



North Ayrshire Council
Comhairle Siorrachd Àir a Tuath

**Standing Orders Relating to Contracts
and Contract Procedure Rules for
North Ayrshire Council**

July 2018

Contents

1.	Introduction	3
2.	Definitions	3
3.	Extent and Application.....	4
4.	Health and Social Care Services	5
5.	Exempted Contracts.....	5
6.	Disaggregation.....	8
7.	Authority to Invite Tenders.....	8
8.	Trading Activities.....	9
9.	Collaborative Procurements including Joint Commissioning of Social Care.....	10
10.	Delegation of Procurement Activity.....	11
11.	Conflicts of Interest.....	11
12.	Procedures prior to Commencing Procurement Exercise	11
13.	Advertising of Contracts	13
14.	Tendering Procedures.....	13
15.	Electronic Tendering	22
16.	Submission of Tenders.....	22
17.	Late Tenders.....	23
18.	Opening of Tenders	23
19.	Checking of Tenders	24
20.	Evaluation of Tenders	24
21.	Post Tender Communication	25
22.	Post Tender Negotiations	25
23.	Acceptance of Tender	26
24.	Nomination of Sub-Contractors	27
25.	Contract Register	27
26.	Variations to Contract.....	29
27.	Termination of Contracts	29
28.	Form of Contract	29
29.	EC Standards.....	29
30.	Copyright	30
31.	Prevention of Collusion and Corrupt Illegal Practices.....	30
32.	Equal Opportunity in Employment	30
33.	Freedom of Information	30
34.	Sustainability.....	31
35.	Assignment	31
36.	Interest of Members.....	32
37.	Interest of Officers.....	32
38.	Health & Safety	33
39.	Insurance	33
40.	Performance Bonds and Parent Company Guarantees	33
41.	Disposal of Surplus or Scrap Materials/Equipment	34
42.	Disposal of Interest in Land and Building	34
43.	Post Contract Monitoring and Evaluation.....	34
44.	Variation and Revocation	34
45.	Thresholds and VAT	34
46.	Commencement.....	34
	Annex A Single Tender Action Request.....	35
	Annex B Disposal of Property / Land	42
	Annex C Health and Social Care Services	44
	Annex D Request for Procurement Action	47

1. Introduction

- 1.1. The Standing Orders Relating to Contracts (the Standing Orders) set out how the Council will invite tenders and let contracts for the supply of goods, works or services. The purpose of the Standing Orders which are made under Section 81 of the Local Government (Scotland) Act 1973, is to ensure that contracts are appropriate for their purpose, provide the right balance between price and quality, and are procured in an open way that demonstrates probity and compliance with the Council's policies. The Standing Orders also apply to the sale/lease of property and the disposal of surplus or scrap materials/equipment.
- 1.2 Every contract whether authorised by the Council, the Cabinet, a Committee, Sub-Committee, Officer or other person engaged by the Council to which the power of entering into contracts has been delegated, shall comply with these Standing Orders and
 - a) The Revenue or Capital Budgets as approved by the Council
 - b) The Financial Regulations of the Council
 - c) The Scheme of Delegation to Officers
 - d) The Procurement Reform (Scotland) Act 2014
 - e) The Public Contract (Scotland) Regulations 2015
 - f) The Procurement (Scotland) Regulations 2016
 - g) Construction contracts, other than those expressly excluded under the Construction Contracts Exclusion Order 1998, must comply with the requirements of the Local Democracy, Economic Development and Construction Act 2009 Commencement no. 2 (Scotland) Order 2011
 - h) North Ayrshire Council's Procurement Strategy
 - i) North Ayrshire Council's Procurement Manual
- 1.3 Due consideration should also be given to all Guidance and Policy Notes issued by the Scottish Government, Scottish Procurement Directorate in respect of procurement matters.

2. Definitions

- 2.1 In these Standing Orders the following words and phrases shall have the meaning hereinafter assigned to them, that is to say:
 - a) "the 1973 Act", means the Local Government (Scotland) Act 1973
 - b) "the 2003 Act", means the Local Government in Scotland Act 2003
 - c) "the Scheme of Delegation", means the Scheme of Delegation to Officers approved by the Council on 17th May 2017 or any subsequent amendment
 - d) "the 2015 Regulations" means the Public Contracts (Scotland) Regulations 2015
 - e) "the Reform Act" means the Procurement Reform (Scotland) Act 2014
 - f) "the SDS 2013 Act" means the Procurement and Social Care Self Directed Support (Scotland) Act 2013
 - g) "Cabinet" means the Cabinet of North Ayrshire Council

- h) “Chief Officer”, means the Chief Executive, Executive Director, or Head of Service of the Council
- i) “Designated Officer”, means any Officer authorised in writing by any Chief Officer for the purposes of these Standing Orders
- j) “ESPD” means the European Single Procurement Document
- k) “Mandatory contract standstill period” means a period of not less than 10 calendar days following communication by electronic means of the award decision to all tenderers as provided for in Public Contracts (Scotland) Regulations 2015
- l) “OJEU” means the Official Journal of the European Union. Tenders over the OJEU threshold will be published in the OJEU
- m) “Post tender negotiations”, means any communication between a Chief or Designated Officer and a tenderer subsequent to the return date for the tender and the acceptance of any such tender
- n) “PCS” means Public Contracts Scotland this is the national tender advertising portal
- o) “Quick Quote” means an invitation only procurement exercise, published on Public Contract Scotland required where the estimated value is between £10,000 and £50,000 (Supplies and Services) and between £10,000 and £100,000 (Works).
- p) “Services”, means any service as defined by the Public Contracts (Scotland) Regulations 2015 and any subsequent amendments thereof
- q) “Supplies”, means any supplies as defined by the Public Contracts (Scotland) Regulations 2015 and any subsequent amendment thereof
- r) “Tender” means any procurement exercise published on Public Contract Scotland with a value greater than £50,000 (supplies and services) and £100,000 (works)
- s) “Works”, means any works defined in the Public Contracts (Scotland) Regulations 2015 and any subsequent amendment thereof.

3. Extent and Application

- 3.1 These Contract Standing Orders are made under Section 81 of the Local Government (Scotland) Act 1973 as amended and, subject to the provisions of Contract Standing Order 5 (Exempted Contracts), shall apply to all contracts made by or on behalf of the Council for the provision of Supplies or Services and the execution of Works.
- 3.2 The Contract Standing Orders shall be applied having regard always to the key principles of:
 - Transparency
 - Equal Treatment
 - Non-discrimination
 - Proportionality
- 3.3 The Contract Standing Orders are subject to the over-riding provisions of European Union, United Kingdom or Scottish legislation, including the EU Procurement Directives and EU Regulations. They are also subject to any EU Commission, UK Government or Scottish Government guidance on public procurement that may be issued from time to time.

- 3.4 All Council employees engaged in procurement on behalf of the Council must comply with the duty to secure best value in accordance with the 2003 Act.
- 3.5 All Council employees shall comply with the terms of the Contract Standing Orders and any failure to do so may result in disciplinary action.
- 3.6 Any Council employee who is contract managing a third party or agent that is procuring on behalf of the Council must ensure that the third party complies with the terms of the Contract Standing Orders and any failure to do so may result in disciplinary action.
- 3.7 Other than alterations of a minor or technical nature or such as are required to be enacted immediately to ensure compliance with statutory obligations that do not have a policy impact (“minor changes”), the Contract Standing Orders may only be varied or revoked by the Council and any motion to vary or revoke these Standing Orders shall conform to the requirements of Standing Order No. 22 of the Standing Orders Relating to Meetings and Proceedings of the Council. Any minor changes must be approved by the Cabinet and reported to the next meeting of the Council.
- 3.8 It is the responsibility of each Chief Officer to ensure officers within their Directorates who are involved in procurement comply with the Standing Orders.
- 3.9 Any query regarding the application or interpretation of these Contract Standing Orders must be referred in the first instance to the Head of Democratic Services.

4. Health and Social Care Services

- 4.1 These Contract Standing Orders shall apply to contracts for all Health and Social Care Services subject to the special procedures set out in Annex C.
- 4.2 All Health and Social Care procurement will be undertaken by the Corporate Procurement Unit with the agreement of the Senior Manager Corporate Procurement.

5. Exempted Contracts

- 5.1 Subject to the continued application of Standing Order 3.2 (key principles), and 5.2 to 5.8 (which apply in all cases), these Contract Standing Orders shall not apply to:
 - 5.1.1 Any contract of employment; this exemption does not extend to any arrangements for the employment of staff on an agency basis.~~basis~~
 - 5.1.2 Any contract or type of contract which the Council or any Committee of the Council declare to be exempt, upon declaration that it is satisfied that the exemption is justified by special circumstances. Note: lack of forward procurement planning does not constitute special circumstances.

- 5.1.3 Any contract with a value less than £1M. which a Chief Officer in consultation with the relevant Portfolio Holder and after obtaining the agreement of the Chief Executive, considers may be exempted by virtue of any special circumstances. Special circumstances do not extend to lack of forward planning for the appropriate procurement exercise.
- 5.1.4 Any contract for the supply of goods or materials or for the provision of services or for the execution of works which in the opinion of any Chief Officer, are urgently required for the prevention of damage to life or property.
- 5.1.5 Any contract or framework arrangement, that has been deemed appropriate by the Senior Manager Corporate Procurement, entered into on the Council's behalf by a consortium, partnership, company or similar body of which the Council is a member or user, where such body has invited Tenders for the provision of Supplies, Services or works, including for example the Scottish Government, Crown Commercial Services and Scotland Excel.
- 5.1.6 Any individual mini- competition exercises undertaken by the Council against an approved framework, where the contract award value is above £500K will be approved by the Chief Executive.
- 5.1.7 Any contract entered into by Hub South West Scotland (Hub) on behalf of the Council. The Hub is a public-private partnership that enables design and construction of community facilities within South West Scotland, the Council is one of seventeen participants of the Hub.
- 5.1.8 Any individual contract (less than £1m) awarded under a Dynamic Purchasing System (DPS) subject to the award of the overarching DPS being approved by Cabinet in accordance with clause 23.5. All individual contracts associated with the DPS must be advertised through Public Contracts Scotland.
- 5.1.9 Any contract relating to the disposal or lease of land and buildings where offers have been invited and a closing date set. Such offers relating to property shall be invited and accepted in accordance with the provisions as set out in the Procedure for Disposal of Surplus Land and Property Assets (set out in Annex B) to the Council's Policy for Property Acquisitions and Disposals.
- 5.1.10 All contracts for the supply of goods or materials (including second-hand goods or materials) and the provision of services including consultancy services where the total estimated contract value does not exceed £50,000, subject always to the need to demonstrate value for money and probity when entering into any such contracts, see 5.2 below
- 5.1.11 All contracts for the execution of works where the total estimated contract value does not exceed £100,000, subject always to the need to demonstrate value for money and probity when entering into any such contracts, see 5.2 below
- 5.1.12 Subject to Council or Cabinet approval any contract where the appropriate

Executive Director is satisfied (a) that the requirement is not readily obtained from more than one supplier, service provider or contractor and it can be demonstrated that no equivalent is available or (b) the prices of the supplies, services or works are wholly controlled by trade organisations or government order and it can be demonstrated that no equivalent is available or; (c) the requirements are subject to intellectual property rights and it can be demonstrated 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.

5.2 Where a contract is exempt due to the value, in accordance with the clause 5.1.9 and 5.1.10 above, the following will apply to ensure value for money is achieved:

<u>Type of Contract</u>	<u>Threshold (excluding VAT)</u>	<u>Procedure</u>
Supplies, Services & Works	< £1,000	Single quotation.
Supplies, Services & Works	£1,000 - £4,999	Minimum 3 verbal quotes
Supplies, Services & Works	£5,000 - £9,999	Minimum 3 written quotes.
Supplies & Services	£10,000 - £49,999	Quick Quote via Corporate Procurement
Works	£10,000 - £99,999*	Quick Quote via Corporate Procurement
*Where transparency, non-discrimination and equal treatment are not compromised the Senior Manager Corporate Procurement retains sole discretion to increase the threshold for Works up to £2,000,000.		

5.3 Trading Operations in accordance with clause 8 below.

5.4 Where a contract is exempt under clauses 5.1.2 or 5.1.3 then a Single Tender Action Request form (see Annex A) is required to be authorised prior to any contractual commitment being made to a supplier. The Single Action Request Form will be amended from time to time, the latest version is available on Connects.

5.5 Where a contract is exempt under clause 5.1.4 then a retrospective Single Tender Action Request form is required to be completed.

5.6 Any contract exempted from these standing orders shall still:-

- Comply with the duty to achieve Best Value.
- Comply with all legal procurement requirements, including the terms of the Public Procurement Regulations.

6. Disaggregation

6.1 Contracts must not be disaggregated, packaged or split into separate smaller contracts or requirements to avoid the application of any provision of the Contract Standing Orders, the EU Regulations or any other legislative provisions. The aggregate value of any single requirement for works, services or supplies across the whole Council must be taken into account in determining whether it exceeds the threshold for application of the EU Regulations or the thresholds stated within the Standing Orders.

6.2 Where specialist consultancy services are required, whether through an existing Framework Agreement or as a new tendering process, at the initial stage, costs must be obtained for all potential stages of the project to ensure that the award decision is based on total potential costs rather than the initial stage only.

7. Authority to Invite Tenders

7.1 Tenders for the provisions of Services, Supplies and Works may be invited by a Chief Officer or Designated Officer where-

- authority for the project to which the tender relates has been granted, either through delegated powers, the Capital Plan or Revenue Estimates or specific Committee authority and;
- where they are satisfied, after proper project appraisal, that the cost of the contract can be met within the approved budget for the project.

8. Trading Activities

8.1 Notwithstanding anything to the contrary under these Standing Orders, it is recognised that the Council when carrying out its function in terms of Trading Activities recognised by the Council from time to time, will be entering into contractual relationships related to those trading activities (such as appointing sub-contractors, ordering materials or other supplies, etc.) and the following procedures shall apply:-

- The Chief Officer or Designated Officer may invite, accept and/or negotiate offers from proposed contractors or suppliers for the supply of goods or materials or for the execution of works or for the provision of services to third parties. In exercising powers under this paragraph they must, unless satisfied that an exemption is justified by special circumstances, secure competition for contracts and regulate the manner in which tenders are invited by securing compliance as far as considered practicable with the terms of these Standing Orders.
- In undertaking trading activities on behalf of the Council all employees are subject to the duty to secure best value in accordance with the 2003 Act.

9. Collaborative Procurements including Joint Commissioning of Social Care

- 9.1 Where the relevant Chief Officer considers it to be in the best interests of the Council and in accordance with Best Value to do so, he/she may seek to enter into a collaboration with one or more other public authorities in respect of the procurement of a requirement for Supplies, Services or Works, subject to the following provisions.
- 9.2 Every Collaborative procurement exercise shall require to be approved in advance by the Senior Manager Corporate Procurement and the procurement process shall be undertaken in conjunction with the Corporate Procurement Team.
 - 9.2.1 Every Joint Commissioning exercise shall require to be approved in advance by the Executive Director (Social Services & Health) or their Designated Officer and the commissioning process shall be undertaken in conjunction with the Senior Manager Corporate Procurement.
- 9.3 A business case shall be prepared in respect of every Collaboration/Joint Commissioning exercise to establish the justification for this and shall be approved in advance by the Senior Manager Corporate Procurement.
- 9.4 Where it is proposed that the Council shall act as “Lead Authority” in a Collaborative procurement/Joint Commissioning exercise with one or more public authorities, the terms of these Contract Standing Orders shall apply to the procurement process and the written agreement of the other parties to the Collaboration, in the form of a Memorandum of Understanding, shall be obtained to this effect.
- 9.5 Where another authority acts as “Lead Authority” in a Collaborative procurement/Joint Commissioning exercise for a contract on behalf of two or more public bodies, including the Council, the procurement and award process shall be conducted in accordance with the Standing Orders of the “Lead Authority”. In every such case however, the appropriate Chief Officer or Designated Officer must first be satisfied that the procurement and award of any such contract ensures that the principles of Best Value are adhered to and the best interests of the Council are served at all times in Collaboration/Joint Commissioning.
- 9.6 Prior to commencing any Collaborative Procurement/Joint Commissioning exercise, the appropriate Chief Officer shall agree the parameters for this with the appropriate officers in the public authorities and shall record this in writing. Appropriate monitoring arrangement shall be put in place by the appropriate Chief Officer to ensure the agreed terms for the Collaboration/Joint Commissioning exercise are adhered to by all parties.

10. Delegation of Procurement Activity

- 10.1 Each Chief Officer may nominate, in writing, such other properly qualified officers as they consider appropriate to undertake any of the duties as set out in these Contract Standing Orders who will then have delegated authority to act in lieu of them in respect of the prescribed duties.
- 10.2 No officer may award a contract greater than £10,000 without written delegated purchasing authority from the relevant Chief Officer and only after consultation with Corporate Procurement to ensure that a robust procurement process has been undertaken.
- 10.3 Note of all written nominations made in terms of Standing Order 10.2 shall be provided to the Senior Manager Corporate Procurement for retention.

11. Conflicts of Interest

- 11.1 No officer who has a potential conflict of interest or a direct or indirect pecuniary interest in any Tender is permitted to be involved in the Tendering process.
- 11.2 If any officer has a conflict of interest in any aspect of the procurement process, they must declare this interest as soon as it arises. The interest must be declared to the Senior Manager Corporate Procurement.
- 11.3 Examples of Conflicts of Interest include members of the evaluation panel or procurement team processing the procurement exercise having a financial interest or having a relationship (spouse, partner, family member etc.) with someone in the bidders organisation.

12. Procedures prior to Commencing Procurement Exercise

- 12.1 Prior to commencing with a Procurement Exercise, any Officer shall consult with the Corporate Procurement Unit to establish whether any existing contracts or Framework Agreements accessible to the Council might fulfil their requirement.
- 12.2 No Tender shall be invited or any contract negotiations commenced, unless:
 - 12.2.1 The estimated expenditure thereon is within the budgetary provision previously approved by the Council and in compliance with the Council's Financial Regulations. The Officer shall be responsible for ensuring that sufficient funds are available prior to the commencement of any Procurement Exercise
 - 12.2.2 A Request for Procurement Action (RPA) (see Annex D) has been completed and authorised by the requesting Service and authorised by Financial Management prior to being submitted to the Corporate Procurement Unit.

The RPA document will be amended from time to time, the latest document is available on Connects.

- 12.2.3 A Contract Strategy has been prepared by Corporate Procurement in consultation with the Service representative
- 12.2.4 In cases of Collaborative Procurement, the terms of Standing Order 9 have been complied with.

13. Advertising of Contracts

- 13.1 In terms of the EU Procurement Directive, The Reform Act and 2015 Regulations, the Council has a duty to ensure that contracts are procured in accordance with the principles of non-discrimination on grounds of nationality, equal treatment and transparency.
- 13.2 Contract opportunities that are subject to the requirements of the Reform Act or the 2015 Regulations must comply with the provisions relating to advertising of contracts set out in that legislation.
- 13.3 All contract opportunities shall be advertised using Public Contracts Scotland, unless a decision has been reached by reason of either Standing Order 5 or Standing Order 14 that the contract opportunity is to be awarded without advertising.

14. Tendering Procedures

- 14.1 Subject to the provisions of clause 5.2 above, where the total contract value exceeds £50,000 (supplies and services) and £100,000 (works) formal tenders will be obtained by one of the following methods:

Type of Contract	Threshold (exc VAT)	Procedure
Supplies & Services	£50k – OJEU	<ul style="list-style-type: none">• Single Stage tendering• Two Stage tendering
Works	£100k – OJEU	<ul style="list-style-type: none">• Single Stage tendering• Two Stage tendering

Supplies, Services & Works	>OJEU	<ul style="list-style-type: none"> • Open tendering; • Restricted tendering; • Negotiated Procedure without Prior Publication of a Notice • Competitive Procedure with Negotiation • Competitive Dialogue Procedure • Innovation Partnerships
----------------------------	-------	---

142 The relevant Chief Officer in consultation with Corporate Procurement will determine through market research which procedure will be used to maximise competition.

143 For Open and Restricted Tenders, the relevant Chief Officer shall seek tenders from any Organisations registered on Pubic Contracts Scotland.

14.4 Single Stage tendering (below OJEU threshold)

This procedure shall apply when after consultation Corporate Procurement and the Chief Officer decides that tenders for a contract shall be obtained by open competition.

Corporate Procurement shall publish a contract notice on Public Contracts Scotland.

The notice shall:

- Specify the nature and purpose of the contract;
- Include an ESPD;
- Contain all tender documentation (including tender award criteria);
- Clearly identify any selection criteria;
- Include the tender return deadline;
- Allow at least 21 days between the published date of the notice and the Tender return deadline.

145 Two Stage Tender (below OJEU threshold)

This procedure shall apply when after consultation Corporate Procurement and the Chief Officer decide to use a short listing process which limits invitations to tender to the applicants responding to a notice

Before inviting tenders, Corporate Procurement shall publish a notice on Public Contracts Scotland.

The notice shall:

- Specify the nature and purpose of the contract;

- Include a European Single Procurement Document (ESPD);
- include selection criteria;
- include the ESPD return deadline;
- allow at least 14 days between the published date of the notice and the ESPD return deadline (unless otherwise agreed with the Senior Manager Corporate Procurement or Designated Officer).

After the ESPD return deadline an Invitation to Tender document shall be issued by Corporate Procurement via Public Contracts Scotland to at least five providers, where possible. Where less than five ESPD returns are received from provider's advice must be sought from the Senior Manager Corporate Procurement or Designated Officer before proceeding.

As soon as practical after deciding to exclude applicants from the Tender list unsuccessful applicants must be given a notice of:

- The names of the applicants proceeding to the second stage;
- The criteria used to exclude the applicant;
- The Councils scoring (if any), against those criteria, of the applicant.

The Invitation to Tender document shall:

- Specify the nature and purpose of the contract;
- Contain all tender documentation (including award criteria);
- Include the tender return deadline;
- Allow at least 21 days between the published date of the notice and the tender return deadline (unless otherwise agreed by the Senior Manager Corporate Procurement or Designated Officer).

14.6 Negotiated Tendering (below OJEU Threshold)

Negotiated tendering allows the Council to negotiate directly with a supplier or limited number of suppliers in order to award a contract. It is a procedure which should only be used in limited circumstances, for example in cases of extreme urgency or when a single stage or two stage tendering process has been discontinued.

As such the use of Negotiated tendering is strictly limited to exceptional circumstances as inappropriate use of the Negotiated tendering may lead to legal challenge.

Any negotiated tendering below the OJEU threshold must be approved by the Senior Manager Corporate Procurement, prior to negotiation commencing.

14.7 Open tendering (above OJEU threshold)

This procedure shall apply when after consultation Corporate Procurement and the Chief Officer decide that tenders for a contract shall be obtained by open competition.

Corporate Procurement shall publish a contract notice on Public Contracts Scotland

The notice shall:

- Specify the nature and purpose of the contract;
- Include an ESPD;
- Contain all tender documentation (including tender evaluation criterion)
- Clearly identify any selection criteria
- Include the tender return deadline
- Allow at least 30 days between the published date of the contract notice and the tender return deadline or at least 21 days if Prior Information Notice (not a call for competition) has been published within 35 days and 12 months from date of contract notice.

14.8 Restricted tendering (above OJEU threshold)

This procedure shall apply when after consultation Corporate Procurement and the Chief Officer decide to use a short listing process which limits invitations to tender to the applicants responding to a notice.

Corporate Procurement shall publish a contract notice on Public Contracts Scotland

The notice shall:

- Specify the nature and purpose of the contract;
- Include an ESPD;
- Include selection criteria;
- Clearly identify selection criteria;
- Include the ESPD return deadline;
- Allow at least 25 days between the published date of the notice and the ESPD return deadline.

After the ESPD return deadline an Invitation to Tender document shall be issued by Corporate Procurement via Public Contracts Scotland to at least five providers. Where less than five expressions of interest/questionnaires are received from provider's advice must be sought from the Senior Manager Corporate Procurement before proceeding. The Senior Manager Corporate Procurement will either authorise accepting less than five expressions of interest/questionnaires or require a re-tender.

As soon as practical after deciding to exclude applicants from the Tender list unsuccessful applicants must be given a notice of:

- The names of the applicants proceeding to the second stage;
- The criteria used to exclude the applicant;
- The Councils scoring (if any), against those criteria, of the applicant.

The Invitation to Tender document shall:

- Specify the nature and purpose of the contract;
- Contain all tender documentation (including award criteria);
- Include the tender return deadline;
- Allow at least 25 days between the published date of the contract notice and the tender return deadline or at least 10 days if Prior Information Notice (not a call for competition) has been published within 35 days and 12 months from date of contract notice.

14.9 Negotiated Procedure without Prior Publication of a Notice (Above OJEU)

Negotiated Procedure without Prior Publication should only be used in very exceptional circumstances. These exceptions should be limited to cases where publishing a call for competition (e.g. Contract Notice) is not possible such as:

- Where no tenders, no suitable tenders, no requests to participate or no suitable requests to participate have been submitted for a previous Open or Restricted tender exercise, provided that the initial conditions of the contract are not substantially altered. A tender shall be considered not to be suitable where it is irrelevant to the contract, being manifestly incapable, without substantial changes, of meeting the Organisation's needs and requirements as specified in the procurement documents. A request to participate shall be considered not to be suitable where the bidder has been or would have been excluded or where it does not meet the selection criteria.
- Where the supplies or services can be supplied only by a particular supplier for any of the following reasons:
 - The aim of the procurement is the creation or acquisition of a unique work of art or artistic performance;
 - Competition is absent for technical reasons (only if it is not caused by artificial narrowing down of the parameters of the procurement and no reasonable alternative or substitute exists);
 - The protection of exclusive rights, including intellectual property rights (only if it is not caused by artificial narrowing down of the parameters of the procurement and no reasonable alternative or substitute exists).
- Where it is strictly necessary for reasons of extreme urgency (where the time limits for the Open or Restricted Procedure or Competitive Procedure with Negotiation cannot be complied with) brought about by events unforeseeable and not attributable to the Organisation, such as emergency situations affecting the public e.g. flooding.

Negotiated Procedure without Prior Publication in case of **goods**:

- Where the products involved are manufactured purely for the purpose of research, experimentation, study or development, but not including quantity production to establish commercial viability or to recover research and development costs. Note this should not be abused to allow a single

supplier to be approached to design an item which must subsequently be purchased as a result of proprietary rights;

- Where a change in supplier(s) would mean that the Organisation would have compatibility issues or disproportionate technical difficulties; this procedure can be used to acquire additional deliveries from the original supplier when needed to replace or increase supplies or installations. In this case, the contract or recurrent contract length must not exceed three years, other than in exceptional circumstances.;
- For supplies quoted and purchased on a commodity market;
- For the purchase of supplies on particularly advantageous terms, from either a supplier which is definitively winding up its business activities, or the liquidator in an insolvency procedure, an arrangement with creditors, or a similar procedure under national laws or regulations.

Negotiated Procedure without Prior Publication in case of **services**:

- Where the contract concerned follows a design contest organised in accordance with the Public Contracts (Scotland) Regulations 2015 and where the contract concerned is to be awarded as part of the design contest to the winner or winners. Where there is more than one winner of the design contest, all of them must be invited to participate in the negotiation;
- In instances when all of the following apply:
 - Where it is for new services consisting of the repetition of similar services performed by the supplier to which the Organisation awarded an original contract, provided that such services are in conformity with the basic project for which the original contract was awarded and the award indicated the extent of possible additional services and the conditions under which they would be awarded;
 - The possible use of this procedure was disclosed in the Procurement Documents and the total estimated cost of subsequent services was taken into consideration by the Organisation when applying the thresholds in relation to the original contract; and
 - Not more than three years have elapsed following the conclusion of the original contract.

As with all aspects of the Procurement Journey, the activities at this stage must be carried out in a carefully managed manner that supports the Principles of Procurement. As a minimum the processes must be carried out in a transparent way that ensures there is no distortion of the market place, the outcome cannot be a procurement that unduly favours or disadvantages a particular supplier and it is the responsibility of the Organisation to make sure that these requirements are met.

You must justify the use of this procedure; however, it can only be used in situations which have not been created by your Organisation. Organisations relying on the exception should provide reasons why there are no reasonable

alternatives or substitutes such as using alternative distribution channels including outside the UK or considering functionally comparable supplies and services. Where the situation of exclusivity is due to technical reasons, they should be rigorously defined and justified on a case-by-case basis. Technical reasons may also derive from specific interoperability requirements which must be fulfilled in order to ensure the functioning of the works, supplies or services to be procured.

Timescales:

When fixing any time limits the Organisation must take account of the complexity of the contract.

A Contract Notice will not be published in this procedure. The only procurement documents which may be published would be a Voluntary Ex-Ante Transparency (VEAT) Notice which an Organisation can use to protect itself by sending a VEAT Notice to OJEU prior to entering the contract. It is still mandatory to publish a Contract Award Notice with this procedure.

14.10 Competitive Procedure with Negotiation

Competitive Procedure with Negotiation can be used:

- Where the needs of the public body cannot be met without adaptation of readily available solutions;
- The works, supplies or services required include design or innovative solutions;
- A contract cannot be awarded without prior negotiation because of the nature or complexity of the works, supplies or services;
- The technical specifications of the works, supplies or services cannot be established by sufficient precision by the public body;
- The public body has already tried to procure the goods, works or services using the open or restricted procedure but only received irregular or unacceptable tenders.

Under this procedure:

- The contract notice will make it clear that the competitive procedure with negotiation is being used;
- Any supplier may make a request to participate;
- The request to participate must be accompanied by an ESPD;
- Following assessment of the submitted ESPDs, the buyer will invite suppliers that meet the selection criteria to the initial tender phase;
- This can be followed by several rounds of negotiation in order for the public body to seek approved offers;
- This may result in a new or revised tender being issued.

- Finally, leading to a contract award

A record of clear reasons for selecting this approach is required and commercial confidentiality is of key importance in employing this procedure.

14.11 Competitive Dialogue Procedure

Competitive Dialogue can be used:

- Where the needs of the public body cannot be met without adaptation of readily available solutions;
- The works, supplies or services required include design or innovative solutions;
- A contract cannot be awarded without prior negotiation because of the nature or complexity of the works, supplies or services;
- The technical specifications of the works, supplies or services cannot be established by sufficient precision by the public body;
- The public body has already tried to procure the goods, works or services using the open or restricted procedure but only received irregular or unacceptable tenders.

Under this procedure:

- The contract notice will make it clear that the competitive dialogue procedure is being used and will also set out the award criteria which the public body will apply during the dialogue stage;
- Any supplier may make a request to participate;
- The request to participate must be accompanied by an ESPD;
- Following assessment of the submitted ESPDs, the buyer will conduct a dialogue with the suppliers which meet the selection criteria. The aim of the dialogue will be to develop one or more suitable alternative solutions capable of meeting the requirements;
- On the basis of this dialogue the buyer will select suppliers to invite to tender.

A record of clear reasons for selecting this approach is required and commercial confidentiality is of key importance in employing this procedure.

14.12 Innovation Partnerships

Innovation Partnerships can be used where there is no existing product or solution currently available on the market.

Under this procedure:

- The contract notice will make it clear that the innovation partnership procedure is being used;
- Any supplier may make a request to participate;
- The request to participate must be accompanied by an ESPD;
- Following assessment of the submitted ESPDs, the buyer will use a negotiated approach to invite suppliers to submit ideas to develop innovative works, supplies or services aimed at meeting a need for which there is no suitable existing 'product' on the market;
- The public body is allowed to award partnerships to more than one supplier;

A record of clear reasons for selecting this approach is required and commercial confidentiality is of key importance in employing this procedure.

14.13 Public Social Partnerships (PSP)

A PSP is a strategic partnering arrangement which involves the third sector earlier and more deeply in the design and commissioning of public services.

The third sector is often best placed to interact closely with communities and its involvement can mean that people have more choice and control over what services are delivered locally. A PSP differs from other commissioning approaches in that it starts with the need to be addressed, not the services available.

A PSP typically comprises of 3 stages:

- Third sector organisations work with the public sector purchasers to design a service;
- A short-term pilot may be run to help refine the service delivery parameters;
- The Service is further developed to maximise community benefit before being competitively tendered, typically within three-four years.

The Senior Manager Corporate Procurement or Designated Officer must be consulted and agree that a PSP is the correct approach.

15. Electronic Tendering

15.1 All tenders must be advertised by electronic means through Public Contracts Scotland (PCS) and the tender process will be managed through the Public Contracts Scotland Tender (PCS-t) e-tendering system. All Quick Quotes will be invited and submission accepted via PCS.

16. Submission of Tenders

16.1 The Invitation to tender shall state that a tender will not be considered unless it is received electronically by the date and time stipulated in the invitation to Tender. No Tender delivered in contravention of this clause shall be considered.

16.2 All invitations to tender shall include the following:-

- (i) A specification that describes the Council's requirements in sufficient detail to enable the submission of competitive offers;
- (ii) A requirement for tenderers to declare that the tender content, price or any other figure or particulars concerning the Tender have not been disclosed by the tenderer to any party (except where such a disclosure is made in confidence for a necessary purpose);
- (iii) A requirement for tenderers to complete fully and sign all tender documents including a form of tender and certificates relating to canvassing and non-collusion;
- (iv) Notification that tenders are submitted to the Council on the basis that they are compiled at the tenderer's expense;
- (v) A description of the award procedure and evaluation criteria (including quality/price ratio, weighted quality criteria and price scoring model). The award procedure and evaluation criteria must remain unchanged throughout the tender process.
- (vi) The method by which any arithmetical errors discovered in the submitted tender is to be dealt with. In particular, whether the overall price prevails over the rates in the tender or vice versa.

- 16.3 All Invitations to Tender or Quotations must specify the goods, services or works that are required, together with the terms and conditions of contract that will apply.
- 16.4 The Invitation to Tender or Quotation must state that the Council is not bound to accept any Quotation or Tender.
- 16.5 All candidates invited to tender or quote must be issued with the same information at the same time and subject to the same conditions through PCS or PCT-t. Any supplementary information must be provided on the same basis.
- 16.6 Candidates invited to respond must be given an adequate period in which to prepare and submit a proper Quotation or Tender, consistent with the urgency of the contract requirement. Normally at least 3 weeks should be allowed for submission of tenders. For all tenders that exceed the EU threshold, the EU timescales will apply.

17. Late Tenders

- 17.1 No tenders received after the closing date and time for submission shall be considered.

Where a tender is late due to a failure or lack of availability of the electronic tendering platform, and which is not attributable to the tenderer or as the case may be their agent, the express approval of the Senior Manager Corporate Procurement shall be required to admit the tender for consideration.

18. Opening of Tenders

- 18.1 Due to the system controls in place all tenders shall be opened by an authorised user, using the parallel opening functionality on PCS or PCS-t, as soon as it is practical to do so.
- 18.2 The Senior Manager Corporate Procurement or Designated Officer shall ensure that for each e-tendering project, the system shall keep and, if required, produce a record showing the date and time when tenders were opened.

19. Checking of Tenders

- 19.1 All Tenders shall be subject to checking for completeness and errors by an appropriate officer nominated by the Chief Officer of the service concerned. Any arithmetical errors that result in a change to the pricing submitted must be documented.
- 19.2 Tenders for construction works shall be checked in accordance with current industry best practice and relevant practice notes, such as JCT Tendering 2012 Practice Note, where deemed appropriate to do so.

20. Evaluation of Tenders

- 20.1 Apart from the notification required or permitted by Standing Order 20.3:
- (i) Confidentiality of Quotations, Tenders and the identity of candidates must be preserved at all times.
 - (ii) Information about one candidate's response must not be given to another Candidate.
- 20.2 During the evaluation process, Officers will be given access to information about the tender responses or the identity of tenderers. Some of this information may be commercially sensitive, confidential or subject to a non-disclosure agreement. This information must not be shared outwith those involved in the evaluation or decision approval process.
- 20.3 Contracts must be evaluated and awarded in accordance with the Award Criteria stated in the contract notice or tender documents and in compliance with Order 16.2 (v).
- 20.4 Where genuine pricing errors are found, they should be notified to the tenderer, who should be requested to confirm or withdraw their Tender. Alternatively, if the individual figures in the Tender, rather than the overall price, were stated within the Invitation to Tender as being dominant, an amended Tender price may be requested to accord with the figures given by the tenderer.
- 20.5 Chief Officers shall ensure that submitted tender prices are compared with any pre-tender estimates and that any discrepancies are examined and resolved satisfactorily.
- 20.6 Where changes to the tender are reasonable by the tenderer, and where such change is viewed to be reasonable by Council staff, erroneous figures shall be adjusted and the tender documents recalculated arithmetically. Changes to the tender document's figures should be signed by the tenderer. A letter from the tenderer, confirming and agreeing to the changes in erroneous figures shall also be appended to the tender documents.
- 20.7 The original tender form shall be amended to reflect the outcome of any new tender offer and the changes shall be signed by the tenderer.

- 20.8 At the end of the evaluation process, tender evaluation summary sheets shall be endorsed by the Evaluation Panel.

The evaluation panel must be made up a panel of at least 2 for tenders over the value of £50K for Supplies and Services and £100K for works

- 20.9 Quotations and Tenders received in respect of proposed contracts should only be accepted where they have been sought and evaluated fully in accordance with these Standing Orders.

21. Post Tender Communication

- 21.1 Between the last date and time for the receipt of Tenders and the date on which a decision is taken as to which, if any, Tender is to be accepted, the Senior Manager Corporate Procurement or any Procurement Officer designated by them may contact a Tenderer in respect of any Tender submitted in order to seek clarification on the terms of the tender.

- 21.2 Where any factor giving rise to post Tender communications is not specific to one Tenderer, all Tenderers must be invited to participate in such communications. There must be no material change to the specification(s) and/or criteria on which Tenders are to be evaluated. If it becomes apparent that a material change is required, the Tendering process must be recommenced with a revised specification or award criteria.

- 21.3 A full written record shall be kept of all such communications and shall be retained with the original Tender.

- 21.4 This provision shall not be used in any way to permit any Tenderer to amend their bid in a manner that allows them to improve their offer, nor to put other Tenderers at a disadvantage nor to distort competition. All Tenderers must be treated at all times equally and in an open, transparent and fair manner.

- 21.5 For all EU tenders a mandatory standstill period must be observed before a contract can be awarded, see paragraph 23.8.

22. Post Tender Negotiations

- 22.1 Once the evaluation of tenders has been completed in accordance with Standing Order 20, the Chief Officer may request the Senior Manager Corporate Procurement or any Procurement Officer designated by them to enter into post Tender negotiations. Such negotiations shall take place with the tenderer who has submitted the Most Economically Advantageous Tender for a contract; and where there is scope for improvement in the Tender received and that such negotiations will be in the best interests of securing Best Value and improved terms and conditions for the Council.

- 22.2 Where it is considered possible that post Tender negotiations might apply, a clear indication will be given to prospective contractors in the instructions to tenderers that post tender negotiations might be considered.
- 22.3 A full record (which shall include copies of all written communications) shall be kept by Procurement of all contracts where post Tender negotiations have been used and the written record will be retained with the original Tender. The written record will include the justification for authorising post Tender negotiations, the nature of the negotiations undertaken, the outcome of such negotiations and shall detail any additional terms agreed by the Council.
- 22.4 This Standing Order 22 shall not be used in any way to put any tenderer at a disadvantage or to distort competition, and it shall not be used to make any change to the specification(s) and/ or criteria on which the identified Tender is to be assessed.

23. Acceptance of Tender

- 23.1 Every Tender issued shall state the award criteria as the Most Economically Advantageous Tender (lowest price is no longer legally compliant). The evaluation of all bids received shall take place in accordance with the criteria specified in the Tender documentation.
- 23.2 No Tender shall be accepted unless:
- The appropriate Chief Officer is satisfied that the selection criteria stated within the tender have been met;
 - The appropriate Chief Officer is satisfied, in accordance with the award criteria, that the Tender is the Most Economically Advantageous Tender and technically compliant proposal for the Council.
- 23.3 Tenders for contracts where the total contract value (including optional extensions) does not exceed £500,000 shall be accepted upon written approval of the appropriate Chief Officer, subject always to confirmation that the tender has been issued in compliance with the provisions of paragraphs 7 and 8 of the Standing Orders.
- 23.4 Where the value of the tender is more than £500,000 but is £1,000,000 or less (including optional extensions), such tender shall be accepted upon the written approval of the Chief Executive or any Executive Director.
- 23.5 Where the value of the tender exceeds £1,000,000 (including optional extensions), such tender will be accepted upon the approval of the Cabinet, as set out herein. A tender outcome report will require to be submitted to Cabinet setting out details of the tenders received. Following the Cabinet meeting a period of 5 working days (excluding Sunday) must elapse prior to a contract being awarded to allow for any call in of the Cabinet decision in terms of clause 24 of the Standing Orders Relating to Meetings and Proceedings of the Council and Committees. In the event of a call-in, the contract shall not be accepted until the call-in is determined.

- 23.6 Subject to the procedures at paragraph 23.3 to 23.5 being adhered to, the contract acceptance and award letter will be issued by the Senior Manager Corporate Procurement.
- 23.7 In exceptional circumstances, where for reasons of urgency, it is not possible to submit a report to the Cabinet in terms of paragraph 23.5 above, the relevant Chief Officer shall with the approval of the Chief Executive, be empowered to authorise acceptance of the tender, subject to a report being submitted to the Cabinet at the first available opportunity. During recess the Chief Executive is also entitled under the Scheme of Delegation to Officers to deal with any urgent matters, subject to reporting back to Cabinet at the first available opportunity.
- 23.8 For all tenders over the EU threshold a mandatory standstill period must be observed prior to the award of contract. If a report has been approved by Cabinet in accordance with paragraph 23.5, the mandatory standstill period will commence after either (a) expiry of 5 working days from the Cabinet decision without any call in or (b) in the event of a call-in, the contract shall not be accepted until the call-in is determined. Guidance on this must be obtained from the Senior Manager Corporate Procurement. The mandatory standstill period must be for a period of at least 10 calendar days.

24. Nomination of Sub-Contractors

- 24.1 Where the Council nominates a sub-contractor or supplier to a main contractor, in the absence of any statutory requirements setting out different procedures, all tenders must be invited by the Council in accordance with the relevant tendering procedures laid down in these Standing Orders.
- 24.2 The terms of the invitation will require an undertaking by the tenderer that, if selected, they will be willing to enter into a contract with the main contractor in terms which may indemnify the main contractor against their own obligations under the main contract for the work goods or services included in the sub-contract.

25. Contract Register

- 25.1 The Reform Act requires the Council to publish an external Corporate Contract Register. The Corporate Procurement Unit shall be responsible for updating the Council's Contracts Register.
- 25.2 The contract register must include the:
- 1) Contract name, description and unique reference number
 - 2) Contractor details
 - 3) Commencement date for contract
 - 4) Termination date for contract
 - 5) Trigger date for renewal/re-tender of contract
 - 6) Annual value of contract

25.3 It is the responsibility of Chief Officers or their Designated Officer to regularly review the contract register to ensure that the register accurately reflects all known contracts including Direct Award contracts eg SW Hub. Chief Officers or their Designated Officer should notify the Corporate Procurement Unit of any new contracts or required amendments in order that the Council can meet the legal requirement of publishing an accurate complete Corporate Contract Register.

26. Variations to Contract

- 26.1 Consideration must be taken of the value of variation, type of variation and scope of variation relevant to the original contract. Variations cannot be considered if the terms and conditions of the contract do not allow for this or if the value and/or scope of the variation are significantly different from the original contract
- 26.2 Variations to contract, greater than 10% of the original contract value, should not be agreed without the prior approval of the Senior Manager Corporate Procurement or Designated Officer and without having necessary budget provision. If the variation to contract is approved, the Corporate Procurement Unit will issue contract variation letters.
- 26.3 Details of all variations to contract must be held in writing by the relevant Directorate and a summary forwarded to Corporate Procurement on a monthly basis.

27. Termination of Contracts

- 27.1 Every contract shall contain a provision allowing for the contract to be terminated.
- 27.2 The Chief Officer may request to terminate any contract or the Council's participation in a Framework Agreement, subject to consultation with the Head of Democratic Services and the Senior Manager Corporate Procurement.
- 27.3 Any termination shall be subject to the Head of Democratic Services and the Senior Manager Corporate Procurement being satisfied that it is reasonable and in the interests of the Council to exercise that power.
- 27.4 Details of all terminations to contract must be held in writing and copies forwarded to the Corporate Procurement Unit.

28. Form of Contract

- 28.1 Except where otherwise agreed by the Executive Director (Finance & Corporate Support) and the Head of Democratic Services every contract shall be in writing, shall be signed by the appropriate Executive Director or other officer specifically authorised by him/her for this purpose and shall be subject to the laws of Scotland and the jurisdiction of the Scottish Courts.

29. EC Standards

Where an appropriate and recognised international or European Standard or British Standards Specification or British Standard Code of Practice is current at the date of the Invitation to Tender, every contract shall require that, as the case may be, all goods and materials used or supplied and all workmanship shall at least meet the requirements of that EC Standard or alternatively British Standard, unless otherwise approved by the appropriate Chief Officer. In the absence of any such recognised European or other standard, the Tender document shall require an appropriate equivalent standard be used.

30. **Copyright**

The Chief Officer shall, in so far as practicable, ensure that in contracts for the commissioning of reports, research, graphics, design, media and other consultancy services to which copyright applies, that whilst copyright in the work vests in the Contractor, the Council has royalty free rights to utilise the information provided in relation to the continued development of the specific project and subsequent related projects.

31. **Prevention of Collusion and Corrupt Illegal Practices**

Every contract shall contain a clause entitling the Council to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation if the contractor or his representative (whether with or without the knowledge of the contractor) 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 have been convicted of an offence under Section 1 of the Bribery Act 2010.

North Ayrshire Council supports the Scottish Governments policy on ensuring that public contracts are awarded to legitimate businesses and has signed up to an Information Sharing Protocol with Police Scotland to share information about organisations who bid for public contracts.

32. **Equal Opportunity in Employment**

Before entering into a contract the Council shall obtain from the Contractor an assurance in writing that, to the best of its knowledge and belief it has complied with all statutory requirements in respect of ensuring equal opportunity in employment; and that it is not unlawfully discriminating within the meaning and scope of the provisions of the on the Equality Act 2010 (or any statutory modification or re-enactment thereof) including but not limited to discrimination on grounds of gender, marital or civil partnership status, race, disability, gender reassignment, religion or belief, sexual orientation, age, pregnancy or maternity leave.

33. **Freedom of Information**

33.1 The Freedom of Information (Scotland) Act 2002 came into force on 1st January 2005. The Act gives a statutory right of access to all information held by Scottish Public Authorities, except where an exemption can be applied. All invitations to tender, invitations to negotiate and ESPD documents should, accordingly, give notice of this.

33.2 On occasions, parties with whom the Council contracts will seek to incorporate stipulations that all or some information is provided in confidence. No such provision should be accepted without the prior approval of the Head of Democratic Services.

- 33.3 In all cases other than those specifically approved by the Head of Democratic Services all contract conditions should include the following provision:-

“All information submitted to the Council may need to be disclosed and/or published by the Council. Without prejudice to the foregoing generally, the Council may disclose information in compliance with the Freedom of Information (Scotland) Act 2002. The decision of the Council in the interpretation thereof shall be final and conclusive in any dispute, difference or question arising in respect of disclosure under its terms, any other law or as a consequence of judicial order or order by any court, tribunal or body with the authority to order disclosure (including the Scottish Information Commissioner). Further, the Council may also disclose all information submitted to them to the members, employees, agents and contractors of the Council”.

34. Sustainability

- 34.1 Sustainable procurement incorporates environmental, economic and social considerations. The Council is legally bound by the Sustainable Procurement duty in the Reform Act to consider sustainability and procure responsibly and in a way that delivers community well-being, minimises use of resources and prevents environmental degradation. Where relevant to the subject matter of the contract, consideration should be given to:

- Limiting energy and water consumption during delivery of the requirement;
- The use of non-toxic substances and renewable materials;
- Disposal, reuse and recycling options at the end of life;
- Incorporation of recycled or part recycled goods and energy efficient products;
- Encouraging local recruitment and training of staff employed in the delivery of the contract;
- Involving Small and Medium Enterprises (SME's), Third Sector Bodies and Supported Business;
- Promoting innovation – Innovation in design and delivery of public services, procurement of innovative goods and services and use of innovative procurement processes.

- 34.2 Every contract shall provide that no goods, products or services shall be supplied which may endanger the health of any person, cause significant damage to the environment during manufacture, use or disposal, which consume a disproportionate amount of energy during manufacture, use or disposal, which cause unnecessary waste, or which contain materials derived from threatened species or environments.

35. Assignment

In every contract, there shall be included a provision whereby:

- The Contractor shall be prohibited from transferring, assigning or sub-contracting a contract or any part thereof without the prior written consent of the Council; and
- The Contractor shall be prohibited from changing any sub-contractors from those noted in the Contract Documents without the prior written consent of the Council.

36. Interest of Members

36.1 A member of the Council with a personal interest in a matter who attends the meeting of the Council at which the matter is considered must disclose to that meeting the existence and nature of that interest at the beginning of that meeting or when the interest becomes apparent, all in compliance with the Councillor's Code of Conduct in terms of Section 1 of the Ethical Standards in Public Life etc. (Scotland) Act 2000.

36.2 A member with a personal interest in a matter also has a prejudicial interest if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard the interest as so significant that it is likely to prejudice the member's discussion or decision making in their role as a Councillor.

A member with a prejudicial interest in any matter must:

- Withdraw from the room where a meeting is being held whenever it becomes apparent that the matter is being considered at that meeting; and
- Not seek improperly to influence a decision about that matter.

37. Interest of Officers

37.1 In addition to his or her duty under Section 81 of the 1973 Act and the requirements of the 2003 Act, if any officer of the Council finds that he or she has a disclosable financial interest in any contract which has been or is proposed to be entered into by the Council or in some other matter which is to be considered by the Council or any of its Committees or Sub-Committees other than:

- A contract of employment under which he or she serves the authority or;
- The tenancy of a dwelling provided by the Authority;

He or she must as soon as is practicable give notice of the fact in writing to the Chief Executive.

37.2 For the purpose of this section, a disclosable financial interest is an interest that, if the officer were a member of the Council and if the contract or other matter were to be considered at a meeting of the Council at which he or she were present, he or she would have to disclose under the provision of the Councillor's Code of Conduct referred to in section 36 above.

37.3 The Chief Executive shall record in a register to be kept for the purpose, particulars of any notice of a financial interest given by an officer under Section 81 of the 1973 Act or under paragraph 37.1 of the Standing Orders.

38. Health & Safety

38.1 Every Contractor appointed by or on behalf of the Council shall be required to comply with current Health and Safety legislation and approved Codes of Practice, as may be applicable to the contract. The Chief Officer will have the ultimate decision as to whether a Contractor's Health and Safety qualification is equal to that required by the Council or in an approved form.

38.2 In the case of contracts for construction type works, in addition to the aforementioned, contractors appointed by or on behalf of the Council shall be required to hold either Contractors Health and Safety Scheme (CHAS), Safety Schemes in Procurement (SSIP) or equal and shall be required (prior to entering a contract) to exhibit an approved letter of compliance or accreditation certificate.

39. Insurance

Every contract shall contain a clause requiring the Contractor to take out and maintain, for the duration of the contract, such insurance cover for such amounts as the Chief Officer may deem relevant to the contract, including, if appropriate, but not restricted to:

- Employers Liability Insurance;
- Public (Third party) Liability Insurance;
- Professional Indemnity Insurance, which shall remain in force for a period of six years beyond the end of the contract;
- Other such specialist classes of insurance as advised by the Senior Manager (Internal Audit, Risk and Fraud).

40. Performance Bonds and Parent Company Guarantees

Where considered necessary by the Chief Officer, the Council shall require the Contractor to take out a bond, obtain and deliver a formal parent company guarantee or provide other sufficient security for the due performance of the contract.

41. Disposal of Surplus or Scrap Materials/Equipment

These standing orders also apply for the disposal of surplus of scrap materials and equipment. The Chief Executive may authorise the adoption of an appropriate method of doing so following a recommendation from the Chief Officer of the Service concerned. This method should be adopted in line with the provisions contained within these standing orders and where more than one offer is received, the highest satisfactory offer will be accepted.

42. Disposal of Interest in Land and Building

The Policy for Property Acquisition and Disposal as set out in Annex B shall apply to the making of contracts for the disposal by the Council of its interest in land or buildings (including the disposal by lease thereof, other than leases by the Council for periods not exceeding 5 years) where the interest has been declared surplus to the Council's requirements. Except in cases of community transfers (in accordance with the Council's policy for the Transfer of Assets to the Community), or otherwise in accordance with the Disposal of Land by Local Authorities (Scotland) Regulations 2010 where more than one offer is received the highest satisfactory offer shall be accepted. Any disposal for less than the recorded value must fulfil the requirements of the Disposal of Land by Local Authorities (Scotland) Regulations 2010.

43. Post Contract Monitoring and Evaluation

During the life of the Contract the Contract and Supplier Management Policy contained within the Procurement Manual will apply.

44. Variation and Revocation

These Standing Orders may be varied or revoked by the Council and any motion to vary or revoke these Standing Orders (which motion shall conform to the requirements of Standing Order 22 of the Standing Orders Relating to Meetings and Proceedings of the Council and Committees) shall, when proposed and seconded, stand adjourned without discussion to the next ordinary meeting of the Council.

45. Thresholds and VAT

All monetary thresholds contained within the Standing Orders are exclusive of VAT.

46. Commencement

These Standing Orders Relating to Contracts shall apply and have effect from 27 June 2018. These Orders supersede the Standing Orders approved by the Council on 17 May 2017.

**Annex A
Single Tender Action Request**

Section 1 – Service Requestor Details

1.1 Service:

1.2 Service Officer Name (Block Capitals):

1.3 Telephone Number:

1.4 Date of Request:

Section 2- Project Details

2.1 Project Title:

2.2 Project Description:

2.3 Supplier/Service Provider Details:

Do you have a Supplier/Service Provider Quotation

Yes/No

If yes please attach a copy

2.4 Category - Supplies/Services/Works/Health & Social Care Services:

2.5 Project Status - New Requirement, Renewal or Variation of Existing Contract:

2.6 Proposed Contract Start Date and duration:

2.7 State reason for requesting a Single Tender Action (see section 3. Single Sourcing Validity)

2.8 Provide justification/business case why a competitive quote/tender is not an option

How have you evidenced value for money in the absence of a competitive process?

2.9 Please state the exemption reason from the Procurement (Scotland) Regulations 2016 for requesting a Single Tender Action (please see exemptions in Part 3, section 6 below)
The Procurement (Scotland) Regulations 2016

Section 3 – Budget Details

3.1 Total Value (ex VAT) of this Procurement Exercise (only) - including all extensions if appropriate.

£

3.2 Breakdown of Value by Financial Year (amend FYs as necessary):	
FY 2017 / 2018	£
FY 2018 / 2019	£
FY 2019 / 2020	£
FY 2020 / 2021	£

3.3 Type of Expenditure - Capital/Revenue:

3.4 Cost Centre:

3.5 Account Code:

Section 4 – IT Security

Please provide a Yes or No reply to every question.

Question	Yes/No
1 Will Council official-protect ¹ information be hosted or held external to the Council by another party? (this includes both paper and electronic formats)	
2 Will you be requiring the supplier/service provider to connect to the Council network to provide support for an application / system residing within the Council? (this includes connecting from a remote location or physically coming into NAC premises)	
3 Are you requiring the supplier/service provider to develop an application / system that will host or hold Council information?	
4 Are you procuring an application / system that the supplier/service provider already has available / developed that will host or hold Council information? (includes situations where changes will be made on the Council's behalf)	
5 Will the supplier/service provider be providing access to a system via the Internet to hold Council information?	

¹ Official-protect covers business sensitive data and data that identifies a living individual. Please note that extracts of Council email addresses would be official-protect.

If you answer **yes** to any of the questions above you will be required to engage with the Council's ICT Security Officer, itsecurityofficer@north-ayrshire.gov.uk, 01294 324250, for guidance on questions to be included as part of your procurement exercise.

You are also required to indicate that you have undertaken the following:

	Only complete if answered YES to any of the questions above	Yes
1	If you replied Yes to any of the questions above please confirm that you have engaged with the ICT Security Officer	
2	Enter the number of documents to be included within your procurement exercise	
3	Confirm you have booked diary time with the ICT Security Officer to review your security returns or that you are aware of this requirement and will schedule in advance.	

Section 5 – Information Governance

Does your purchase have information governance implications?

Yes / No

If no please confirm you have contacted the Information Governance Manager on 01294 324128 to agree that there are no implications:

If yes please provide details of requirements to be included in the tender if applicable:

Section 6 - Approvals

6.1 Budget Holder

Name of Officer (Block Capitals):

*****Signature:***

Date:

46.1 6.2 Financial Management

Please sign below to confirm all information detailed in Section 3

Name of Officer (Block Capitals):

*****Signature:***

Date:

46.2 6.3 Head of Service

Please sign below to confirm all information detailed in Section 2 & 3. If the requirement is >£50k Supplies & Services or >£100k Works, sections 6.3.1 and 6.3.2 must be completed

6.3.1 Please confirm that the Head of Service or Director or Executive Director have consulted with the Portfolio Holder, Chair of Cabinet and Chief Executive

Yes/No

Date of consultation with Portfolio Holder

Date of consultation with Chair of Cabinet

6.3.2 Please confirm that you will prepare a report for Cabinet

Yes/No

Please confirm the date that this will be reported to Cabinet

Name of Chief Officer (Block Capitals):

****Signature:**

Date:

46.3 Chief Executive

Name of Chief Executive or Designated Officer (Block Capitals):

****Signature:**

Date:

46.4 Senior Manager Corporate Procurement Please sign below

to confirm decision:

Decision	Signed	Date
STA Request Authorised with no conditions.		
STA Request Authorised subject to conditions. <u>Conditions</u>		
STA Rejected <u>Details of reason for rejection</u>		

<u>STA Reference Number*</u>

*To be completed by CPU

** Internal Audit requirement – original signature required, type signed is not acceptable

Annex B

Disposal of Property / Land

PROCEDURES FOR INVITING AND OPENING OFFERS RELATING TO THE SALE/LEASE OF PROPERTY WHERE A CLOSING DATE HAS BEEN FIXED.

1. Introduction

- 1.1 In all cases where offers for the sale or lease of Council property have been invited following appropriate authorisation from the relevant Committee or the Chief Executive in terms of the Scheme of Delegation to Officers, and a closing date has been fixed, the procedures set out below must be followed.
- 1.2 Prior to carrying out the sale or lease of the property, the Head of Physical Environment or Designated Officer shall obtain from the relevant Planning Officers, a report on the planning history of the property, including a development brief document, where appropriate, which information where relevant, will be incorporated into any marketing material which shall be used as part of the evaluation process of offers.
- 1.3 No proposal for the development of or investment in land, property or building fabric shall be made to the Council or Cabinet without prior approval of the Executive Director of Place or an officer designated by them. .

2. Invitation to Submit Offers

- 2.1 When inviting offers it is important that uniform instructions are given and the following information must therefore be included in all instructions:
 - 2.1.1 Interested parties must be instructed to return offers in the official envelope provided. Each offer must be returned in a separate envelope.
 - 2.1.2 Interested parties must be informed that it is their responsibility to have the offer delivered to the address on the instructions by 12 noon on the designated day. Under no circumstances will a late offer be considered, and any offer arriving after the specified time will be returned unopened. It should also be noted that offers in the form of a faxed document or submitted by e-mail cannot be accepted.
- 2.2 It is the responsibility of the Head of Physical Environment or Designated Officer to send out with the sale or lease particulars an official return envelope. This envelope must not identify the interested party by name but must have unique reference number marked in the relevant place. This reference will correspond to those used on the official return notification and record form (see below) and the Head of Physical Environment or Designated Officer will keep a record of the reference numbers and the relevant interested parties.

3. Offer Return and Notification Record

- 3.1 The Head of Physical Environment or Designated Officer must prepare an offer return form for every sale or lease. The unique reference numbers referred to in paragraph 2.2 above must be added.

4. Procedure for Opening Offers

- 4.1 The Head of Physical Environment or Designated Officer will collect offers when received and mark the envelopes with the date and time of receipt. Any offers arriving after the specified time will be clearly marked with the date and time of receipt and the words "late offer". The Service representative will also enter the date and time of receipt in the relevant column on the offer return form.
- 4.2 The Head of Physical Environment or Designated Officer will, as soon as possible after the closing of offers, take the offer return form and all offers received to the Executive Director (Finance and Corporate Support) or their nominee who along with the Head of Democratic Services or their nominee shall open the offers.

5. Acceptance of Offers

- 5.1 Offers received and evaluated as provided for above, shall be accepted in the following manner:
- 5.1.1 Where the value of the offer to purchase or the annual rental does not exceed £150,000 or £50,000 respectively, acceptance of the offer may be authorised by the Executive Director (Place) in terms of the Scheme of Delegation to Officers;
- 5.1.2 Where the value of the offer to purchase or lease exceeds the respective limits set in 5.1.1 above, a report shall be submitted to the Cabinet for authorisation to accept the offer.
- 5.2 All formal legal documentation in respect of offers relating to the sale or lease of property shall be undertaken by the Head of Democratic Services or his nominee.
- 5.3 The Head of Democratic Services or his nominee shall sign the last page of each offer which is opened and the date of opening will also be marked thereon. In addition, the offer return form should be completed and signed by both officers.
- 5.4 All offers received shall be evaluated jointly by representatives of the Head of Physical Environment and the Head of Democratic Services prior to any further action being taken.

Annex C

Health and Social Care Services

Procedures for Commissioning of Health and Social Care Services

1. Introduction

- 1.1 In accordance with Standing Order 4, the Contract Standing Orders shall apply to the procurement of contracts for Health and Social Care Services subject to the special procedures set out in this Annex.
- 1.2 These procedures are intended to accord with and reflect the principles set down in the Statutory Guidance issued by Scottish Ministers in terms of the Procurement Reform (Scotland) Act 2014 as well as the Best Practice Guidance on the Procurement of Care and Support Services 2016 issued in terms of the Procurement Reform (Scotland) Act.
- 1.3 All Health and Social Care Services procurement will be undertaken by the Corporate Procurement Unit.
- 1.4 The Director of Health and Social Care Partnership or designated Officer must satisfy themselves that all procurement has been undertaken and authorised by the Corporate Procurement Unit in terms of these standing orders

2. Governing Bodies (Care Inspectorate)

- 2.1 Any tenderers wishing to provide Health and Social Care Services to the Council must be registered with Care Inspectorate (or its statutory successor(s)) or any other relevant regulatory bodies that are a mandatory requirement to the service provision, where required in terms of the contract.

3. Procedures for Procuring Contracts for Health and Social Care Services

- 3.1 In accordance with Standing Order 12.2, a contract for Health and Social Care Services that has an estimated value in excess of the EU Threshold for Social and Other Specific Services must be procured by following a procedure that satisfies the Council's duties set out in the 2015 Regulations.
- 3.2 In cases of procuring a contract for Health and Social Care Services that has an estimated value below the EU Threshold for Social and Other Specific Services, the Director - Health and Social Care Partnership in conjunction with the Senior Manager Corporate Procurement shall be responsible for deciding whether the particular contract is one which may be awarded without advertisement and competition, in accordance with section 12 of the Reform Act.

- 3.3 In determining whether a contract for Health and Social Care Services may be awarded without advertisement and competition in terms of paragraph 3.2, the Director - Health and Social Care Partnership shall take account of the individual circumstances of the contract, including the subject matter and estimated value of the contract, the specifics of the service sector concerned and the geographic location of the place of performance of the contract to firstly identify whether there is likely to be a cross-border interest in the contract. The Director - Health and Social Care Partnership, following consultation with the Senior Manager Corporate Procurement, may determine that there is no cross-border interest in the contract where:
- 3.3.1 It can be demonstrated that the contract is of no interest to service providers in other EU member states; and/ or
 - 3.3.2 The total sum to be paid under the contract is so low that service providers located in other EU member states would not be interested in bidding for the contract; and/ or
 - 3.3.3 The service is of such a specialised nature that no cross-border market of suitable service providers exists; and/ or
 - 3.3.4 Advertising the contract would result in the loss of a linked service and/ or
 - 3.3.5 The service is one that in accordance with the SDS 2013 Act the individual service user has a choice in selecting the provider.
- 3.4 Where the Director - Health and Social Care Partnership decides under paragraphs 3.2 and 3.3 above that a contract is likely to attract a cross-border interest, it should be procured by way of a competitive process and it will be advertised in accordance with Standing Order 12 unless the Director - Health and Social Care Partnership with the agreement of the Senior Manager Corporate Procurement decides that there are special circumstances justifying a departure from that requirement. Such decisions will be taken on a case by case basis and advertising may not be required where, for example:
- 3.4.1 The needs of the service user(s) concerned would be best met by a particular service provider; and/ or
 - 3.4.2 The existing service provider(s) are the only service provider(s) capable of delivering the service to meet the needs of the individual(s) concerned; and/ or
 - 3.4.3 the nature of the service is such that it should not or cannot be adequately specified in advance because of the nature of the social care needs of the service user(s) concerned; and/ or
 - 3.4.4 There are special circumstances such as ownership of land or property, geographic locations or particular skills or experience of service providers of social care which limit the choice to one service provider; and/ or
 - 3.4.5 There are reasons of extreme urgency, brought about by unforeseen events which are not attributable to the Council.

- 3.5 Where the Director - Health and Social Care Partnership decides under paragraphs 3.2 and 3.3 above that EU Treaty Principles do not apply to a contract for Health and Social Care Services, he/ she may also decide with the agreement of the Senior Manager Corporate Procurement that Standing Order 12 shall not apply to that contract.
- 3.6 The Director - Health and Social Care shall be required to maintain a list of all proposed contracts which he/ she decides do not require to be advertised on the basis of the determinations made under paragraphs 3.2, 3.3, 3.4 or 3.5 above. He/ she shall provide a copy of that list to the elected members on an annual basis. Any decisions taken under paragraphs 3.2, 3.3, 3.4 or 3.5, that neither advertising nor competition will be required for a particular contract shall be subject to review by the Director - Health and Social Care Partnership at regular intervals (and at least annually).
- 3.7 The decisions (and subsequent review of those decisions) taken by the Director - Health and Social Care Partnership under this Annex will all be fully documented. Any reasons for deciding that a proposed contract will not be advertised must be recorded and included on the list which is to go to the elected members under paragraph 3.6.
- 3.8 In addition to demonstrating how Best Value will have been achieved, the contracting service will be responsible for evidencing the reasons referred to under paragraph 3.6.

Annex D

Request for Procurement Action

CORPORATE PROCUREMENT UNIT (CPU)
REQUEST for PROCUREMENT ACTION (RPA) FORM

Section 1 – Service Details

Service:

Service Officer Name (Block Capitals):

Telephone Number:

Date of Request:

Section 2- Project Details

Project Title:

Category - Supplies/Services/Works/ Health and Social Care Services:

Project Status - New Requirement or Renewal of Existing Contract:

Proposed Advertisement Date:
Deadline Date for Questions:

Proposed Contract Start Date and duration:

Section 3 – Budget Details

Total Value (ex VAT) of this Procurement Exercise (only) - including all extensions if appropriate.
£

Breakdown of Value by Financial Year (amend FYs as necessary):

FY 2018 / 2019	£
FY 2019 / 2020	£
FY 2020 / 2021	£
FY 2021 / 2022	£
FY 2022 / 2023	£

Type of Expenditure - Capital/Revenue:

Cost Centre:

Account Code:

Section 4 – IT Security

Please provide a Yes or No reply to every question.

Question	Yes/No
1 Will Council official-protect ² information be hosted or held external to the Council by another party? (this includes both paper and electronic formats)	
2 Will you be requiring the supplier to connect to the Council network to provide support for an application / system residing within the Council? (this includes connecting from a remote location or physically coming into NAC premises)	
3 Are you requiring the supplier to develop an application / system that will host or hold Council information?	
4 Are you procuring an application / system that the supplier already has available / developed that will host or hold Council information? (includes situations where changes will be made on the Council's behalf)	
5 Will the supplier be providing access to a system via the Internet to hold Council information?	

¹ Official-protect covers business sensitive data and data that identifies a living individual. Please note that extracts of Council email addresses would be official-protect.

If you answer **yes** to any of the questions above you will be required to engage with the Council's ICT Security Officer, itsecurityofficer@north-ayrshire.gov.uk, 01294 324250, for guidance on questions to be included as part of your procurement exercise.

You are also required to indicate that you have undertaken the following:

Only complete if answered YES to any of the questions above	Yes
1 If you replied Yes to any of the questions above please confirm that you have engaged with the ICT Security Officer	
2 Enter the number of documents to be included within your procurement exercise	
3 Confirm you have booked diary time with the ICT Security Officer to review your security returns or that you are aware of this requirement and will schedule in advance.	

Section 5 – Information Governance

Please provide a yes/no reply to every question:

Question	Yes/No
1 Will the service or product include the sharing and/or processing of personal information? <i>i.e. data that relates to a living individual or can identify an individual (see the Data Protection Policy for full definition)</i>	
2 Will the service or product include the sharing and/or processing of business sensitive information? <i>i.e. where unauthorised disclosure would cause harm to the interests or security of the Council</i>	

3	Will the successful supplier create and/or manage Council Records as part of delivering a Council function? <i>i.e. recorded information, digital or paper, create or received in the transaction of business and kept as evidence of such activity</i>	
---	---	--

If you answer no to all questions, there are no information governance implications.

If you answer yes to any of the questions above, please contact the Information Governance team, informationgovernanceteam@north-ayrshire.gov.uk 01294 310039 or 317223, for advice.

Please provide details of any requirements:

Section 6 – Protecting Vulnerable Groups (PVG) Checks

Does your purchase require PVG checks?

Yes / No

If yes please provide details of requirements to be included in the tender if applicable:

Section 7 - Approvals

7.1 Budget Holder

Name of Officer (Block Capitals):

****Signature:**

Date:

7.2 Finance Manager

Please sign below to confirm all information detailed in Section 3

Name of Officer (Block Capitals):

****Signature:**

Date:

7.3 Category Manager

Please sign below to confirm all information detailed in the RPA

Name of Officer (Block Capitals):

****Signature:**

Date:

Note:

* All boxes are required to be completed by the person completing the form. On completion the RPA should be sent to CPU at: Procurement@north-avvshire.gov.uk.

** Internal Audit requirement – original signature required, type signed is not acceptable

Document Control Summary:-		
Location:	I:\Committee Services\Publications\05 Standing Orders Relating to Contracts	
Last Revised:	Revised By	Nature of Revision
July 2018	MJA	Correction of typographical errors