

Audit Scotland

FINANCIAL GUIDELINE NO. 1 -PROCUREMENT-

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1 General

- 1.1 The instructions within this Section relate to Purchasing, Tendering and Contract procedures agreed by Audit Scotland (with the exception of work contracted to Approved Auditors – see section 9) and must be followed at all times. Additional advice in relation to the procurement of **Agency/Temporary Staff** is provided in a separate Guidance Note on the intranet, under Human Resources.
- 1.2 All procurement of goods and services should be based on “value for money” principles, with due regard to propriety and regularity. Therefore, goods and services should generally be procured in competition unless there are sound reasons to the contrary.
- 1.3 Where appropriate, purchasing decisions should take account of Audit Scotland’s environmental management strategy, details of which are on the intranet (see Environmental Project).
- 1.4 No orders shall be issued for goods and services where the cost is not allowed for within an approved budget. Should there be any doubt about budget provision for what may be considered to be necessary goods or services, the budget holder should discuss the matter with the Director of Corporate Services to ascertain whether appropriate capital or revenue funding can be made available.
- 1.5 Audit Scotland must also comply with the requirements of European Commission public procurement legislation in any procurement process. Failure to do so could result in legal action being taken against Audit Scotland and in substantial delays in completing a transaction and damage to Audit Scotland’s reputation. Maximum advance planning is essential for contracts near or above financial thresholds which require strict compliance with detailed EU procurement rules.
- 1.6 Further information on European procurement legislation is detailed in section 8.
- 1.7 If in doubt, consult the Director of Corporate Services.
- 1.8 The Scottish Executive revised (in December 2005) its rules and guidance on procurement, to meet commitments given by Ministers following the Holyrood Inquiry report. The most important change was a new requirement that – “all (non-PPP) capital projects (including, but not confined to, construction projects) exceeding £5 million budget must be assessed in terms of risk level and that those which are high risk or mission critical (as defined in SPFM and Finance Guidance Note 2004/03) must undergo a formal independent Gateway Review at each key decision stage”.
- 1.9 Always ensure that transactions are backed up by adequate documentation which will allow staff and auditors to follow through the processes by which a purchase or contract decision has been taken. This will also facilitate control over contractors (particularly where there may be a risk of a dispute arising). In general, important information from contractors and consultants should be monitored to ensure that risk in the procurement process is minimised.
- 1.10 All Audit Scotland staff are bound by the Staff Code of Conduct. The qualities of selflessness, integrity, objectivity and honesty referred to are particularly relevant to procurement and contracting.

2 Quotation/Tendering Limits

- 2.1 In accordance with Audit Scotland's Financial Regulations, the quotation/tendering limits for (a) **goods & materials**, and (b) **services** are as follows:

(a) Goods and Materials

Orders up to £1,000	A single verbal estimate or quotation.
Orders over £1,000 to £10,000	A single written estimate or quotation. If practical, a number of small projects should be considered jointly to attract more competitive quotations.
Orders over £10,000 to £50,000	A minimum of 3 competitive written quotations should be invited, and a minimum of 2 obtained.
Orders over £50,000	Full written tendering procedures must be applied, i.e. either tenders have been invited by public advertisement or not less than three competitive tenders have been obtained.

(b) Services

Orders up to £2,500	A single verbal estimate or quotation.
Orders over £2,500 to £10,000	A single written estimate or quotation. If practical, a number of small projects should be considered jointly to attract more competitive quotations.
Orders over £10,000 to £50,000	A minimum of 3 competitive written quotations should be invited, and a minimum of 2 obtained.
Orders over £50,000	Full written tendering procedures must be applied, i.e. either tenders have been invited by public advertisement or not less than three competitive tenders have been obtained.

NB – Where a tender sum exceeds the European procurement thresholds (see section 8 below), the European Procurement procedures must be followed.

- 2.2 In general the objective for any contract should be to secure cost certainty, so that tender acceptance results in the commitment to obtain specified goods and services of sufficient quality at a fixed price.
- 2.3 However, before tenders are received, when considering the action to be taken within the above categories, it should be recognised that there will be inevitable uncertainty with pre-tender cost estimates and the possibility that actual tender costs will exceed these estimates. This applies particularly where the anticipated cost is relatively near to the upper limit of the category (i.e. mainly in regard to the £10,000 and £50,000 limits). If there is a significant chance that the cost will exceed the upper limit, then the procurement process to be followed is that relating to the next category. This principle does not necessarily apply to variations that arise during the course of a contract, where these could not be reasonably anticipated when the contract was first agreed.

3 Definition of Tender and Quotation

- 3.1 A tender or quotation is an offer in writing for the supply of material or goods, or an undertaking to do work, submitted against a detailed specification, and conditions laid down in a Form of Agreement, to Audit Scotland's requirements.

4 Non-Competitive (or Single) Quotations

- 4.1 A single, non-competitive quotation in writing for orders of over £10,000 to £25,000 may be obtained only under the following special conditions:
- a) The supply of goods or the rendering of services of a special character, such that competition is considered impractical
 - b) The supply of goods/services, which are required urgently, and not obtainable under the conditions of existing contracts
- 4.2 In all such cases, a senior manager at Assistant Director level or above must certify that one of the special conditions applies, that this is included in the records, and the Director of Corporate Services should be notified, as head of procurement, before any commitment is entered into.
- 4.3 Otherwise, a minimum of 3 written quotations should be sought and 2 obtained.
- 4.4 An example of (a) above could be where equipment needs to be acquired that is identical to specific equipment that is already in use, to ensure uniformity and compatibility within the office. However, should this be the case, you should be alert to the possibility of other suppliers/manufacturers having similarly available equipment which may be entirely compatible and possibly of the same or superior quality and cheaper in price.

5 Competitive Quotations

- 5.1 Competitive quotations in writing must be obtained for all orders over £10,000 except in cases detailed under non-competitive quotations (see 4 above) or where full tendering is required.
- 5.2 Care must be taken to ensure that all quotations are submitted on the same basis and that sufficient detailed information is provided to each contractor to ensure that the various offers will be directly comparable. The contractors should be made aware of their point of contact within Audit Scotland. There should be a minimum of 3 and a maximum of 6 quotations, unless there is specific reason to exceed these levels.
- 5.3 In seeking such quotations, care must be taken to cover the following items:
- That the contractors are aware of the method of acceptance by Audit Scotland, whether by official purchase order under stated conditions, or under the special conditions of an official form of contract.
 - The contractor must be made aware of the programme required for the work or supply and should be asked to state any exceptions that they may wish to be made to the stated conditions.
 - Contractors must be given the same period of time in which to complete their quotations, and should be advised that the offer can only be accepted if received in the correct manner by a stated date at the stated address.
 - The contractor is required to advise the period for which their quotation is open for acceptance.

6 Acceptance of Quotations

- 6.1 Since quotations are normally opened upon receipt, it is essential that confidentiality of information is maintained at all times.
- 6.2 Care must be taken to assess each single quotation to ensure that it fully covers every aspect of the request made, will produce finished work of the required standard and is of fair and reasonable value. Care must also be taken to ensure that any special items or conditions made in the contractors' terms do not contravene Audit Scotland's normal practice or policies.
- 6.3 The lowest quotation, if payment is being made by Audit Scotland, or the highest if payment is to be received by Audit Scotland, shall be accepted unless there are good and sufficient reasons to the contrary. Such reasons shall be set out in writing and maintained in the relevant file.
- 6.4 Where a number of contractors provide a similar product but which vary only in particular design, details and provisions, quotations can be arranged on a general performance based specification which embraces these variations. When the quotations have been assessed and the successful contractor chosen, the final design details can be agreed and the offer adjusted.
- 6.5 It is preferable and helpful to contractors submitting an unsuccessful quotation to be informed that their offer is not being accepted. This should be in the form of a Letter to Unsuccessful Tenderers.

7 Tendering Procedures

Pre-planning

- 7.1 The overall aim is to obtain goods and services of sufficient quality at the best possible price using competition to ensure value for money without placing an excessive burden on potential suppliers.
- 7.2 This requires:
- Advance planning for what competition will entail
 - A decision on whether the value of the contract requires strict EU procurement procedures to be adopted (section 8); and if not what the competition will entail
 - A decision on whether there will be an open or a restricted competition (see next section), how the tender process is to be conducted and over what timescale
 - Audit Scotland must act fairly and transparently in all dealings with potential suppliers.
- 7.3 For contracts exceeding £50,000 the tender strategy to achieve these goals should be set out in writing for consideration and approval by a Director.

Open or restricted competition?

7.4 Even for contracts which are below the thresholds for adopting strict EU procurement procedures there is still an obligation to follow the general principles of EC law and to obtain value for money. The general principles of EC law are:

- No discrimination
- Equal treatment
- Transparency
- Proportionality
- Mutual recognition.

7.5 For contracts exceeding £50,000, limiting the tender list must be considered, in the interests of ensuring the most effective competition. There is a need to balance the possible advantages of a full and open competition with many tenders against the risk of inviting too many tenders:

- An **open competition** takes place where we specify the goods and services to be provided and invite suppliers to tender without any restriction at the outset.
- A **restricted competition** takes place where we choose to limit the number of suppliers whom we permit to tender.

7.6 The following table highlights the issues to consider –

Open competitions make sense where:	Restricted competitions are better where:
<ul style="list-style-type: none"> • The goods and services are easy to define • There is an established market to supply the goods • It is comparatively simple to confirm the capability of any chosen supplier to provide the goods and services • Reflecting the factors above, the costs of submitting and appraising each tender are relatively low. 	<ul style="list-style-type: none"> • The goods and services are difficult to define at the outset • There may be few capable suppliers in the market • It takes time and effort to appraise the suppliers' evidence of experience, ability and capacity to undertake the work, for example with regard to consultancy contracts • Reflecting the factors above, the costs of submitting and appraising each tender are correspondingly higher.

7.7 The potential advantages of a restricted competition are:

- By limiting tenders to providers who are deemed most capable, there is keener competition
- With a well-designed competition Audit Scotland is more likely to get the best the market can provide at an affordable price
- Audit Scotland maintains the trust and goodwill of potential providers by not imposing excessive costs by inviting a large number of tenders
- In complex contracts, Audit Scotland's costs in appraising tenders are minimised by restricting the number of tenders that must be appraised.

7.8 If a decision to limit the tender list is made, it must be ensured that there are proper arrangements for ensuring fairness and transparency (see section on two-stage tendering below).

Documentation - the specification for the goods and/or services required

- 7.9 You must know and document well the specification for the goods and services required:
- For goods, physical attributes and any requirements for delivery, installation and maintenance must be specified.
 - For services, the nature of the service, overall aims, the deliverables, the standard of service and timetable to be achieved should all be described. The skills and expertise expected to be necessary to complete the work should also be specified. Tenderers should be invited to propose how they will complete their work to the required standard. The aim should be to put the onus on the tenderer to demonstrate how they will provide quality.
- 7.10 When preparing the specification the requirements for tender evaluation (see below) should be considered. It should be ensured that the specification will support an effective tender evaluation, particularly for any evaluation based on a mixture of quality and price (see below).

Tender documentation

- 7.11 When issuing an invitation to tender, potential contractors should be advised of the necessity to comply with current statutory requirements, government legislation, any special arrangements prescribed by Audit Scotland and other professional or trade guidance.
- 7.12 In particular:
- The Contractor should be requested to confirm that they have (or will have) insurance cover appropriate to the contract to be undertaken and should be requested to furnish evidence of such cover prior to the commencement of the contract.
 - Contractors should be requested to provide a declaration detailing any pecuniary or other interest, or potential conflict of interest, which could arise, either directly or indirectly, from the contract.
 - Unless permitted in a contract, a contractor may only assign or sub-let the contract with the prior written consent of Audit Scotland. Where sub-contractors are appointed, all conditions to be observed by contractors, (in terms of relevant legislation and Audit Scotland's requirements), shall equally apply to sub-contractors, and all contractors shall be responsible for the observance of such conditions by such sub-contractors.
 - Contractors should be requested to confirm that they do not discriminate unlawfully against their employees on grounds of sex, race, sexual orientation, disability, religion or belief, age or other grounds, as defined and provided for in all relevant legislation (where the contract is for the provision of services), and that they comply with the general principles of EC law regarding non-discrimination, equal treatment, transparency, proportionality and mutual recognition.
 - Contractors should be asked to provide a copy of their insurance documents, equal opportunities policy and Health & Safety policies.
 - The Contractor's attention should be drawn to the implications of the Freedom of Information (Scotland) Act 2002.
 - The specification should include a copy of Audit Scotland's standard conditions which will apply to any contract.
 - You should request tenderers to confirm these conditions are acceptable.
- 7.13 The tender documents provided should include the following:
- Copy of the detailed specification for the supply or work where applicable.
 - Any instructions for submitting tender inquiries, if allowed, and how they will be answered.
 - Clear instructions for the return of the tender, including form and content, return deadlines, sealing and marking of tender envelopes and whether electronic versions are required.
 - A named contact within Audit Scotland to resolve any difficulties.

- 7.14 Each invitation to tender shall state a specific date and time after which no tender will be considered. Every invitation to tender shall also state that no tender shall be considered unless submitted in an official envelope or plain sealed package with the word "Tender" followed by the subject to which it relates.
- 7.15 If adopting a price quality mechanism for evaluating tenders (see 7.32), instructing tenderers to submit commercial (price) and technical (quality) submissions in separately sealed envelopes should be considered. This will facilitate evaluation of technical proposals before opening any commercial proposals, to reinforce the objective assessment of quality.
- 7.16 Tenders for contracts of a duration not exceeding 12 months should be at a fixed price basis for the whole contract, unless further guidance is given.

Confidentiality

- 7.17 To maintain a fair and proper procedure, it is important that complete confidentiality is observed on all information contained in offers made by contractors or suppliers, and that information shall not be passed on or discussed with any outside agency. All staff who handle this information from the time of receipt of the tenders or quotations and thereafter when it is recorded against the appropriate reference or job number shall be aware of the strict requirement of this confidentiality.
- 7.18 The tender documents shall be kept strictly confidential, sealed and in safe custody by an appropriate official. To ensure confidentiality only those authorised to do so should open and read tenders at a predetermined time. Procedures should be devised to support this (see below). It should be considered whether to allow submissions to be provided electronically (e.g. by requiring electronic tender documents to be submitted only on a CD in a sealed envelope with tender proposals).

Opening Tenders

- 7.19 As soon as possible after the date and time stated as being the latest time for the receipt of tenders, they shall be opened in the presence of at least 2 members of staff. Every tender shall be endorsed by those present at the opening (dated and initialled). An Official Tender Record Sheet shall be maintained in which the following details shall be recorded:
- Title of the project, location, etc.
 - The name of all firms invited to tender.
 - The name of all firms from whom tenders have been received.
 - The date tenders were invited.
 - The latest date for receipt of tenders.
 - The date tenders were received.
 - The date tenders were opened.
 - The estimated contract price.
- 7.20 In addition, the following shall also be recorded:
- An entry detailing any instances where a price has been altered. The final price(s) shall be recorded and initialled by those present.

- Where price alterations on any one tender are so numerous as to render the procedure above to be unreasonable, a suitable report shall be made.

7.21 The official tender records must also record the name of the contractor whose tender is ultimately accepted and provision for a special report if other than the lowest tender is accepted.

Admissibility of Tenders

7.22 **Late tenders** are those received after the due time and date and, as a general rule, should not be accepted. In exceptional circumstances, late tenders may be considered, provided there is no reason to doubt the bona fide nature of the tenders and the delay is entirely outside the control of the tenderer. The officer opening tenders should record on the official record the reason for the late acceptance.

7.23 **Technically late tenders** are those clearly despatched in good time but delayed beyond the due time through no fault of the tenderers. Such tenders may be regarded as having arrived in due time, whether or not other tenders have been opened.

7.24 **Amended tenders** are those amended by the tenderer upon their own initiative either orally or in writing before or after the time for receipt. They should be dealt with as incorrect tenders as described at 7.26.

7.25 **Tenders requiring clarification** - If it is necessary to discuss with tenderers the contents of their tender to clarify technical points, etc before the award of the contract, the tender need not be excluded from the adjudication.

7.26 **Incorrect tenders** are those involving arithmetical or pricing errors. If discovered by the tenderer prior to the opening of the tenders, a revised tender should be submitted accompanied by an explanatory letter and considered in the normal way as a technically late tender.

7.27 If discovered by Audit Scotland following the opening of the tenders, the tenderer should be requested to confirm if the tender has to be evaluated on the basis of the stated or the corrected total.

7.28 **Confidentiality** - Whilst decisions as to admissibility of late, incomplete or amended tenders are under consideration, and whilst negotiations are in progress and re-tenders are being sought, the tender documents shall be kept strictly confidential and held in safe custody by an appropriate official.

Tender Evaluation

7.29 For simple and straightforward contracts Audit Scotland should aim to choose the winning supplier and record the results of the competition in conjunction with the tender opening process.

7.30 For some contracts, particularly for consultancy services, the quality of each proposal will need time to be considered, assessed and evaluated. Interviewing tenderers to help assess their proposals may be planned. In such cases choosing the winning tender immediately after opening is not practicable. Instead a short protocol should be prepared to govern the detailed tender assessment process. The protocol should ensure fairness and objectivity. Appendix 2 provides an example of a simple protocol illustrating the issues that you may consider.

- 7.31 For consultancy services, particularly for more than £50,000, you should consider the use of a price-quality mechanism to evaluate tenders. Although this may seem an unwieldy process, experience is that it will help make good tender decisions fairly and objectively. See the Scottish Executive guidance in the footnote for more information¹. You will need to devise your own protocol to award price and quality markings in advance.
- 7.32 If a price-quality mechanism is intended to be used, it must be ensured that the specification is drafted to support this and that tenderers are informed. It is helpful to tell tenderers what quality criteria will be applied so that they may make proposals that best fit the quality requirements.
- 7.33 In all cases you must record in writing the process you actually followed for tender evaluation and the basis and justification for all decisions.

Acceptance of Tenders

Acceptance - Other than Highest/Lowest

- 7.34 A tender other than the lowest (if payment has to be made by Audit Scotland), or a tender other than highest (if payment is to be received by Audit Scotland), shall not be accepted unless for good and sufficient reason. That reason should be explained in writing and kept in the appropriate file.
- 7.35 As an example, tenders may be awarded on price-quality grounds, subject to the need always to maintain an audit trail of all assessments and decisions.

Acceptance – General

- 7.36 When a decision has been made to accept a given tender, this decision should be included in the official tender record. The decision shall be confirmed with the appropriate contractor by issue of an official Purchase Order, signed by the appropriate official.
- 7.37 Where the order would be for more than £30,000, and Audit Scotland has no history of dealing with the supplier, the Corporate Resource Group should be asked to carry out a credit check on the supplier, before an official order is placed.
- 7.38 Where this procedure is used, the reasons for acceptance should be set out on a permanent record. Should the contractor whose offer is considered acceptable withdraw that offer before receipt of the official order or letter of intent, or immediately afterwards under circumstances which are considered to preclude abuse, the next lowest tender should then be accepted and the circumstances recorded.
- 7.39 It is preferable and helpful to the contractor submitting an unsuccessful tender to be informed that their offer is not being accepted. This should be done in writing.

¹ “Construction Works Procurement Guidance” <http://www.scotland.gov.uk/Publications/2005/11/28100404/04066>

Post – Procurement Follow-up

- 7.40 In every case where there has been a full tendering procedure, copies (electronic or otherwise) of all invoices relating to the tender should be kept on file, summarised at the completion of the project, and the total project cost compared with the tender. An explanation for any variation should be placed on the file.
- 7.41 Where relevant, Audit Scotland must ensure that it puts in place contract monitoring procedures that are appropriate to the circumstances of the contract.
- 7.42 If tenderers ask for feedback about their performance following any competition it should be provided. Well designed tender evaluation procedures and good records will help provide useful and objective feedback to tenderers.

8 European Commission (or Union) Procurement Directives

- 8.1 Public Procurement Directives are EU rules which impose legal obligations on public bodies (contracting authorities) in Member States to advertise contracts for works, supplies and services, above certain thresholds, in the Official Journal of the European Union (OJEU).
- 8.2 The Directives set out procedures for awarding contracts designed to ensure open, transparent and fair competition.
- 8.3 The thresholds are revised every two years and were last adjusted with effect from 31st January 2006 as follows –

	Supplies	Services	Works
Other public sector contracting authorities	£144,371 (€211,000)	£144,371 (€211,000)	£3,611,319 (€5,278,227)

Note - The estimated value of a public contract is the value of the total consideration payable net of value added tax.

- 8.4 The EU procurement rules can be somewhat complex depending on what procurement is being undertaken. This subject merits a significant section of its own but as (a) the rules are subject to ongoing change, and (b) it may be that Audit Scotland will seldom operate above the thresholds, it is considered that the full details should not be laid out in this Guideline, but that staff should refer to the appropriate information if and when the thresholds are likely to be exceeded.
- 8.5 Maximum advance planning is essential in any case where Audit Scotland must follow EU procurement rules. A key feature of the rules is a requirement to adopt specified notice and tendering periods. This can mean even a straightforward tender takes at least three months to progress; in more complex cases up to eight months may be needed.
- 8.6 To further assist staff in this matter, a summary of the current Scottish regulations (Statutory Instrument 2006 No. 1) is provided as **Appendix 1** to this Guideline.
- 8.7 Details of the full regulations can be viewed on the Audit Scotland intranet, - SI 2006 No. 1 “**Public Procurement**”, “**The Public Contracts (Scotland) Regulations 2006**”, but it is emphasised that staff should consult with the Director of Corporate Services and/or Audit Scotland’s legal officer, and ensure that management agreement is obtained before proceeding with a contract that is near to, or over the EU thresholds.

8.8 Further current information can be obtained, when necessary, from the Scottish Executive website at <http://www.scotland.gov.uk/Topics/Government/SPD> .

9 Approved Auditors (private firms)

9.1 Although approved auditors are approved under statute by the Auditor General or the Accounts Commission (depending on sector), Audit Scotland procures these services on their behalf in accordance with the Audit Procurement Strategy approved by the Commission and the Auditor General Scotland.

9.2 The current strategy provides for auditors to be appointed following an EU open tendering procedure. The criteria approved for evaluating audit tenders is “the most economically advantageous tenders” having regard to experience, quality and capacity. Price is not a factor in the evaluation of audit tenders.

9.3 Auditors appointed under this contract are remunerated under a “fee for audit”. The fee to be paid for an audit is the amount agreed between the auditor and the audited body, within an indicative fee range that will be specified, wherever possible, by Audit Scotland. The daily rates used to construct indicative fees shall be approved by the Audit Scotland Board. These rates shall be increased annually in accordance with the method set out in the auditor’s letter of appointment.

9.4 The auditor may agree a fee outside the indicative range, provided that the prior approval of Audit Scotland is sought.

9.5 The Audit Scotland Board shall also approve the maximum daily rates that the auditor may apply to additional more challenging work as defined in the letter of appointment.

9.6 The Audit Strategy Group shall maintain control records for each audit and shall ensure that the fees claimed by firms do not exceed the notified agreed fee.

9.7 The authorisation levels for firm’s fee claims are as follows –

- Interim fees up to £50,000 – senior manager, Audit Strategy
- Interim fees over £50,000 – senior manager and Director
- Final fee claims up to £10,000 – senior manager, Audit Strategy
- Final fee claims over £10,000 – senior manager and Director.

APPENDIX 1:

SUMMARY OF SI 2006 No. 1: PUBLIC PROCUREMENT REGULATIONS

1. Introduction

The Public Contracts (Scotland) Regulations 2006 (SI 2006 No. 1) came into force on 31st January 2006. These regulations serve to implement the latest EU Procurement Directives (which replace the existing Directives covering public procurement of services, supplies and works). This briefing note provides a summary of the main issues arising from the SI which will, or may, affect Audit Scotland.

It is emphasised that this summary cannot cover all of the complexities of the regulations and that officers should consult with the Director of Corporate Services and/or Audit Scotland's legal officer prior to progressing any procurement matters that may fall within the terms of these regulations.

This briefing note should be read in conjunction with Audit Scotland's Procurement Guidance and the detailed regulations, including the EU Procurement Directives.

2. General

The main changes within the revised regulations include:

- Revision of tendering thresholds
- Provision for:
 - Framework agreements
 - Electronic auctions
 - Competitive dialogue procedure
 - Dynamic purchasing systems
 - Central purchasing bodies
 - Mandatory exclusion of candidates convicted of offences

3. SI 2006 No. 1 (Summary & Commentary)

Part 1 – General

Explains the **Interpretation** of the regulations.

Defines what organisations are **Contracting Authorities**.

Defines who are **Economic Operators** (i.e. – contractors, suppliers or service providers).

A contracting authority shall:

- (a) Treat economic operators equally and without discrimination; and
- (b) Act in a transparent and proportionate manner.

Defines the **Application** of the regulations and the **General Exclusions**.

Explains participation in **Reserved Contracts** (i.e. contracts with “supported” businesses, employment programmes, or factories, where more than 50% of the workers are disabled).

Details the new **Thresholds** (Regulation 8) that apply from 31.01.06 –

Thresholds applicable to Audit Scotland –

Supplies -	€ 211,000 (currently £ 144,371)
Services -	€ 211,000 (currently £ 144,371)
Works -	€5,278,227 (currently £ 3,611,319)

Threshold Notes -

- 1) The value in pounds sterling is calculated by reference to the rate for the time being applying for the purpose of the Public Sector Directive as published from time to time in the Official Journal.
- 2) The estimated value of a public contract is the value of the total consideration payable net of value added tax.
- 3) These regulations do not apply to the seeking of offers in relation to a proposed public contract, framework agreement or dynamic purchasing system, where the estimated value of the contract (net of value added tax) at the relevant time is less than the relevant threshold.

Aggregation (Regulation 8(11) etc.)

Where a contracting authority has a single requirement for goods or services or for carrying out of a work or works and a number of contracts have been entered into or are to be entered into to fulfil that requirement, the estimated value of each of those contracts is the aggregate of the value of the consideration which the contracting authority expects to be payable under each of those contracts.

Note – This does not apply to any contract (unless the contracting authority chooses to do so) if the contract has an estimated value of less than € 80,000 (£54,738) (supplies or services) or € 1,000,000 (£684,223) (works).

Regulations 8(13) to 8(20) cover other aspects of contracting, particularly in relation to where a contracting authority has a requirement over a period for goods or services and enters into either a series of contracts or a contract which under its terms is renewable.

NB – Reg. 8 (21) – Where a contracting authority proposes to award.....estimated value.....below threshold, or where.....is otherwise exempt from publication of a PIN (see Part 3 below), the contracting authority shall, if required by its general Community obligations, for the benefit of any potential economic operator, ensure a degree of advertising which is sufficient to enable open competition and meet the requirements of the principles of equal treatment, non-discrimination and transparency.

It is therefore recommended that contracts of £50,000 to £144,371 be suitably advertised to satisfy the terms of this regulation.

PART 2 (TECHNICAL SPECIFICATIONS)

In summary, Part 2 outlines that –

- 1) Where a contracting authority wishes to lay down technical specifications which must be met, it shall specify them in the contract documents.
- 2) A contracting authority shall ensure that technical specifications afford equal access to economic operators and do not have the affect of creating unjustified obstacles to the opening up of public procurement to competition.

PART 3 (PROCEDURES LEADING TO THE AWARD OF A PUBLIC CONTRACT)

Part 3 outlines the procedures to be followed in issuing a **Prior Information Notice (PIN)** where the contract value is € 750,000 (£ 513,167) or more (supplies and services contracts), or € 5,278,000 (£ 3,611,328) or more (works contracts) and only where the contracting authority takes the option of shortening the time limits for the receipt of tenders.

Furthermore, **Part 3** also details the procedures to be followed in regard to –

- 1) **The open procedure.**
- 2) **The restricted procedure.**
- 3) **The negotiated procedure** (with and without prior publication of a contract notice).
- 4) **The competitive dialogue procedure** (for use in the award of complex contracts, where there is a need for the contracting authorities to discuss all aspects of the proposed contract with candidates, e.g. complex IT projects. Such dialogue would not be possible under open and restricted procedures. The main features of the new procedure are:
 - dialogue is allowed with selected suppliers to identify and define solutions to meet the needs and requirements of the contracting authority;
 - the award is made only on the most economically advantageous tender criteria;
 - dialogue may be conducted in successive stages, with the aim of reducing the number of solutions/bidders; and
 - there are explicit rules on post-tender discussion).
- 5) **Framework agreements** (a general term for agreements with providers which set out terms and conditions under which specific purchases (call-offs) can be made throughout the term of the agreement).
- 6) **Dynamic purchasing systems (DPS)** (a completely electronic system which may be established by a contracting authority to purchase commonly used goods, works or services. A DPS may not be operated for more than 4 years, unless there are exceptional circumstances).
- 7) **Electronic auctions** (are on-line auctions where selected bidders submit offers electronically against the purchaser's specification).
- 8) **Central purchasing bodies** (e.g. the **Authorities Buying Consortium** that procures on behalf of the local authorities, police and fire authorities, etc. within the former Strathclyde area).
- 9) **Design contest** procedures may also be used where appropriate (see **Part 6**).

PART 4 (SELECTION OF ECONOMIC OPERATORS)

Regulation 23 within this Part outlines the **Criteria for the Rejection of Economic Operators**.

There is a new mandatory requirement for contracting authorities to exclude economic operators where they have been convicted of certain offences. (In the past, the exclusion for these and other offences was optional).

The offences are detailed within Regulation 23 and include conspiracy, bribery, corruption, incitement to commit a crime, fraud and money laundering.

There are also grounds where a contracting authority may exclude an economic operator for matters including bankruptcy, professional misconduct, not fulfilling obligations to the payment of taxes and social security contributions, and serious misrepresentation.

Regulation 24 covers **Information as to Economic and Financial Standing** including the obtaining of the operator's accounts and bank statements, etc.

Information as to Technical or Professional Ability is referred to in regulation 25.

A contracting authority has the right to require an economic operator to provide **Supplementary Information** (Reg. 26), and Regulation 27 refers to **Official Lists of Approved Economic Operators**.

Consortia and **Corporations** are covered under Regulations 28 and 29.

PART 5 (THE AWARD OF THE PUBLIC CONTRACT)

Criteria for the Award of a Public Contract (Reg. 30).

A contracting authority shall award a public contract on the basis of the offer which –

- a) Is the most economically advantageous from the point of view of the contracting authority; or
- b) Offers the lowest price.

Regulation 31 stipulates the procedures and timescales to be followed in relation to the **Contract Award Notice**.

Information about Contract Award Procedures (Reg. 32) – outlines what procedures and timescales have to be followed regarding the provision of information to economic operators following the award of a contract or conclusion of a framework agreement.

PART 6 (SPECIALISED CONTRACTS)

Part 6 covers –

- **Design contests** (Reg. 33)
- **Subsidised public works and public services contracts** (Reg. 34)
- **Subsidised housing scheme works contracts** (Reg. 35)
- **Public works concession contracts** (Reg. 36)
- **Sub-contracting under a public works concession contract** (Reg. 37)

PART 7 (MATTERS RELATING TO A PUBLIC CONTRACT)

Part 7 is a very short Part covering –

- **Obligations relating to taxes, environmental protection, employment protection and working conditions** (Reg. 38)
- **Conditions for performance of contracts** (Reg. 40)

PART 8 (MISCELLANEOUS)

Part 8 details information and timescales that have to be followed by contracting authorities in regard to the provision of **Statistical and other reports** to Scottish Ministers.

Part 8 also outlines information in regard to –

- **Publication of notices** (notices in Official Journal to be in correct format, etc.)
- **Confidentiality of information** (contracting authority shall not disclose information which an economic operator has reasonably designated as confidential.)
- **Means of communication** (may be by post, facsimile, electronic means, telephone, or a combination of these.)
- **Sub-contracting** (a contracting authority may require an economic operator to indicate in its tender – (a) any part of the contract that the economic operator intends to sub-contract to any other person, and (b) the identity of any person to whom that economic operator proposes to sub-contract any part of the contract).

PART 9 (APPLICATIONS TO THE COURT)

Enforcement of obligations is covered in this Part.

PART 10 (REPEALS, REVOCATIONS, SAVINGS, TRANSITIONAL PROVISIONS)

Part 10 outlines –

- a) **Repeals and revocations** (Reg. 48)
- b) **Savings and transitional provisions** (Reg. 49).

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GENERAL PRINCIPLES OF EC LAW (developed in European Court of Justice [ECJ] law)

- Non-discrimination
- Equal treatment
- Transparency
- Proportionality
- Mutual recognition.

APPENDIX 2:

PROTOCOL FOR TENDER ASSESSMENT FOR ASSISTANCE ON THE EXAMINATION OF THE ABC* PROJECT

1. The assessment panel will consist of:
Name
Name
etc.
2. Each panel member will initially receive copies of parts x, y and z of the tender submissions from those bidders who submit before the deadline. The panel members will review the submissions and consider the score to be awarded to each tenderer under the quality headings set out in the evaluation spreadsheet for the process.
3. Upon completion of the quality scoring, the individual score sheets will be passed to [another colleague not on the tender panel] who will enter details into the initial evaluation spreadsheet and provide copies of the spreadsheet for the detailed and summary initial evaluation to the panel.
4. The panel will convene and discuss any anomalies in the marking between the panel members and reasons for these. Panel members will then consider whether there are any reasons to adjust their scores in the light of the discussions and any agreed adjustment will be adjusted. Reasons for changes will be recorded and adjusted scores will be input to a new version of the worksheet and the resultant detailed and summary sheets printed off for each member.
5. The panel will convene in advance of the interviews for each of the tenderers who have submitted and decide on the areas for clarification and questions they wish to pose to each team.
6. Following the interviews each panel member will decide on whether they wish to flex the scores in the original assessment in the light of the interview. The post interview scores will be fed into the workbook.
7. When interviews have been completed and scores finalised, the financial details will be examined and fed into the evaluation workbook. The panel will reconvene and consider the results and their recommendation on the outcome.

***Authorities Buying Consortium**