulations 2006 (TUPE)** are likely to apply in a change of service provision, a clause imposing a contractual obligation on the contractor to provide TUPE information in good time prior to the termination of the contract and potential future service provision change.
- (24) that, in so far as carrying out functions of the Council, the contractor will comply with the **Public Records (Scotland) Act 2011** and will indemnify the Council in respect of any claims arising due to a contractor's breach of that Act;

13. CONTRACT MONITORING

- 13.1 The Chief Officer will establish a contract monitoring process which will review all contracts during the contract term and after their completion. This review will not only consider financial aspects of the contract but other relevant operational issues to establish a measure of the performance of the supplier in relation to the contract requirements. The degree of monitoring will be determined by the Chief Officer and take account of the Contract Value, the frequency and complexity of the contract and relevant market conditions.

Records will be maintained of the monitoring process to provide evidence that Best Value has been addressed and that an assessment is taking place to enable continuous improvement of the process.

14. CONTRACT PAYMENTS BY INSTALMENTS

- 14.1 Where contracts provide for payment to be made by instalments, the Chief Finance Officer shall arrange for the keeping of a contract register or registers to show the state of account on each contract between the Council and the contractor together with any other payments and the related professional fees. Services shall provide the necessary information to the Chief Finance Officer.
- 14.2 Payments on account of the contract sum shall be made by the Chief Finance Officer within the time specified in the contract upon production of authorised certificates by the Chief Officer. Such certificates shall be in a form approved by the Chief Finance Officer.

15. VARIATIONS TO CONTRACTS/CLAIMS

- 15.1 Any material variation to a contract, whether it be by an addition or an omission, shall be authorised by the Chief Officer who having consulted with the Capital Co-ordinator, Chief Executive Office - Finance shall notify the contractor in writing by issuing an official variation order specifying the addition or omission and include the financial effect of any variation order on the contract price in any progress reports on that contract submitted to other Chief Officers.
- 15.2 All such variations shall be reported to the Policy and Resources Committee as soon as possible if the cumulative effect of these is to increase or decrease the Contract Value by:
- £35,000 if the value of the original contract is £350,000 or less; or
 - 10% if the value of the original contract is over £350,000
- 15.3 Claims from contractors in respect of matters not clearly within the terms of any existing contract shall be referred to the Chief Governance Officer for

consideration of the authority's legal liability and, where necessary, to the Chief Finance Officer for consideration, before a settlement is reached.

16. RETENTION OF DOCUMENTS

The provisions relating to the retention of tender documentation are set out in the Council's Retention Schedule.

- (1) All unsuccessful tenders will normally be retained for one year.
- (2) Successful tenders and consequent contracts shall normally be retained for five years after completion of the contract.
- (3) Contracts with historical significance should be referred to the Council's Archivist.
- (4) The Chief Officer may decide to retain contracts beyond the normal periods if particular circumstances require, for example, the risk of latent defects appearing in works.