

# Standing Orders Relating to Contracts



Inverclyde Council

**Standing Orders  
Relating to Contracts**

Approved – 17 February 2022

# STANDING ORDERS FOR CONTRACTS

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## 1.0 DEFINITIONS

1.1 In these Standing Orders relating to Contracts the following definitions and provisions shall apply:

“2014 Act” means the Procurement Reform (Scotland) Act 2014 (as amended);

“2015 Regulations” means the Public Contracts (Scotland) Regulations 2015 as amended by the Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020;

“2016 Regulations” means the Procurement (Scotland) Regulations 2016;

“ALEO” means arm’s length external organisation used by the Council to deliver services e.g. Inverclyde Leisure and Riverside Inverclyde;

“Direct Award” means an award directly to a supplier without advertising or competition.

“Directors” shall include the Chief Executive and the Chief Officer of the Integration Joint Board;

“appropriate committee” shall mean the committee to which the procuring Service reports in terms of the Council’s Scheme of Administration;

“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 (Scotland) Act 2003 which requires the Council to attain an appropriate balance of quality and cost for any particular requirement having regard to efficiency, effectiveness, economy, equal opportunity requirements and sustainability;

“Emergency” shall be deemed to mean an actual or potential event involving or likely to involve any of the following:

- (i) danger to life or health;
- (ii) serious damage or destruction of property;
- (iii) major financial penalties; or
- (iv) significant unforeseen and unplanned financial consequences;

“Fair Work First” means the commitment by employers to investment in skills and training, no inappropriate use of zero hours contracts, action to tackle the gender pay gap, genuine workforce engagement, including with trade unions and payment of the Real Living Wage;

“Framework” means an overarching arrangement under which the terms and conditions are agreed, but where there is normally no commitment to subsequently place orders or call-off contracts;

“FTS” means Find a Tender Service, the new UK e-notification system which replaced requirements to advertise in the online journal of the EU;

“FTS Thresholds” means those thresholds (formerly referred to as EU thresholds) for the Council’s procurement requirements caught within the ambit of the 2015 Regulations: currently £213,477 for supplies and services and £5,336,937 in relation to works<sup>1</sup>;

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<sup>1</sup> These values changed on 1<sup>st</sup> January 2022 and shall change biennially thereafter

“FTS Contracts/ Procurements” means those procurements required to be advertised on FTS since they fall within the remit of the 2015 Regulations;

“General Duties” means (i) treating relevant economic operators equally and without discrimination, (ii) acting in a transparent and proportionate manner and (iii) complying with sustainable procurement duty set out in the 2014 Act

“Health and Social Care Services” means any of the services as defined by Regulation 12(1) and 13(1) of the 2014 Act, Regulations 74 to 76 and schedule 3 of the 2015 Regulations along with the associated schedule of the 2016 Regulations;

“other Specific Services” means the services listed in Schedule 3 to the 2015 Regulations excluding Health and Social Care Services;

“PCS” means Public Contracts Scotland and Public Contracts Scotland Tender being the advertising portal provided by the Scottish Government for the advertising of public contract opportunities;

“Procurement” means the process leading to the award of the of a public contract for the acquisition of services, supplies or work from an economic operator;

“Procurement Manual” means the Procurement Manual issued by the Procurement Manager setting out the detailed requirements and processes for the conduct of the Council’s procurement activity;

“Quick Quote” means an online request for a priced quotation provided through the PCS website used to obtain competitive quotes for low value/low risk procurement exercises from suppliers who are registered on PCS;

“Real Living Wage” means the hourly rate of pay which is independently calculated each year and overseen by the Living Wage Foundation;

“Regulated Contracts/Procurement” means those procurements which fall within the remit of the 2014 Act;

“Regulated Contracts/ Procurement Threshold” means those thresholds for the Council’s procurement requirements caught within the ambit of the 2014 Act – being £50K for goods and services and £2M for works; and

“Retained EU law” means any retained EU law within the meaning of the European Union (Withdrawal) Act 2018.

- 1.2 The title of every officer referred to in the Standing Orders relating to Contracts shall be read to include any alternative title which the Council may from time to time ascribe to that officer. Further, in the event that functions ascribed at the date hereof to a particular officer are re-ascribed, the relevant provisions herein shall transfer to that other officer(s).

## 2.0 INTRODUCTION

- 2.1 These Standing Orders Relating to Contracts (“Standing Orders”) are made under Section 81 of the Local Government (Scotland) Act 1973 and set out how contracts for all supplies, services and works will be made by or on behalf of the Council. The term ‘contract’ includes any form of agreement, written or unwritten, to which the Council is a party which creates rights and responsibilities for any of the parties involved.

- 2.2 The purpose of these Standing Orders is to ensure that contracts are appropriate for their purpose, provide the right balance between price and quality, and are procured in an open way that demonstrates probity and compliance with the Council's policies.
- 2.3 These Standing Orders apply to the Council carrying on its own procurement activity and any activity that the Council conducts on behalf of other parties such as ALEOs and the Health and Social Care Partnership.
- 2.4 In entering contracts for or on behalf of the Council, every officer or such other person as may have the power of entering into contracts on the Council's behalf, regardless of whether any such contracts are otherwise exempted from the application of these Standing Orders, shall be subject to an obligation to seek Best Value for the Council and be able to demonstrate equal treatment, non-discrimination, proportionality and transparency in the process of awarding contracts.
- 2.5 Notwithstanding the provisions and requirements of these Standing Orders, all contracts must comply with:
- (i) The requirements of the 2015 Regulations;
  - (ii) The requirements of the 2014 Act;
  - (iii) All other relevant legislation including Retained EU law;
  - (iv) the Council's Financial Regulations;
  - (v) the Council's Scheme of Delegation (Officers);
  - (vi) the Procurement Manual and the guidance on procedural requirements contained therein issued from time to time by the Procurement Manager; and
  - (vii) Rules of procedure for national contracts set up by Scotland Excel and Procurement Scotland;

Due consideration should also be given to all Guidance and Policy Notes in respect of procurement matters which may be issued by the Scottish Government and the Crown Commercial Services which may be issued from time to time.

- 2.6 In the event of any conflict between these Standing Orders and such legislation or rules or guidance, the legislation or rules and guidance shall take precedence.
- 2.7 Where any tender is likely to:-
- (i) equal or exceed the FTS Thresholds from time to time; or
  - (ii) equal or exceed the Regulated Procurement Thresholds,

the Director and relevant Head of Service will remain responsible for complying with the requirements of applicable procurement law but will consult fully with the Procurement Manager and the Head of Legal & Democratic Services to ensure that (a) the various requirements of the 2015 Regulations and/or the 2014 Act are fully complied with and (b) where the 2015 Regulations apply, to determine the appropriate procurement route: open; restricted; negotiation; competitive procedure with negotiation; or, competitive dialogue.

### **3.0 VARIATION AND REVOCATION**

3.1 Other than alterations of a nature which fall within Standing Order 3.2, these Standing Orders relating to Contracts may from time to time be varied or revoked by the Council.

3.2 The Head of Legal & Democratic Services shall have the power to vary these Standing Orders relating to Contracts but only in the following circumstances:

- (i) to reflect changes in job titles, re-organisations of services and directorates and vacancies in posts;
- (ii) to change references to any pieces of legislation where the legislation is repealed, and to insert references to new pieces of legislation where the new pieces of legislation largely re-enact the provisions of the repealed legislation;
- (iii) to change the financial values of FTS Thresholds or Regulated Contracts/Procurement Threshold where referred to in these Standing Orders relating to Contracts, to implement any changes made to those thresholds.

Any alterations made in terms of this Standing Order 3.2 shall be reported to the next meeting of the Council.

### **4.0 SUSPENSION**

4.1 The appropriate committee, on receiving a joint recommendation from the relevant Director, the Head of Legal & Democratic Services and the Chief Financial Officer that there are special circumstances justifying suspension of one or more provisions of these Standing Orders relating to Contracts and that it is in the interests and within the powers of the Council to do so, may suspend the application of such provision(s) to any contract.

4.2 The Chief Executive, in terms of the specific delegation to them by the Council to deal with matters of Emergency and following appropriate consultation, may authorise action which otherwise would require suspension of one or more provisions of these Standing Orders relating to Contracts.

### **5.0 REVIEW**

5.1 These Standing Orders relating to Contracts shall be reviewed at least every four years by the Head of Legal & Democratic Services.

### **6.0 BREACH OF STANDING ORDERS AND/OR PROCUREMENT PROCESSES**

6.1 Any contravention of or non-compliance with these Standing Orders and/or procurement processes must be reported immediately to the Procurement Manager and the Head of Legal & Democratic Services who may discuss the matter with senior managers as appropriate, to determine any action to be taken.

6.2 Any incidents of suspected fraud must be directed to the Chief Financial Officer immediately.

6.3 Disciplinary action may be taken as a result of any of the events in Standing Orders 6.1 and/or 6.2 being found to have occurred.



## 7.0 DISAGGREGATION

- 7.1 Contracts must not be disaggregated, packaged or split into separate smaller contracts or requirements to avoid the application of any provision of these Standing Orders, FTS Procurements, Regulated Procurements or any other legislative provision including Retained EU law.
- 7.2 In determining whether either the FTS Procurement Threshold or the Regulated Procurement threshold has been exceeded in respect of any single requirement for works, services or supply contracts, the value of that requirement shall be aggregated across the entire Council.

## 8.0 EXCLUDED CONTRACTS

### **A – Below Threshold/Quick**

#### **Quote Contracts**

- 8.1 Contracts for the supply of goods or materials, the provision of services or for the execution of works are excluded from the application of the Standing Orders relating to Contracts where the estimated price of the contract is less than:

Supplies and Services	£50,000
Works	£250,000

For the avoidance of doubt, 'services' includes without limitation Health and Social Care Services and other Specific Services

- 8.2 Competitive quotes or Quick Quotes must still be sought for the excluded contracts referred to at Standing Order 8.1 above in line with the procedures detailed in the Procurement Manual.

### **B) Specific Exclusions**

- 8.3 The following specific contracts are excluded from the application of the Standing Orders relating to Contracts:-
- (i) any contract for supplies and services or for the execution of works which, in the opinion of the Chief Executive, in consultation with the relevant Director, Head of Legal & Democratic Services and the Chief Financial Officer, are urgently required for the prevention of damage to life or property or which the Chief Executive believes would avert, alleviate or eradicate the effects or potential of an Emergency. Any such contracts, and the relevant circumstances, shall be reported by the relevant Director to the appropriate committee as soon as possible after the event;
  - (ii) a contract which has been extended for a period of up to six months in terms of the Council's Scheme of Delegation (Officers);
  - (iii) contracts of employment;
  - (iv) the appointment of legal agents or legal counsel in accordance with the 2014 Act and 2015 Regulations;
  - (v) the allocation of direct payments or personal budgets under options 1, 2 or 4 of the Social Care (Self Directed Support) (Scotland) Act 2013;

- (vi) any contract awarded under the National Care Home Contract;
- (vii) appointed guardians or legal services instructed by a court or tribunal from the panel of persons appointed by the Council under The Curators ad Litem and Reporting Officers (Panels) Scotland Regulations 2001 and the appointment of board members required by statute; and
- (viii) any proposals, transactions or contracts regarding the acquisition or disposal of lands or buildings by the Council (which shall be subject to separate procedures contained within the Procurement Manual).

### **C) Framework and Exempt Collaborative Agreements**

- 8.4 Frameworks and Collaborative Agreements are excluded from the application of the Standing Orders relating to Contracts where the contract is for supplies and services or for the execution of works made on behalf of the Council by Scotland Excel, Procurement Scotland, the Crown Commercial Service, Strathclyde Partnership for Transport, hub West Scotland, SCAPE Scotland, ESPO (Eastern Shires Purchasing Organisation) or any successor body or bodies for whom the Council has approved its membership or participation in furtherance of collaborative purchasing or admission to contractual arrangements providing Best Value to the Council. For the avoidance of doubt, Standing Order 26 (*Framework and Non-exempt Collaborative Agreements*) shall apply in all other cases.
- 8.5 Any participation agreement required to secure the Council's right to participate in a particular collaborative purchasing contract set up by a body listed at Standing Order 8.4, shall, irrespective of value, be signed on behalf of the Council by the Procurement Manager.
- 8.6 In accordance with the agreed contract strategy, the Procurement Manager, in consultation with the Head of Legal & Democratic Services and the Chief Financial Officer, may approve a recommendation for a tender exercise not being undertaken in terms of a Framework or Collaborative Agreement in terms of Standing Order 8.4 subject to the appropriate Director or relevant Head of Service evidencing the value of an alternative procurement route.
- 8.7 If the appropriate Director or relevant Head of Service believes that such collaborative purchasing is not achieving Best Value the Director or Head of Service must obtain the prior approval of the Procurement Manager in consultation with the Head of Legal & Democratic Services and the Chief Financial Officer for any alternative procurement route.
- 8.8 Any matter relating to the Council's membership of the bodies listed at Standing Order 8.4 shall be referred to the Council's Policy & Resources Committee or its equivalent from time to time.

### **D) Other Specific Services**

- 8.9 Where the 2015 Regulations apply, other Specific Services shall be procured in accordance with those Regulations as explained in the Procurement Manual.

## **9.0 PRE-PROCUREMENT PROCEDURES**

- 9.1 No tender shall be invited or offer made or accepted for any contract for supplies and services or for the execution of works unless there is sufficient financial provision within approved budgets for the net estimated expenditure.
- 9.2 The values stated in these Standing Orders are the total estimated values of the contract concerned for the entire duration of the contract including any extensions and not the estimated annual value of the contract.
- 9.3 The estimated values in these Standing Orders are calculated inclusive of VAT in relation to FTS Thresholds but exclusive of VAT in relation to Regulated Procurement and any requirement lower than the Regulated Procurement thresholds.
- 9.4 Where it is likely that a supply of goods or services or execution of works will be required on a continuing basis for a number of years the anticipated duration of the continuing supply shall be taken into account when estimating the value of the contract for the purposes of these Standing Orders.
- 9.5 For purposes of any financial checks of tenders, the amount of the annual value shall be a sufficient and appropriate basis of assessment. The financial check process is set out in the Procurement Manual.
- 9.6 Prior to commencing with a procurement exercise, the relevant Head of Service, in consultation with the Procurement Manager, shall check the Council's contract register to establish whether any existing corporate contracts are in existence which may already fulfill the requirement in question.

## **10.0 TENDERING PROCEDURES - GENERAL**

- 10.1 All contracts exceeding the values specified in Standing Order 8.1 require to be advertised in a sufficiently open manner to ensure that the principles of openness, transparency and equality are fully met.
- 10.2 Public notice shall be given of all contracts over the values specified in Standing Order 8.1 on the Public Contracts Scotland Portal. Where, in particular circumstances, the Head of Service considers it necessary, public notice may also be given in appropriate trade journals or newspapers.
- 10.3 Tenders must be invited by advertising the contract opportunity on the Public Contracts Scotland Portal.

## **11.0 HEALTH AND SOCIAL CARE SERVICES**

- 11.1 Subject to the modifications set out in Appendix 1 and in accordance with the 2015 Regulations and the principles set out in the Statutory Guidance issued by Scottish Ministers in terms of the 2014 Act, as well as the Best Practice Guidance on the Procurement of Care and Support Services 2016 issued in terms of the 2014 Act, these Standing Orders shall apply to contracts for Health and Social Care Services subject to the special procedures set out in Appendix 1.
- 11.2 Any contract for Health & Social Care Services which has an estimated value in excess of the FTS Threshold for Health & Social Care Services must be procured by following a procedure which conforms to the Council's duties as outlined in the 2015 Regulations.

## 12.0 **SUSTAINABILITY**

- 12.1 (i) The 2014 Act requires that prior to procuring any contract for supplies or services equal to or greater than £50,000 or procuring any contract for the execution of works equal to or greater than £2million, the Council must, in line with the sustainable procurement duty consider how its actions can improve the social, environmental and economic wellbeing of the Inverclyde Council area, focusing particularly on inequality and then procure in a manner which secures those identified improvements; and
- (ii) seek to facilitate the involvement of SMEs, third sector bodies and supported businesses and support innovation in its procurement processes.
- 12.2 Advice must be sought from the Procurement Manager on the requirements set out at Standing Order 12.1 prior to issuing a tender.

## 13.0 **AWARDING CONTRACTS IN LOTS**

- 13.1 Where the 2015 Regulations apply, a contract may be awarded in the form of separate lots. Where the decision is taken not to award in the form of separate lots the main reason(s) for this must be explained in the contract documents or within the reporting requirements set out in the 2015 Regulations.
- 13.2 Where the 2015 Regulations apply, prior to issuing a tender, advice must be sought from the Procurement Manager on whether or not it is possible to separate the contract into lots.

## 14.0 **RESTRICTING TENDERS TO SUPPORTED BUSINESSES**

- 14.1 The Council can restrict participation in any tender opportunity to providers operating supported businesses, supported employment programmes or supported factories where more than 30% of the workers are disabled or disadvantaged persons in accordance with the 2015 Regulations.
- 14.2 The restriction set out in Standing Order 14.1 must be advertised in the relevant public notice specified in accordance with Standing Order 10.2 above. Prior to exercising this right, advice must be sought from the Procurement Manager in consultation with the Head of Legal & Democratic Services and the Chief Financial Officer.

## 15.0 **FAIR WORK FIRST AND COMMUNITY BENEFITS**

- 15.1 All procurement planning and tendering procedures and contractual arrangements entered into shall, in accordance with Council policy and guidance, encourage Fair Work First working practices and payment of the Real Living Wage and, where appropriate, shall include the use of community benefit clauses.
- 15.2 Advice must be sought from the Procurement Manager on the requirement set out at Standing Order 15.1 prior to issuing a tender.

## 16.0 **TENDER EVALUATION**

- 16.1 The evaluation methodology of tenders shall be transparent, fair, and proportionate and comply with Council guidance on evaluation criteria contained within the Procurement Manual and shall be fully disclosed to prospective tenderers in the tender documentation.

16.2 Unless otherwise provided for in the Procurement Manual, each and every contract must be awarded to the 'most economically advantageous tender' and the balance between cost/quality must not fall below 60/40, where 60 represents cost and 40 represents quality.

16.3 Where the relevant Director is of the opinion that the ratio specified at Standing Order 16.2 requires to be varied to the extent that cost represents a smaller percentage of the overall total, then prior to commencing the procurement process, the Director shall prepare a report for the approval of the appropriate committee. Any such report shall be prepared in consultation with the Procurement Manger, the Head of Legal & Democratic Services and the Chief Financial Officer.

## 17.0 **CONTRACT TERMS AND CONDITIONS**

17.1 Officers shall procure using current standard industry form terms and conditions and/or current framework terms and conditions. Where no such terms are available, officers shall procure using the Council's current Standard Terms and Conditions of Purchase.

17.2 Officers shall give specific consideration to the inclusion of an alternative dispute resolution clause in the terms and conditions of a contract if such a clause is not already included in the applicable terms.

## 18.0 **LATE TENDERS**

18.1 No tenders received after the closing date and time for submission shall be considered and arrangements shall be made for their rejection. Tenderers shall be advised of this provision in the invitation to tender.

18.2 The Council expressly reserves the right to require any tenderer to provide additional written information supplementing or clarifying any of the information provided by that tenderer in response to requests for information or questions contained in the pre-qualification questionnaire, the Single Procurement Document or invitation to tender.

## 19.0 **OPENING OF TENDERS**

19.1 All tenders relating to a specific project shall be opened at the one time.

19.2 Tenders in excess of £1million shall be opened by 2 Procurement Officers (Grade 7 or above) using the date and time stamp element of the PCS portal to record offers received. All other tenders shall be opened by one Procurement Officer (Grade 7 or above) using the date and time stamp element of the PCS portal to record offers received.

## 20.0 **ACCEPTANCE OF TENDERS**

20.1 Except as hereinafter provided, the most economically advantageous tender shall be accepted.

20.2 The lowest price shall only be accepted (if desired for any particular procurement) where the value of the Council's requirement falls below the Regulated Procurement Threshold Procurement Manual.

20.3 Tenders may only be accepted on behalf of the Council:-

- (i) in the case of tenders where the total estimated value or the amount does not exceed £1,000,000 by the Head of Legal & Democratic Services;

- (ii) in the case of tenders where the total estimated value or amount exceeds £1,000,000 by the Head of Legal & Democratic Services with authority from the appropriate committee; and in relation to tenders beneath the PCS-FTS threshold, where the tender recommended for acceptance is not the most economically advantageous, by the Head of Legal & Democratic Services only with authority from the appropriate committee.
- 20.4 The Procurement Manager shall, on a bi-annual basis, submit a report for noting to the appropriate committee detailing all awards (including Direct Awards) which have been placed within the previous six month period.
- 20.5 If the appropriate Director or Head of Service recommends that none of the tenders submitted should be accepted, the relevant Head of Service or his/her authorised representative shall notify all tenderers accordingly.
- 20.6 No tender shall be accepted unless the appropriate Director or Head of Service and the Chief Financial Officer respectively are or have been satisfied as to the technical capability and professional fitness and financial standing of the tenderer.
- 21.0 **PROCUREMENT STRATEGY, RECORDS AND REPORTING**
  - Procurement Strategy**
  - 21.1 The Procurement Manager shall, in consultation with the Head of Legal & Democratic Services and the Corporate Management Team, prepare and publish an annual procurement strategy setting out how the Council intends to carry out procurements regulated by the 2014 Act.
    - Annual Procurement Report**
    - 21.2 The Procurement Manager shall, in consultation with the Head of Legal & Democratic Services, in relation to any financial year, prepare and publish an annual procurement report on procurements regulated by the 2014 Act as soon as reasonably practicable after the end of the relevant financial year.
      - Register of Tenders**
      - 21.3 The Procurement Manager shall keep and maintain a register of all tenders received which register shall be made available for inspection at any time, and in which shall be entered, in respect of each tender:
        - (i) the number of tenders received in respect of each contract;
        - (ii) the date and time of opening of each tender; and
        - (iii) the name and address of each tenderer, the value or amount of each tender and a statement as to the acceptance or otherwise of the tender.
      - 21.4 Standing Order 21.3 shall not apply to Health and Social Care Service contracts. The relevant Head of Service shall keep and maintain a register of tenders relating to Health and Social Care Services containing the information (where relevant) outlined in (i) – (iii) above.

## 22.0 **DIRECT CONTRACT AWARDS**

22.1 In relation to a FTS Procurement or a Regulated Procurement, a contract can only be awarded directly without competition if the Direct Award can be justified under the relevant law.

22.2 Where the circumstances of Standing Order 22.1 apply the Director or Head of Service must obtain advice from the Procurement Manager, in consultation with the Head of Legal & Democratic Services and the Chief Financial Officer before submitting a report to the appropriate committee for prior approval to make a Direct Award.

22.3 In other exceptional cases:

(i) where the contract is for the provision of services and supplies and the proposed spend falls below the Regulated Procurement Threshold, if the Director or Head of Service considers on the application of Best Value principles that a contract can be directly awarded without competition, the Director shall obtain the prior approval of the Procurement Manager, in consultation with the Head of Legal & Democratic Services and the Chief Financial Officer.

(ii) where the contract is for the execution of works and the proposed spend is below £250,000, if the Director or Head of Service considers on the application of Best Value principles that a contract can be directly awarded without competition, the Director shall obtain the prior approval of the Procurement Manager, in consultation with the Head of Legal & Democratic Services and the Chief Financial Officer.

(iii) where the contract is for the execution of works and the proposed spend is between £250,000 and the Regulated Procurement Threshold relating to the execution of works (£2million), the Director or Head of Service must obtain advice from the Procurement Manager, in consultation with the Head of Legal & Democratic Services and the Chief Financial Officer before submitting a report to the appropriate committee for prior approval for a Direct Award.

22.4 Any report required in terms of Standing Orders 22.2 and 22.3(iii) shall confirm the identity of the party to which the contract is to be directly awarded and the proposed contract terms.

22.5 The process set out in the Procurement Manual must be followed before the making of any Direct Award in terms of Standing Orders 22.1 and 22.3.

22.6 The Direct Award process for all contracts (including Health and Social Care contracts) is set out in more detail in the Procurement Manual.

## 23.0 **CONTRACT EXTENSIONS**

23.1 A contract extension affects the duration and potentially the value of the contract.

23.2 A contract can only be extended in certain defined circumstances:

(i) the right to extend must have been referred to in the initial procurement advert for the contract and the terms and conditions of the contract must contemplate such an extension; or

(ii) the extension constitutes a permissible and justifiable Direct Award under Standing Order 22 (*Direct Award Contracts*).

In all other cases a contract extension is not permitted.

23.3 This Standing Order does not apply to contracts for the execution of works where extensions of time are expressly contained in standard industry form terms and conditions of contract.

23.4 The relevant Head of Service must obtain advice from the Procurement Manager in consultation with the Head of Legal & Democratic Services and the Chief Financial Officer prior to extending any contract under Standing Order 23.2(ii) and must follow the process for Direct Awards set out in the Procurement Manual.

#### 24.0 **CONTRACT MODIFICATIONS**

24.1 A contract modification affects the scope of the contract.

24.2 Examples of when a contract modification may be required include circumstances where there is a need for additional works, services, goods or materials which were not specified in the initial procurement or where a new contractor replaces the contractor to whom the contract was initially awarded.

24.3 The 2015 Regulations set out when it is permissible to modify a contract to which the Regulations apply. Where it is not possible to modify a contract, the contract must be re-tendered unless the modification constitutes a permissible and justifiable Direct Award under Standing Order 22 (*Direct Contract Awards*).

24.4 The relevant Head of Service must obtain advice from the Procurement Manager in consultation with the Head of Legal & Democratic Services and the Chief Financial Officer prior to modifying any contract.

#### 25.0 **EARLY TERMINATION OF A CONTRACT**

25.1 In relation to tenders falling within the scope of the FTS thresholds, tender documents must include an early termination clause to permit effect to be given to Regulation 73 of the 2015 Regulations namely the Council must have the right to terminate the contract or framework early where:

- (i) the contract or framework has been subject to such substantial modification that a new procurement exercise is required; or
- (ii) the tenderer has been in a situation which constitutes a ground for exclusion at the time the contract was awarded and should therefore have been excluded from the procurement process; or
- (iii) A court or tribunal of competent jurisdiction has declared that a contract or framework should not have been awarded due to a serious breach of the 2015 Regulations.

25.2 If the relevant Head of Service decides that an operational contract which has no significant implications for the Council and no significant unplanned budgetary impact, including a contract falling within the scope of Standing Order 25.1, requires to be terminated prior to the expiry date, the Head of Service must explain the circumstances and obtain the prior written approval for the early termination from the Procurement Manager in consultation with the Head of Legal & Democratic Services and the Chief Financial Officer.



25.3 In all other cases where the relevant Head of Service decides that a contract requires to be terminated prior to the expiry date, including a contract falling within the scope of Standing Order 25.1, the Head of Service must, in consultation with the Procurement Manager, Head of Legal & Democratic Services and the Chief Financial Officer, submit a report explaining the circumstances and implications for the Council and seeking the approval of the appropriate committee.

## 26.0 **FRAMEWORK AND NON-EXEMPT COLLABORATIVE AGREEMENTS**

26.1 The Procurement Manager may seek the approval of the appropriate committee to participate in framework or non-exempt collaborative agreements with a body or organisation which is not listed at Standing Order 8.4 (*Framework and Non-Exempt Collaborative Agreements*) for a maximum period of 4 years provided the Procurement Manager is satisfied that any such framework or non-exempt collaborative agreement:

- (i) has been established in accordance with the 2015 Regulations or the 2014 Act; and
- (ii) is achieving Best Value.

26.2 No further committee approval will be required to purchase from a framework or non-exempt collaborative agreement approved in terms of Standing Order 26.1 unless the total estimated value or amount of the contract exceeds £1,000,000 in which circumstances Standing Order 20.3(ii) (*Acceptance of Tenders*) will apply.

26.3 Where a Director or Head of Service deems it Best Value, they may enter into or participate in a framework or non-exempt collaborative agreement which has not been approved in terms of Standing Order 26.1 provided the Director or Head of Service has obtained the prior approval of the appropriate committee for the participation and level of spend. Before doing so, the Director or Head of Service shall consult fully with the Procurement Manager, the Head of Legal & Democratic Services and the Chief Financial Officer.

26.4 Any participation, membership or similar agreement required to secure the Council's right to participate in collaborative purchasing contracts duly approved under Standing Orders 26.1 or 26.3 shall be signed by the Head of Legal & Democratic Services in consultation with the Chief Financial Officer and the Procurement Manager.

## 27.0 **POST TENDER CLARIFICATION**

### **Errors in computation**

27.1 Where examination of tenders received reveals obvious errors in the computation of the offer which would affect the tender figures, these errors will be dealt with in the following manner:-

- (i) any obvious arithmetical errors will be rectified by the appropriate officer checking the tenders and the amount of tender shall be held to be the amount of the documents so rectified and the tenderer informed in writing of the corrected amount; and
- (ii) where there is an obvious and genuine error in rates occurring, the tenderer will be given the opportunity of either (a) confirming that they agree to their tender being considered with the error remaining, (b) correcting the error, or (c) withdrawing their tender. This procedure must be undertaken in writing. Should the tenderer decide to withdraw their tender, it will not be considered for

acceptance. The tenderer must be permitted only to amend the obvious or genuine error and must not be given the opportunity to amend any other part of their tender.

### **Requests for clarification**

27.2 A full written record shall be kept by the relevant Head of Service of all contracts where post tender clarification has been used and the written record will be retained with the original tender. The written record will include the justification for authorising post tender clarification, the nature of the clarification undertaken, the outcome of such clarification and shall detail any additional terms agreed by the Council.

### **28.0 CONTRACT TERMS REGARDING CONSULTANTS AND SPECIALIST SERVICE PROVIDERS**

28.1 Where appropriate, it shall be a condition of engagement of consultants and specialist service providers that:-

- (i) they and their staff shall comply with these Standing Orders as though they were officers of the Council;
- (ii) at any time during the performance of the contract, the consultant/specialist service provider shall, on a request by the relevant Head of Service, produce all records maintained by them in relation to the contract and on completion of the contract, transmit all such records to the Council, if so required; and
- (iii) copyright and intellectual property rights in and to all documentation produced by or on behalf of the consultant/specialist service provider exclusively for the Council in the course of providing the services shall vest and remain vested in the Council.

28.2 In the event that a Head of Service wishes to depart from the requirements of Standing Order 28.1, the Head of Service shall only do so with the prior agreement of the Procurement Manager in consultation with the Head of Legal & Democratic Services and the Chief Financial Officer.

### **29.0 FORM OF CONTRACT**

29.1 Except where otherwise agreed between the appropriate Director and the Head of Legal & Democratic Services, every contract shall be in writing and in the name of the Council, shall be signed by the Head of Legal & Democratic Services or other proper officer(s) designated by him/her and shall be subject to the laws of Scotland.

### **30.0 PERFORMANCE BONDS**

30.1 A contract guarantee bond, formal parent company guarantee or other sufficient security for the due performance of a contract must be obtained from a building contractor for capital and infrastructure projects in the following circumstances:

- (i) where the total contract sum for the project exceeds £1,000,000; or
- (ii) where the Council as funder contributes more than £250,000 to the project, or
- (iii) Where otherwise considered necessary by the relevant Head of Service.

30.2 The security provided must have a minimum value of 10% of the total contract sum and any contract guarantee bond must be based on the standard Association of British Insurers Model Form of Guarantee Bond duly amended to include the insolvency of

the building contractor as a default.

### **31.0 COLLATERAL WARRANTIES**

31.1 A collateral warranty may be required where goods or materials, services or works are provided by a party which is not a party to the Council's main contract. A collateral warranty enables the Council to raise a contractual claim directly against the party which is not a party to the main contract.

31.2 Collateral warranties may also require to be provided in associated but separate or phased tender exercises. For example, a building contractor appointed by the Council may require a collateral warranty to be provided by a specialist consultant appointed by the Council to provide a specialist structural report. In such circumstances, the contractual terms of the original specialist consultant appointment must oblige the original specialist consultant to provide collateral warranties where required by other parties to the project.

31.3 Officers shall consider whether it is appropriate to obtain a collateral warranty or warranties including whether a collateral warranty or warranties may require to be provided as part of an associated but separate or phased tender approach. Advice must be sought from the Procurement Manager in consultation with the Head of Legal & Democratic Services prior to issuing any tender or contract if collateral warranties may be required by the Council or another party.

### **32.0 FREEDOM OF INFORMATION**

32.1 All tender documents shall clearly state that the Council is a body to whom the Freedom of Information (Scotland) Act 2002 applies in accordance with the procedure detailed in the Procurement Manual

### **33.0 TECHNICAL STANDARDS**

33.1 All tenders for supplies, services or works shall be based on a defined specification except where the Council otherwise decides.

33.2 Where there is a recognised international or British Standards Specification or British Standard Code of Practice current and applicable at the date of tender, every contract shall require, as the case may be, that all goods, materials used or supplied, services provided and all workmanship shall at least meet the requirements of that standard.

33.3 In the absence of any such recognised standard as referred to at Standing Order 33.2, the contract documents shall require an appropriate equivalent standard shall be used, where available.

### **34.0 EQUALITIES & PREVENTION OF DISCRIMINATION**

34.1 No contract shall be awarded without the relevant Head of Service having obtained from the tenderer confirmation in writing that, to the best of the tenderer's knowledge and belief, the tenderer-

- (i) has complied with all statutory requirements relating to equal opportunities in employment; and
- (ii) is not unlawfully discriminating within the meaning and scope of the Equality Act 2010 (or any statutory modification or re-enactment thereof).

34.2 No contract shall be awarded unless the relevant Head of Service has obtained satisfactory information from the tenderer in relation to their statutory obligations under the said Equality Act 2010.

#### 35.0 **ETHICS AND STANDARDS**

35.1 Dealings with suppliers and tenderers must at all times be transparent, honest and fair.

35.2 Any conflict of interest which arises in relation to an officer's official duty and their personal interest must be resolved so that any conflicted individual is not in a position to influence decisions made.

35.3 The actions of officers should not be, nor give the impression that they have or may have been, influenced by a gift or consideration to show favour or disfavour to any person or organisation. Officers must be aware of their responsibilities when procuring and that there are criminal penalties for offences which are specified in the Bribery Act 2010.

35.4 Officers must keep sufficient records to establish an audit trail to demonstrate that ethical standards have been observed throughout any procurement process.

#### 36.0 **ASSIGNATION/NOVATION**

36.1 Except where otherwise provided in the contract, a contractor shall not assign, novate or sub-let a contract or any part thereof without the previous written consent of the Council.

## **Appendix 1**

### **Procedures for Commissioning of Health and Social Care Services**

#### **1. Introduction**

- 1.1 In accordance with Standing Order 11.0, the Standing Orders relating to Contracts shall apply to the procurement of contracts for Health and Social Care Services subject to the special procedures set out in this Appendix.
- 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 and the 2015 Regulations.
- 1.3 Any competitive process must be carried out in line with the requirements of these Standing Orders relating to Contracts including provisions regarding possible contract extensions or modifications.
- 1.4 All Health and Social Care Services procurement will be undertaken by the Health and Social Care Partnership (HSCP) Commissioning Team, supported by Corporate Procurement.
- 1.5 All Officers must follow the process and procedures set out at Paragraph 3 and in the Procurement Manual in relation to the Commissioning of Health & Social Care Services.

#### **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

TOTAL VALUE FOR DURATION OF CONTRACT (AGGREGATION RULES APPLY)*	PROCEDURE	APPROVAL PROCESS	COMMITTEE APPROVAL
£663,540** and above	Must be advertised in FTS and the light touch provisions in the 2015 Regulations apply	HSCP Chief Officer in conjunction with Chief Financial Officer, Procurement Manager and Head of Legal & Democratic Services up to £1,000,000	Approval to award must be sought from the appropriate Committee where the value exceeds £1,000,000
£50,000 - £663,539.99	May award without seeking offers, but should consider the General Duties where relevant. For any contract over £50,000, a contract award notice must be published on PCS. Certain other rules also apply (see paragraph 8.12 of Guidance on the Procurement of Care and Support Services 2021 (Best Practice)  Or  May choose to seek offers: in which case all provisions of the 2014 Act apply	HSCP Chief Officer in conjunction with Procurement Manager shall be responsible for deciding whether a particular contract is one which may be awarded without advertisement and competition in accordance with Section 12 of the Reform Act.	Not required
Below £50,000	Not a Regulated Procurement	Procurement Manager in conjunction with the relevant Head of Service.	Not Required

\* the estimated value of the Contract is the value of the total consideration which the Council expects to be payable under or by virtue of the Contract. Contracts must not be artificially disaggregated as per Contract Standing Order 7.0. Advice must be sought from the Chief Financial Officer on a case by case basis in relation to whether the Contract is exempt from VAT.

\*\* or the applicable FTS Threshold for Social and other specified services as defined in Schedule 3 of the 2015 Regulations.

#### 4. **Direct Award Process**

- 4.1 The procedure in relation to procuring a contract for Health and Social Care Services without advertisement and competition that has an estimated value below the FTS Threshold for Health and Social Care Services is fully detailed in the Procurement Manual.