



**North Ayrshire Council**

**Comhairle Siorrachd Àir a Tuath**

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

May 2024 (updated May 2024)

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## **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 the Council:

- achieves social and economic value
- furthers its strategic aims
- purchases quality goods, services and works
- safeguards its reputation from any implication of fraud or corruption through a system of transparency, integrity, and accountability
- safeguards its employees and
- meets its legal obligations

**1.2** The Standing Orders also apply to the sale/lease of property and the disposal of surplus or scrap materials/equipment.

**1.3** Every contract authorised by Council Officers or other person engaged by the Council to which the power of entering into contracts has been delegated, shall comply with the Standing Orders and

- The Revenue or Capital Budgets as approved by the Council
- The Financial Regulations of the Council
- The Scheme of Delegation to Officers
- The Procurement Reform (Scotland) Act 2014
- The Public Contract (Scotland) Regulations 2015
- The Procurement (Scotland) Regulations 2016
- North Ayrshire Council's Procurement Strategy
- North Ayrshire Council's Procurement Manual
- Local Democracy, Economic Development and Construction Act 2009  
Commencement no. 2 (Scotland) Order 2011 for Construction contracts, other than those expressly excluded under the Construction Contracts Exclusion Order 1998.

**1.4** 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:

**2.1.1** “Best Value” means the legal duty to secure continuous improvement in the performance of the Council’s functions as set out in section 1 of the Local Government in Scotland Act 2003

**2.1.2** “Cabinet”, means the Cabinet of North Ayrshire Council

**2.1.3** “Chief Officer”, means the Chief Executive, Executive Director, or Head of Service of the Council

**2.1.4** “Community Benefit” means, benefits requested from suppliers within Procurement Exercises, which become contractual requirements. Community Benefits include employment, education and community support and support for SMEs and TSOs

**2.1.5** “Community Benefits Officer” means the Council Officer who manages and monitors the community benefit process

**2.1.6** “Corporate Procurement Unit” means the centralised procurement team of officers that progress Procurement Exercises for service teams for all procurements over the value of £10,000 for Supplies, Services and Works

**2.1.7** “Direct Award” means a call-off from an established approved Framework Agreement.

**2.1.8** “Designated Officer”, means any Officer authorised in writing by any Chief Officer for the purposes of these Standing Orders

**2.1.9** “Dynamic Purchasing System” means a procedure available for contracts for Supplies, Services and Works, it has similar aspect to a Framework Agreement but new Suppliers can join at any time.

**2.1.10** “Find a Tender (FTS)” means the portal for higher-value, public contract opportunities (tenders) within the UK. The portal is used by both public buyers and Suppliers. For public buyers, the use of the portal is in compliance with Public Contracts (Scotland) Regulations 2015

**2.1.11** “Framework Agreement” means an agreement between one or more contracting authorities and one or more economic operators, to establish the terms governing public contracts to be awarded during a given period

**2.1.12** “GPA” means the Agreement on Government Procurement which is a plurilateral agreement under the auspices of the World Trade Organization (WTO) which regulates the procurement of Goods, Services and Works by the public authorities of the parties to the agreement. Tenders over the GPA threshold will be published in the Find a Tender Service

**2.1.13** “Light Touch Regime” means specific set of procedural rules for Social and other Specific Services as more particularly set out in Regulations 74-76 of the 2015 Regulations

**2.1.14** “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 The Public Contracts (Scotland) Regulations 2015

**2.1.15** “Mini -competition” means a call-off from an established approved framework, where all suppliers from the framework for the relevant lot are invited to bid

**2.1.16** “PCS”, means Public Contracts Scotland which is the national tender advertising portal

**2.1.17** “PCS-T” means Public Contract Scotland Tender which is the e-Tendering system used to progress procurement exercises

**2.1.18** “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

**2.1.19** “Procurement Exercise”, is a general term used to describe any appropriate procurement procedural route followed to obtain goods, services or works. This can include a Direct Award, Quick Quote, Mini-Competition, award without competition, Regulated Procurement, Non-Regulated Procurement or GPA tender

**2.1.20** “Procurement Officer” means the Council Officer who progresses allocated procurement exercises in compliance with legislative requirements and these standing orders

**2.1.21** “Quick Quote” is a facility available on the Public Contracts Scotland Tender website to electronically request and receive quotations. The Corporate Procurement Unit use the Quick Quote facility where the estimated value is between £10,000 and £50,000 (Supplies and Services) and between £10,000 and £500,000 (Works).

**2.1.22** “Regulated Procurement” means a procedure to award a regulated contract being a public contract, which is equal to or greater than £50,000 (other than works or health or social care contracts) or £2 million for works contracts or as set out in the Procurement of Care and Support Services 2016 (Best Practice) Guidance for applicable social care contracts and “Regulated Procurement Thresholds” shall be construed accordingly “2015 Regulations” means the Public Contracts (Scotland) Regulations 2015 or successor legislation (as amended from time to time)

**2.1.23** “Request for Procurement Action (RPA)” means a document setting out as a minimum:

- the Council’s requirement for the goods, works or services and why we need it
- Selection and award criteria
- approval to proceed to procurement following a make or buy decision
- confirmation that a financial viability assessment has been carried out and there is sufficient budget to meet the whole life costs associated with the requirement

**2.1.24** “Services”, means any service as defined by the Public Contracts (Scotland) Regulations 2015 and any subsequent amendments thereof

**2.1.25** “Service Team Representative” means the Council Officer from the relevant service team (Roads, Facilities Management, Property Maintenance and Investment etc.) that is requesting a procurement exercise to be progressed

**2.1.26** “SPD”, means the Single Procurement Document (pre-qualification questionnaire)

**2.1.27** “Supplier” means a contractor, service provider or supplier that supplies Goods, Services or Works

**2.1.28** “Supplies”, means any supplies as defined by the Public Contracts (Scotland) Regulations 2015 and any subsequent amendment thereof

**2.1.29** “Tender” means any procurement exercise published on Public Contract Scotland with a value greater than £50,000 (Supplies and Services) and £500,000 (Works) or a bid submitted for a tender advertised on PCS

**2.1.30** “the 1973 Act”, means the Local Government (Scotland) Act 1973

**2.1.31** “the 2003 Act”, means the Local Government in Scotland Act 2003

**2.1.32** “the 2015 Regulations”, means the Public Contracts (Scotland) Regulations 2015

**2.1.33** “the 2016 Regulations”. Means the Procurement (Scotland) Regulations 2016

**2.1.34** “the Reform Act”, means the Procurement Reform (Scotland) Act 2014

**2.1.35** “the Scheme of Delegation”, means the Scheme of Delegation to Officers approved by the Council on 25 September 2019 or any subsequent amendment.

**2.1.36** “the SDS 2013 Act”, means the Procurement and Social Care Self Directed Support (Scotland) Act 2013

**2.1.37** “Trading Activities”, refers to when the Council bids for or is awarded contracts to deliver goods, service or works to other public sector bodies or private sector organisations

**2.1.38** “Works” means any works defined in the Public Contracts (Scotland) Regulations 2015 and any subsequent amendment thereof

### **3. Extent and Application**

**3.1** These Standing Orders are made under Section 81 of the Local Government (Scotland) Act 1973 as amended and, subject to the provisions of 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 Standing Orders shall be applied having regard always to the key principles of:

- Transparency
- Equal Treatment
- Non-discrimination
- Proportionality

**3.3** The Standing Orders are subject to the over-riding provisions of the United Kingdom or Scottish legislation. They are also subject to any 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 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 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 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 Standing Orders must be referred in the first instance to the Head of Democratic Services.

## **4. Health and Social Care Services**

**4.1** These Standing Orders shall apply to contracts for all Health and Social Care Services subject to the special procedures set out in Annex B.

**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** It must be noted that whilst certain categories of contract are exempt from the Standing Orders, they are not exempt from the application of the Reform Act and the 2015 and 2016 Regulations, where these apply and all stated exemptions from Standing Orders are subject to the proviso that such exemption is within the statutory powers of the Council and does not contravene any UK or Scottish legislation. Subject to the continued application of Standing Order 3.2 (key principles), and Standing Orders 5.2 to 5.5 (which apply in all cases), these 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.

**5.1.2** 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.

**5.1.3** Any contract or Framework Agreement or Dynamic Purchasing System, which has been approved by the Senior Manager (Corporate Procurement) and entered 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 bids for the provision of



Supplies, Services or Works, including for example the Scottish Procurement and Property Directorate, Crown Commercial Services and Scotland Excel.

**5.1.4** Any individual Mini-Competition exercises undertaken by the Council against an approved Framework Agreement or Invitation to Tender exercise against a Dynamic Purchasing System. Where the contract award value is above £500K, the contract will be approved by the Chief Executive and a Chief Officer and where the contract is between £50K and £500,000 for Supplies and Services the contract will be approved by a Chief Officer.

**5.1.5** Any contracts 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 southwest Scotland, the Council is one of seventeen participants of the Hub.

**5.1.6** Any contact for the purchase of a specific piece of land or a building where there is a unique owner and therefore not open to a competitive procurement process.

**5.1.7** 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 A) to the Council’s Policy for Property Acquisitions and Disposals.

**5.1.8** 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 any such contracts, see Standing Order 5.2 below.

**5.1.9** All contracts for the execution of works where the total estimated contract value does not exceed £500,000, subject always to the need to demonstrate value for money and probity when entering any such contracts, see Standing Orders 5.2 below.

**5.1.10** Any contract or purchase urgently required to react to any unprecedented external factors, out with the control of the Council, deemed appropriate by the Senior Manager (Corporate Procurement) taking cognisance of procurement legislation and supply market forces.

**5.1.11** Subject to Council or Cabinet approval any contract where the appropriate Executive Director is satisfied:

- that the requirement is not readily obtained from more than one Supplier, and it can be demonstrated that no equivalent is available or
- 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
- 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 Standing Orders 5.1.8 and 5.1.9 above, the following will apply to ensure value for money is achieved:

| <b>Type of Contract</b>    | <b>Threshold (excluding VAT)</b> | <b>Procedure</b>                      |
|----------------------------|----------------------------------|---------------------------------------|
| Supplies, Services & Works | < £2,000                         | Single quotation                      |
| Supplies, Services & Works | £2,000 - £9,999*                 | Minimum 3 written quotes              |
| Supplies & Services        | £10,000 - £49,999                | Quick Quote via Corporate Procurement |
| Works                      | £10,000 - £499,999**             | Quick Quote via Corporate Procurement |

\*Works only – if during an on-site Works programme unforeseen requirements are identified that could cause delay, then in these instances the threshold for a single verbal quote can be raised to £5,000. Records should be kept supporting the use of the increased limit.

Where the contract is exempt under Standing Orders 5.1.2 and 5.1.11 justification for obtaining a single quote instead of 3 quotes must be recorded and kept for audit purposes.

\*\*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 Activities in accordance with Standing Order 8 below.

**5.4** Where a contract is exempt under Standing Orders 5.1.11 then a Single Tender Action Request form is required to be authorised prior to any contractual commitment being made to a supplier. For urgent requirements Standing Order 5.1.2 a retrospective single tender action form is required. The Single Action

Request form will be amended from time to time, the latest version is available on Connects.

**5.5** Any contract exempted from these Standing Orders shall still:

- Comply with the duty to achieve Best Value
- Comply with all legal procurement requirements

## **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 Standing Orders or any other legislative provisions. The aggregate value of any single requirement for Works, Services or Supplies across the whole Council must be considered in determining whether it exceeds the threshold for application of the GPA, 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
- 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 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 or Designated 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 Unit.

**9.3** 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.)

**9.4** 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.)

**9.5** 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 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.

**9.6** 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.

**9.7** Prior to commencing any Collaborative Procurement/Joint Commissioning exercise, the appropriate Chief Officer or Designated 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 or Designated 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 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 the

Corporate Procurement Unit to ensure that a robust procurement process has been undertaken.

**10.3** A 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 Procurement Exercise is permitted to be involved in the specification development, contract strategy development, evaluation, award of the contract or contract management 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 line manager and the Senior Manager (Corporate Procurement) using the conflict of interest declaration form available on Connects.

**11.3** Examples of Conflicts of Interest include members of the evaluation panel or The Corporate Procurement Unit processing the Procurement Exercise, having a financial interest or having a relationship (spouse, partner, family member, close friend etc.) with someone in the bidder's organisation. Failure to declare a conflict of interest in advance of any involvement in a Procurement Exercise may result in disciplinary action.

## **12. Purchase of Supplies, Service or Works**

**12.1** Prior to purchasing any Supplies, Services or Works, Officers are required to check the contract register and consult with the Corporate Procurement Unit to establish whether any existing contract, Dynamic Purchasing System or Framework Agreement accessible to the Council might fulfil their requirement.

**12.2** If a contract exists for the specific Supplies, Services and Works required, officers should check with the Corporate Procurement Unit, that they are able to utilise the contract. If agreed, officers then must then use the existing contract. If not agreed, an alternative contract will be procured. To utilise an existing contract, a purchase order should be raised in advance of making any commitment to Suppliers. The purchase order should refer to the contract reference number being used to ensure that the Council received the agreed contractual terms and conditions.

**12.3** If no contract exists and the value is below £10K then Standing Order 5.2 must be followed.

**12.4** The use of retrospective orders is not good practice and should only be used when an extreme emergency arises.

**12.5** The Council have implemented a "No PO – No Pay" this means that any invoice received from a Supplier without a valid purchase order will be returned to the Supplier. Officers are therefore responsible for ensuring that Suppliers are given a valid purchase order to quote on their invoices to ensure that Suppliers are paid on time.

## **13. Framework Agreements and Dynamic Purchasing Systems**

**13.1** The powers set out in this Standing Order 13 shall be exercised by Chief Officers or Designated Officer through the Corporate procurement Unit.

**13.2** Where there is likely to be a repeated requirement for particular Supplies Services or Works, a Chief Officer or Designated Officer may seek to establish or participate in a Framework Agreement or Dynamic Purchasing System in line with Standing Orders 13.3 or 13.4, after establishing this is the best value route after completing a contract strategy with the Procurement Officer.

**13.3** The Chief Officer or Designated Officer may elect to establish a Framework Agreement or Dynamic Purchasing System to provide for agreement on the terms for future call-off contracts (whether through Direct Award, in the case of a Framework Agreement only, or by the acceptance of a Tender following an Invitation to Tender/Mini-Competition) where permitted in accordance with the terms of that Framework Agreement or Dynamic Purchasing System. Standing Order 5.1.4 will apply to call-off Contracts awarded in such circumstances.

**13.4** The Chief Officer or Designated Officer may elect to participate in an existing Framework Agreement or Dynamic Purchasing System that has been properly constituted by Scotland Excel, the Scottish Procurement and Property Directorate, another local authority, the Crown Commercial Service or any other public sector procurement agencies and may enter into call-off Contracts (whether through Direct award, in the case of a Framework Agreement only, or by the acceptance of a Tender following an Invitation to Tender/Mini Competition) where permitted in accordance with the terms of that Framework Agreement or Dynamic Purchasing System. Standing Order 5.1.4 will apply to call-off Contracts awarded in such circumstances.

**13.5** Where, in order to participate in an existing Framework Agreement or Dynamic Purchasing System of the type described in Standing Order 13.4, the Council is required to enter into a participation agreement or other similar agreement regulating the use of the Framework Agreement or Dynamic Purchasing System by the Council, the Senior Manager (Corporate procurement) shall have the authority to enter into that agreement on behalf of the Council.

**13.6** Any Mini-Competition run by the Council shall be conducted by means of electronic tendering for the purposes of Standing Order 18 and shall run in accordance with the procedures set out therein, unless contrary to any provisions set out in the relevant Framework Agreement or DPS (in which case, the terms of the Framework Agreement or DPS will have precedence).

**13.7** Direct awards from approved frameworks, using the framework according to its rules and using the appropriate framework paperwork up to 50K can be progressed by service teams without assistance from the Corporate Procurement Unit. For any direct awards above this value a RPA should be submitted to the Corporate Procurement Unit. Any direct award over the value of £50K must be approved by the Senior Manager (Corporate Procurement).

## **14. Supported Businesses & Reserved Contracts**

**14.1** The Council may restrict participation in a Regulated Procurement irrespective of its duties under Section 8 of the Act except where this is expressly prohibited by relevant legislation.

**14.2** The Council may reserve the right to participate in a tendering procedure to providers operating a Supported Business. Where the Council exercises this right the contract award procedures provided by the Regulations and Act shall be followed.

**14.3** Where the Council decides to restrict participation in a procurement to Supported Businesses it must state that fact in the contract notice.

## **15. Procedures prior to Commencing Procurement Exercise**

**15.1** No Tender shall be invited, or any contract negotiations commenced, unless:

- 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.
- A Request for Procurement Action (RPA) has been completed and authorised by the requesting service team's budget holder 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.
- A contract strategy has been prepared by the Procurement Officer in consultation with the Service Team Representative.
- In cases of Collaborative Procurement, the terms of Standing Order 9 have been complied with.

## **16. Advertising of Contracts**

**16.1** In terms of 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.

**16.2** 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.

**16.3** All contract opportunities shall be advertised using Public Contracts Scotland, Scotland, unless a decision has been reached by reason of either Standing Order 5 or Standing Order 30 that the contract opportunity is to be awarded without advertising.

## **17. Tender Documents**

**17.1** The tender documents shall clearly set out the proposed method of evaluation as well as the scope, timing, quality and quantity of the Works, Services and Supplies required by the Council.

**17.2** Standard terms & conditions for Supplies and Services, and approved industry model form contracts for Works, shall be used in all contracts to which these Standing Orders apply, where the Council is the lead procurer.

## **18. Technical Specification**

**18.1** Formal specifications or statements of requirement shall be developed, in compliance with Regulation 43 of the 2015 Regulations for Regulated Procurements above the GPA Threshold and Regulations 11 and 12 of the 2016 Regulations for Regulated Procurements below the GPA Threshold, by the relevant Service Team Representative with support from the Procurement Officer for all tendered or quoted requirements for Supplies, Services or Works, which will fully define what the Supplier is to provide.

**18.2** Specifications shall not be accepted as final until the Procurement Officer and/or Service Team Representative, where appropriate, are satisfied as to their affordability.

**18.3** The Service Team Representative must ensure that technical specifications for Regulated Procurements give equal access to all interested parties and do not create unjustified obstacles to the opening up of public procurement to competition or encouraging innovation. The Service Team Representative shall specify requirements for award criterion in generic, technical or performance terms. Technical specifications must not refer to materials or goods of a specific make or source or to a particular process or trademark, patent, type, origin or means of production which has the effect of favouring or eliminating particular suppliers.

**18.4** The requirement may only be dispensed with in exceptional circumstances, where the subject of the contract cannot otherwise be described by reference to technical specifications which are sufficiently precise and intelligible to all suppliers. However, where this exception applies, any such references in the technical specification must be accompanied by the words "or equivalent". Where a technical specification does make such a reference, a written justification shall be provided as part of the contract notice or invitation to participate or quote, including an explanation as to why it was not possible to describe the product by reference to technical or performance characteristics.

**18.5** The Service Team Representative may include references in specifications to mandatory technical rules which go beyond the relevant legislative standards, provided these are non-discriminatory and without prejudice to any relevant national or international standards or specifications.

## **19. Standards**

**19.1** 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, all goods and materials used or supplied and all workmanship shall at least meet the requirements of that Standard, unless otherwise approved by the appropriate Chief Officer or Designated Officer. In the absence of any such recognised standards, the Tender document shall require an appropriate equivalent standard be used.



## **20. Intellectual Property Rights**

**20.1** The Chief Officer or Designated Officer shall, in so far as practicable, ensure that in contracts for procuring reports, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs developed by the Supplier, on behalf of the Council, shall vest in the Council absolutely.

## **21. Prevention of Collusion and Corrupt Illegal Practices**

**21.1** Every contract shall contain a clause entitling the Council to cancel the contract and to recover from the Supplier the amount of any loss resulting from such cancellation if the Supplier or his representative (whether with or without the knowledge of the Supplier) 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.

**21.2** 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.

## **22. Equality**

**22.1** Every contract shall contain an Equality clause to provide assurance that, the Supplier 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 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.

## **23. Public access to information**

**23.1** 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 terms and conditions and invitations to tender/bid, give notice of this.

**23.2** 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.

**23.3** 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 in compliance with the Freedom of Information (Scotland) Act 2002 and/or the Environmental Information (Scotland) Regulations 2004, (the decisions 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 or tribunal with the authority to order disclosure.

**23.4** Further, the Council may also disclose all information submitted by the tenderer to the Scottish or United Kingdom Parliament or any other department, office or agency of Her Majesty's Government in Scotland or the United Kingdom, and their servants or agents. When disclosing such information to either the Scottish or the United Kingdom Parliament it is recognised and agreed by both parties that the Council shall disclose such information but are unable to impose any restrictions upon the information that they provide to Members of the Scottish Parliament, or Members of the United Kingdom Parliament; such disclosure shall not be treated as a breach of this agreement.

**23.5** Accordingly, if tenderers consider that any of the information included in their tender is commercially confidential, please identify it and explain (in broad terms) what harm might result from disclosure and/or publication. It should be remembered though, that, even where tenderers have indicated that information is commercially sensitive, the Council may disclose this information. Receipt by the Council of any material marked "confidential" or equivalent should not be taken to mean that the Council accept any duty of confidence by virtue of that marking.

**23.6** The Council will publish, on the Public Contracts Scotland website, the names and contact details of successful tenderers for contracts over £50,000 for Supplies and Services and £500,000 for Works.

## **24. Sustainability**

**24.1** 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 through community benefit clauses
- Encouraging fair work practices including fair pay
- Involving Small and Medium Enterprises (SME's), Third Sector Bodies and Supported Businesses
- Promoting innovation – Innovation in design and delivery of public services, procurement of innovative goods and services and use of innovative procurement processes

- Ensuring every contract shall not provide Goods or Services
  - which may endanger the health of any person
  - cause significant damage to the environment during manufacture,
  - where use or disposal, consumes a disproportionate amount of energy during manufacture,
  - where use or disposal, causes unnecessary waste, or contains materials derived from threatened species or environments.

## **25. Community Benefits**

**25.1** A Community Benefit clause must be considered as a contractual requirement for any procurement of which the estimated value is equal to or greater than £50,000 for Supplies and Services and over £100,000 for works. For contracts up to the value of £499,999 the Community Benefits are voluntary and for contracts £500,000 or over Community Benefits are mandatory.

**25.2** The Procurement Officer in consultation with the Community Benefit Officer will determine if there is an opportunity to deliver community benefits and include details of the Community Benefits required in the contract notice. If there is no community benefit requested, the notice must give reasons why.

**25.3** The Council must ensure the requirements are in line with the relevant procurement legislation and the Council must ensure that the Community Benefit clause does not amount to direct or indirect discrimination.

**25.4** The Community Benefits Officer must ensure that robust arrangements are in place to monitor Community Benefits and the outcomes delivered are recorded and reported.

## **26. Assignment/Novation**

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

- The Supplier shall be prohibited from transferring, assigning or sub-contracting a contract or any part thereof without the prior written consent of the Council
- The Supplier shall be prohibited from changing any sub-contractors from those noted in the Suppliers response documents without the prior written consent of the Council

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

- If a Supplier's name changes, but their company registration remains the same, they will provide the Council with a copy of their "Certificate of Incorporation on Change of Name"
- If a Supplier's company registration number changes, the Council have the right to terminate the contract or continue the contract, providing, pre-qualification and

quality criteria applied to the original contract are met and a Deed of Novation is signed confirming they accept all contractual obligations and liabilities within the contract.

## **27. Health & Safety**

**27.1** Every Supplier 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 or Designated Officer will have the ultimate decision as to whether a Supplier's Health and Safety qualification is equal to that required by the Council or in an approved form.

**27.2** In the case of contracts for construction type works, in addition to the aforementioned, Suppliers appointed by or on behalf of the Council shall be required to submit evidence (prior to entering a contract) of a UKAS (or equivalent) accredited independent third-party certificate of compliance in accordance with ISO 45001 (or equivalent) or have, within the last 12 months, successfully met the assessment requirements of a construction-related scheme in registered membership of the Safety Schemes in Procurement (SSIP) forum, or they must have a regularly reviewed and documented policy for Health and Safety management

## **28. Insurance**

**28.1** Every contract shall contain a clause which requires the Supplier to take out and maintain, for the duration of the contract, such insurance cover for such amounts as the Chief Officer or Designated Officer and the Insurance Team may deem relevant to the contract, including, if appropriate, but not restricted to:

- Employers Liability Insurance
- Public (Third Party) Liability Insurance
- Product Liability Insurance
- Professional Indemnity Insurance, which shall remain in force for a period of six years beyond the end of the contract
- Third Party Motor Vehicle Insurance
- Other such specialist classes of insurance as advised by the Senior Manager (Internal Audit, Fraud, Safety & Insurance)

## **29. Performance Bonds and Parent Company Guarantees**

**29.1** Where considered necessary by the Chief Officer or Designated Officer, the Council shall require the Supplier 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.

## **30. Tendering Procedures**

**30.1** Subject to the provisions of Standing Order 5.2, where the total contract value exceeds £50,000 (Supplies and Services) and £500,000 (Works) formal tenders will be obtained by one of the following methods:

| Type of Contract           | Threshold* | Procedure   |
|----------------------------|------------|---|
| Supplies & Services        | Over £50k  | <ul style="list-style-type: none"> <li>• Open Tender</li> <li>• Restricted Tender</li> </ul>  |
| Works                      | Over £500k | <ul style="list-style-type: none"> <li>• Open Tender</li> <li>• Restricted Tender</li> </ul>  |
| Supplies, Services & Works | >GPA       | <ul style="list-style-type: none"> <li>• Negotiated Procedure without Prior Publication of a Notice</li> <li>• Competitive Procedure with Negotiation</li> <li>• Competitive Dialogue Procedure</li> <li>• Innovation Partnerships</li> </ul> |

\*Wherever VAT may be payable under a contract, the Council must ensure that an allowance for VAT is included in the calculation of the estimated value of the contract for the purposes of determining whether the contract equals or exceeds the GPA threshold.

**30.2** The relevant Chief Officer or Designated Officer in consultation with the Procurement Officer will determine through market research which procedure will be used to maximise competition.

**30.3** For all procedures apart from Standing Orders 30.6, the relevant Designated Officer shall seek tenders from any organisations registered on Public Contracts Scotland and Public Contract Scotland Tender.

#### **30.4 Open Tender**

This procedure shall apply when after consultation the Procurement Officer, Service Team Representative and the Chief Officer or Designated Officer decide that tenders for a contract shall be obtained by open competition. The Procurement Officer shall publish a contract notice on Public Contracts Scotland. The notice shall:

- Specify the nature and purpose of the contract
- Detail selection criteria
- Detail award criteria
- Detail a tender return deadline

A minimum of 21 days must be allowed for below GPA threshold procurement and 30 days for above GPA threshold procurements, between the notice published date and the tender return deadline.

#### **30.5 Restricted Tender**

This procedure shall apply when after consultation the Procurement Officer, Service Team Representative and the Chief Officer or Designated Officer decide to use a shortlisting process which limits invitations to tender to the applicants responding to

a notice. Before inviting tenders, the Procurement Officer shall publish a notice on Public Contracts Scotland. The notice shall:

- Specify the nature and purpose of the contract
- Detail selection criteria
- Detail the SPD return deadline

A minimum of 14 days should be allowed for below GPA threshold procurements and 25 days for above GPA threshold procurements between the notice published date and the SPD return deadline (unless otherwise agreed with the Senior Manager (Corporate Procurement) or Designated Officer).

After the SPD return deadline an Invitation to Tender document shall be issued by the Procurement Officer via Public Contracts Scotland Tender to a minimum of five providers, where possible. Where less than five SPD returns are received from providers advice/approval 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 applicants scoring against the maximum scoring available and the winning bidder(s) score.

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

A minimum of 21 days for below GPA threshold procurements and 30 days for above GPA threshold procurements should be allowed between the notice publish date and the tender return deadline.

### **30.6 Negotiated Procedure without Prior Publication of a Notice (Above GPA)**

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 is not possible such as situations:

- 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 2015 Regulations 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 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
- 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 marketplace, 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.

Use of this procedure must be justified; it can only be used in situations which have not been created by the Council. 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. When fixing any time limits the Council 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 GPA prior to entering the contract. It is still mandatory to publish a Contract Award Notice with this procedure.

For all procurements detailed in standing order 30.6 a single tender action request must be submitted to the Corporate Procurement Unit as per standing order 5.4.

### **30.7 Competitive Procedure with Negotiation (above GPA)**

The Competitive Procedure with Negotiation lets you clarify bids after their submission of fully formed initial tenders. This procedure may be used:

- If you unable to define how to meet your needs technically and/or you cannot specify the legal or financial requirements of your contract
- For procuring Services or Goods that require adaptation or design inputs
- In cases of complex purchases, such as sophisticated products, intellectual services or major information and communication technology tools

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 SPD
- Following assessment of the submitted SPDs, the buyer will invite suppliers that meet the selection criteria to the initial tender phase
- You may have to start a dialogue with bidders to guarantee a satisfactory outcome of the procurement process
- 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.

### **30.8 Competitive Dialogue Procedure (above GPA)**

Competitive Dialogue can be used:

- Greater flexibility is needed e.g., highly complex and risky projects
- you are procuring innovative projects
- you are unable to specify your requirements e.g., your technical, financial or legal solutions. Therefore, bidders may have a major role in defining the solution
- You cannot assess without in-depth dialogue on what the market can offer or
- The Open or Restricted Procedures may not deliver the expected outcomes.

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 SPD
- Following assessment of the submitted SPDs, 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
- Based on 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.

### **30.9 Innovation Partnerships (above GPA)**

Innovation Partnerships can be used where there is a need to develop an innovative product or Service and 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 SPD
- Following assessment of the submitted SPDs, 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.

### **30.10 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 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.

## **31. Electronic Tendering**

**31.1** All tenders must be advertised by electronic means through Public Contracts Scotland and the tender process will be progressed through the Public Contracts Scotland Tender e-tendering system. All Quick Quotes, Dynamic Purchasing Systems Invitations to tender and Mini Competitions will be invited, and submissions accepted via Public Contracts Scotland Tender.

## **32. Submission of Tenders**

**32.1** 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.

**32.2** All invitations to tender shall include the following: -

- A specification that describes the Council's requirements in sufficient detail to enable the submission of competitive offers
- 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)
- A requirement for tenderers to complete fully and sign all relevant tender documents including a form of tender
- Notification that tenders are submitted to the Council on the basis that they are compiled at the tenderer's expense
- 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
- 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.

**32.3** All Invitations to Tender must specify the Supplies, Services or Works that are required, together with the terms and conditions of contract that will apply.

**32.4** The Invitation to Tender must state that the Council is not bound to accept any tender or accept any part of any tender.

**32.5** All candidates invited to tender must be issued with the same information at the same time and subject to the same conditions through Public Contracts Scotland or Public Contract Scotland Tender. Any supplementary information must be provided on the same basis.

**32.6** 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 GPA threshold, the GPA timescales will apply.

### **33. Late Tenders**

**33.1** 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.

## **34. Opening of Tenders**

**34.1** Due to the system controls in place all Tenders shall be opened by an authorised user, using the parallel opening functionality on Public Contracts Scotland or Public Contract Scotland Tender as soon as it is practical to do so.

**34.2** 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.

## **35. Checking of Tenders**

**35.1** 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.

**35.2** Tenders for construction works shall be checked in accordance with current industry best practice and relevant practice notes.

## **36. Evaluation of Tenders**

**36.1** Apart from the notification required or permitted by Standing Order 36.3:

- Confidentiality of qualification, quality and commercial responses, and the identity of bidders must be preserved at all times, including during the Procurement Exercise process and after the contract is awarded
- Information about one candidate's response must not be given to another candidate

**36.2** During the evaluation process, Officers will be given access to information about the Tender responses or the identity of tenderers. This information must be kept confidential as it could be commercially sensitive, or subject to a non-disclosure agreement. This information must not be shared out with those involved in the evaluation or decision approval process. The only information that will be disclosed publicly after the award of the contract will be the awarded Supplier's company name and bid value. Unsuccessful bidders will be provided with the costs and quality score of the winning bid and their own cost and quality score.

**36.3** Contracts must be evaluated and awarded in accordance with the Award Criteria stated in the contract notice or tender documents and in compliance with Standing Order 32.2.

**36.4** 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.

**36.5** Chief Officers or Designated Officer shall ensure that submitted Tender prices are compared with any pre-tender estimates/budgets and that any discrepancies are examined and resolved satisfactorily. Budgets and tender prices will be detailed in the Procurement Outcome Report.

**36.6** 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 recalculated arithmetically. Changes to the Tender figure should be signed by the tenderer. A letter or email from the tenderer, confirming and agreeing to the changes in erroneous figures shall also be appended to the Tender response documents.

**36.7** 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.

**36.8** At the end of the evaluation process, Tender evaluation summary sheets shall be endorsed by the Evaluation Panel.

**36.9** 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 £500K for works.

**36.10** 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.

## **37. Abnormally Low Bids**

**37.1** Investigating abnormally low bids is a mandatory obligation. Any Tender considered to be an abnormally low bid in relation to either the proposals or the anticipated contract value must be investigated and clarified.

**37.2** Any such proposal should be excluded from any further consideration in the event that investigation and clarification fail to resolve identified issues. The Procurement Officer must consult with the Senior Manager (Corporate Procurement) before any final decision is taken.

## **38. Post Tender Clarifications**

**38.1** 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.

**38.2** Where any factor giving rise to post tender clarifications is not specific to one tenderer, all tenderers must be invited to participate in such clarification 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.

**38.3** A full written record shall be kept of all such clarifications and shall be retained with the original Tender.

**38.4** 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.

## **39. Post Tender Negotiations**

**39.1** Once the evaluation of tenders has been completed in accordance with Standing Order 36, 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.

**39.2** Where it is considered possible that post tender negotiations might apply, a clear indication will be given to prospective Suppliers in the instructions to tenderers that post tender negotiations might be considered.

**39.3** A full record (which shall include copies of all written communications) shall be kept by the Corporate Procurement Unit 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.

**39.4** This Standing Order 39 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.

## **40. Acceptance of Tender**

**40.1** Every Tender issued shall state the award criteria as the Most Economically Advantageous Tender. Lowest price is no longer legally compliant for procurements over £50K for Supplies and Services and over £500K for Works. The evaluation of all bids received shall take place in accordance with the criteria specified in the tender documentation.

**40.2** No Tender shall be accepted unless:

- The appropriate Chief Officer or Designated Officer is satisfied that the selection criteria stated within the tender have been met
- The appropriate Chief Officer or Designated 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.

**40.3** Where the value of the contract (including optional extensions and collaborative partners spend) does not exceed £500,000 it shall be accepted upon written approval of the appropriate Chief Officer and Designated Officers. For Procurement Exercises over £10,000 for Supplies and Services and over £10,000 for Works a procurement outcome report will be prepared setting out details of the bids received. Subject to the procedures of Standing Orders 40.2 being adhered to, the contract acceptance and award letter will be issued by the Senior Manager (Corporate Procurement) or Designated Officer.

**40.4** Where the value of the contract is more than £500,000 (including optional extensions and collaborative partners spend), a procurement outcome report will be prepared setting out the details of the tenders received. A tender shall be accepted upon the written approval of the Chief Executive, Chief Officer and Senior Manager (Corporate Procurement). In the absence of the Chief Executive, such tenders shall be accepted on the written approval of an appropriate Executive Director (from out with the Procuring Directorate) in consultation with the Monitoring Officer/Chief Finance Officer, the appropriate Chief Officer (from the procuring Service and Senior Manager (Corporate Procurement)). Subject to the procedures of Standing Order 40.2 being adhered to, the contract acceptance and award letter will be issued by the Senior Manager (Corporate Procurement) or Designated Officer

**40.5** For all tenders over the GPA threshold a Mandatory Standstill Period must be observed prior to the award of contract. The Mandatory Standstill Period must be for a period of at 10 calendar days. The standstill period starts the day after the award letter is issued and ends 10 calendar days later. If the end date is a weekend day the standstill period will end on the Monday. If the end date is on a bank holiday, the standstill period will end the following day.

## **41. Form of Contract**

**41.1** Except where otherwise agreed by the Chief Executive or Designated Officer and the Head of Democratic Services every contract shall be in writing, shall be signed by the appropriate Chief Officer, Designated Officer 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.

## **42. Nomination of Sub-Contractors**

**42.1** 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.

**42.2** 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.

## **43. Contract Register**

**43.1** The Reform Act requires the Council to publish an external Corporate Contract Register for all regulated procurements. The Corporate Procurement Unit shall be responsible for updating the Council's Contracts Register. The contract register must include the:

- Contract name and description
- Contract reference number
- Contract value
- Supplier name and address details

- Commencement date for contract
- Termination date for contract
- Any optional extension dates

**43.2** 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. Chief Officers or 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.

## **44. Modifications to Contract**

**44.1** Consideration must be taken of the value, type and scope of the modification relevant to the original contract. Modifications 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 modification are significantly different from the original contract.

**44.2** Any modifications to the scope, duration, terms and conditions or 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 modification to contract is approved, the Corporate Procurement Unit will issue contract modification letters.

**44.3** For Taxis or other Services, with a high frequency/quantity of modifications, details of all modifications to contract must be held in writing by the relevant Service Team Officer.

**44.4** Any modifications not issued by the Corporate Procurement Unit must be agreed with the Senior Manager (Corporate Procurement).

## **45. Termination of Contracts**

**45.1** Every contract shall contain a provision allowing for the contract to be terminated.

**45.2** The Chief Officer or Designated 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.)

**45.3** 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.

**45.4** Details of all terminations to contract must be held in writing and copies retained by the Corporate Procurement Unit.

## **46. Post Contract Monitoring and Evaluation**

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

## **47. Interest of Members**



**47.1** 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, 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.

**47.2** 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

## **48. Interest of Officers**

**48.1** 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 practicable give notice of the fact in writing to the Chief Executive.

**48.2** 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 Standing Order 47.1.

**48.3** 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 87.1 of the Standing Orders.

## **49. Disposal of Surplus or Scrap Materials/Equipment**

**49.1** 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.

## **50. Disposal of Interest in Land and Building**

**50.1** The Policy for Property Acquisition and Disposal as set out in Annex A 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.

## **51. Variation and Revocation**

**51.1** 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.

## **52. Thresholds and VAT**

**52.1** All monetary thresholds contained within the Standing Orders are exclusive of VAT, unless otherwise stated.

## **53. Commencement**

**53.1** These Standing Orders Relating to Contracts shall apply and have effect from 19 May 2022. These Orders supersede the Standing Orders approved by the Council on 23 September 2020.

## **Annex A – 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 Executive Director of Place 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 shall be notified by the Executive Director of Place or Designated Officer that a closing date, including the date and time for submission has been fixed.
  - 2.1.2 Interested parties must be informed that it is their responsibility to have the offer, in Scottish legal form emailed to the specified email 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 not be accepted. The principal offer should also be sent to the Council but this will not need to be received by the deadline for email submission. No contract will be concluded until the principal offer is received.

#### **3. Offer Return and Notification Record**

- 3.1 The Executive Director of Place or Designated Officer must prepare an offer return form for every sale or lease.

#### **4. Procedure for Considering Offers**

- 4.1 The Senior Manager, Legal Services or Designated Officer will collate offers receive in the email inbox by the deadline for submission. Any offers arriving after the specified time will be highlighted as late offer.
- 4.2 The Senior Manager, Legal Services or Designated Officer will, as soon as possible after the closing of offers, collate the offers received, complete the offer return form and circulate all offers received to the Head of Service

(Finance) or their nominee who along with the Senior Manager, Legal Services or their nominee shall verify the validity of the offers.

## **5. Acceptance of Offers**

- 5.1 Offers received and verified as provided for above, shall be evaluated jointly by representatives of the Executive Director (Place) and the Head of Democratic Services prior to any further action being taken. In the event that it determined to proceed to accept an offer received, it will then be accepted in the following manner:
  - 5.1.1 Where the value of the offer to purchase or the annual rental does not exceed £300,000 or £120,000 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 Unsuccessful parties will be notified that their offer has not been successful.

## **Annex B – Health & 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 13, a contract for Health and Social Care Services that has an estimated value in excess of the GPA 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. If the Light Touch Regime is to be used, this must be set out in the contract notice.

**3.2** In cases of procuring a contract for Health and Social Care Services that has an estimated value below the GPA 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:

- The service is of such a specialised nature that no cross-border market of suitable service providers exists
- Advertising the contract would result in the loss of a linked service
- 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 14 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:

- The needs of the service user(s) concerned would be best met by a particular service provider
- 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
- 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
- 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
- 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 14 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.

**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  |
| September 2020 | MJA        | Changes approved by Council on 23 September 2020  |
| February 2022  | WT         | Minor grammar changes, minor layout changes, changes in terminology from OJEU to GPA, new paragraph added on VAT at section 14 and updated Annex A STAR form.   |
| April 2022     | SQ         | <p>Expanded introduction relating to the purpose.</p> <p>Changed the flow of sections in line with the procurement process.</p> <p>Added more definitions.</p> <p>Amalgamated exemption for Frameworks and Dynamic Purchasing Systems.</p> <p>Changed Thresholds:</p> <p>From single quote up to 1K, verbal 3 quotes 1K to 5K and 3 written quotes 5K to 10K. Quick Quote for Works 10K to 100K</p> <p>To Single quote up to 2K, 3 written quotes 2K to 10K, Quick Quote for Works 10K to 500K</p> <p>Amalgamated single stage and open tender section and restricted and two stage section to simplify.</p> <p>Added sections for technical specification, community benefits, novation, Frameworks and Dynamic Purchasing Systems, abnormally low bids, supported business and reserved contracts.</p> <p>Expanded sections – Evaluation of tenders (to make confidentiality clearer), Insurance, Purchase of Goods, Service or Works (to make consultation with procurement to check if contract on the contract register can be used clearer)</p> <p>Added information re the legislation taking precedence over standing orders. Exemptions cannot contravene legislation.</p> |



|            |    |   |
|------------|----|---|
| April 2023 | SQ | <p>Removed special circumstances approved by Chief Executive and Cabinet in section 5. As permissible special circumstances are already addressed and procurement legislation would supersede the standing orders if decisions in breach of legislation are made.</p> <p>Added guidance on service teams progressing direct awards under 50K out with the Corporate Procurement Unit.</p> |
| June 2023  | MT | <p>Removal of several annexes including Request for Procurement Action (RPA) Single Tender Action Request (STAR) and Conflict of Interest Declaration Form and updated reference to annex throughout the standing orders.</p>   |
| May 24     | SQ | <p>Corrected typos, and made wording more robust, removed ability to reduce tender timescales if a PIN is issued, added more information to the standstill section and replaced tender outcome report with procurement outcome report.</p>  |