
Report To:	Policy & Resources Committee	Date : 8 February 2011
Report By:	Head of Legal & Democratic Services	Report No: LA/642/11
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Subject:	Standing Orders Relating to Contracts	

1.0 PURPOSE

- 1.1 The purpose of this report is to propose to members that they approve the revised Standing Orders Relating to Contracts forming Appendix 1 of this report and to recommend to Council that it formally adopts the revised Standing Orders.

2.0 SUMMARY

- 2.1 Standing Orders Relating to Contracts (hereinafter referred to as 'Orders') are the means whereby the Council controls and regularises the manner in which the Council contracts with third parties. It is one of the core corporate governance documents and reflects both legal and best value requirements.
- 2.2 The Orders were last reviewed in 2007 and require to be updated at this point in time to reflect changes in legislation and best practice as well as structural changes within the Council. The current Standing Orders Relating to Contracts form Appendix 2 to this report.
- 2.3 The draft attached to this report has been revised in collaboration with the Chief Financial Officer, the Corporate Procurement Manager and the Corporate Procurement Board. The Corporate Management Team has also endorsed the proposed draft.
- 2.4 The draft contains substantial revisions to the current Orders which are too numerous to outline individually. However, those changes which are most notable are highlighted in the body of this report.
- 2.5 It is likely that further revisions to the Orders will be required once the Council's approach to e-tendering is developed.
- 2.6 There are no financial implications related to this report.

3.0 RECOMMENDATION

- 3.1 It is proposed that the Committee:-
- (i) approves the revised Standing Orders Relating to Contracts all as detailed in Appendix 1 to this report;
 - (ii) recommends to the Council that it formally resolves to adopt the aforesaid revised Standing Orders Relating to Contracts; and
 - (iii) notes that a briefing session will be held for members in April in relation to the Corporate Procurement Manual referred to in the draft Standing Orders.

Elaine Paterson
Head of Legal & Democratic Services

4.0 BACKGROUND

- 4.1 The Orders referred to in para 1.1 hereof are made under Section 81 of the Local Government (Scotland) Act 1973 and apply, unless otherwise stated within the Orders, to all contracts entered into by the Council. They form an important part of the Council's Corporate Governance Framework.
- 4.2 The Orders were last revised in 2007 and require updating at this time to take account of developments in legislation and best practice as well as structural changes within the Council.
- 4.3 In terms of the existing Orders, any amendments thereto should be considered firstly by the Policy & Resources Committee and thereafter by the Council.
- 4.4 The draft attached to this report contains substantial revisions to the existing Orders, the most relevant of which are detailed in Section 5 hereof.
- 4.5 The Orders will be supported by a Corporate Procurement Manual which is to be prepared by the Corporate Procurement Manager and which will address a variety of operational issues arising from the Orders.

5.0 REVISIONS TO EXISTING ORDERS

- 5.1 As noted in paragraph 2.4 hereof, the draft Orders contain too many revisions to highlight. However, attention is drawn to the following:-
 - (i) the draft Orders, if approved, effectively end the use of Standing Restricted and Ad Hoc Lists. It is now commonly accepted that the use of Standing Restricted and Ad Hoc restricted Lists can be open to challenge as they do not meet the standards of openness and transparency demanded by European Procurement Principles. Most tenders between the values specified at 3.1.1 in the Orders and the European Thresholds will require a degree of advertisement and detailed guidance in this regard will be contained within the Corporate Procurement Manual. In addition, the Manual will contain guidance on how to select a list of tenderers from amongst those who respond to an advert without embarking on a wholesale PQQ process which may not always be cost effective or appropriate;
 - (ii) the exemption thresholds have been raised from £10,000 for goods, materials and services and £25,000 for works to £25,000 for goods, materials and services and £50,000 for works;
 - (iii) the draft Orders make provisions in relation to collaborative purchasing, the use of national framework agreements and the use of the Public Contract Scotland Portal for advertising certain tender opportunities. Since the last revision of the Orders, substantial developments have taken place in these areas and the draft reflects those developments;
 - (iv) a new provision has been added to cover the use of post tender clarification (Order 13). These provisions ensure that only such clarification as complies with the principles of openness and transparency and recent court precedents is acceptable;
 - (v) new provisions have been included in relation to the evaluation of tenders (Order 6.6). This is generally to ensure compliance with the European Procurement Framework and specifically to provide clear direction in relation to the split between cost and quality. In particular it should be noted that any proposal to reduce the percentage attributable to cost below the default provision will require approval from the relevant Service Committee;

- (vi) those Orders relating to Negotiated Tenders (Order 11), Consultants (Order 14), Equalities (Order 18) have all been updated;
- (vii) additional Orders have been added in relation to Freedom of Information (Order 16), the Disposal of Land (Order 22) and the Council as Contractor (Order 23). The first two have been added to reflect developments since the Orders were last revised, whilst the last has been added to remind officers of the need to obtain Council approval before entering into any arrangement whereby the Council contracts to deliver goods or services to other bodies or organisations;
- (viii) a provision (Order 2.4.1) has been included requiring the Orders to be reviewed every two years, as a matter of course. This will bring the Orders into line with Financial Regulations which also contains such a provision;
- (ix) for the avoidance of doubt, the Chief Executive's delegated power to deal with matters of urgency (Order 2.3.2) has been repeated within the Orders; and
- (x) Order 3.2.1 (vi) relates to occasions where the Council is a contractor rather than an employer and requires to obtain sub-contractor prices at short notice. Consequently, it should be utilised only very occasionally.

5.2 It should also be noted that the various Rules of Procedure which are appended to the existing Orders have been removed from the revised Orders since they deal largely with operational issues. They will be updated and will form part of the Corporate Procurement Manual.

5.3 The Corporate Procurement Manual will be available to Council Staff in February and will incorporate the changes detailed in the draft Orders. The Manual is intended to be more detailed than the Orders and to give advice to users on Best Practice.

5.4 It is proposed to hold a briefing session for members once the Corporate Procurement Manual is available and this will take place around the end of April.

5.5 The changes to the Orders will impact on the Council's supply base and in particular to local contractors. To that end, the Corporate Procurement Manager has been attending the Inverclyde Construction Forum in order to consult with these suppliers on the planned changes. The proposals have been well received. Confirmation of these changes will be fed back to the Construction Forum, if agreed by the Policy & Resources Committee, and thereafter by the Council. When these new changes have been agreed, it is suggested that an advert could be placed in the local paper and on the website giving notice of the changes.

6.0 IMPLICATIONS

6.1 This report has no financial implications.

Financial Implications – One off Costs

Cost Centre	Budget Heading	Budget Year	Proposed Spend this Report	Virement From	Other Comments
n/a	n/a	n/a	n/a	n/a	n/a

Financial Implications – Annually Recurring Costs/ (Savings)

Cost Centre	Budget Heading	With Effect from	Annual Net Impact	Virement From (If Applicable)	Other Comments
n/a	n/a	n/a	n/a	n/a	n/a

6.2 Personnel: None

6.3 Legal: As outlined in the body of the report.

7.0 CONSULTATION

7.1 The Chief Financial Officer and the Corporate Procurement Manager have been fully involved in the revision of the Orders and the members of the Corporate Procurement Board have been consulted. All relevant comments have been taken on board in producing the attached draft.

APPENDIX 1

Inverclyde Council

STANDING ORDERS RELATING TO CONTRACTS

Final Draft Revision 2011
For P&R

STANDING ORDERS RELATING TO CONTRACTS

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1.0 DEFINITIONS

1.1 For the avoidance of doubt, it is understood that in these Standing Orders the following definitions and provisions shall apply:

- (i) "Corporate Directors" shall be deemed to include the Chief Executive;
- (ii) 'appropriate committee' shall mean the committee to which the procuring Service generally reports in terms of the Council's Scheme of Administration, except where the relevant contract is being procured through Scotland Excel or Procurement Scotland in which case the 'appropriate committee' shall mean the Policy & Resources Committee (or its equivalent from time to time);
- (iii) the values specified herein are exclusive of any Value Added Tax that may be levied;
- (iv) "emergency" shall be deemed to mean an actual or potential event involving or likely to involve any of the following:
 - (a) danger to life or health;
 - (b) serious damage or destruction of property;
 - (c) major financial penalties.
- (v) "the European Procurement Regime" means the various directives, regulations, formal guidance notes, interpretative communications and precedents which together form the legal and procedural framework relating to public sector procurement for public works, the supply of goods and materials and the supply of services.
- (vi) 'social care services means-

the provision of services for the performance of the Council's functions under:-
 - (a) The Social Work (Scotland) Act 1968;
 - (b) Part 2 of the Children Act 1995;
 - (c) Sections 25 to 27 of the Mental Health (Care & Treatment)(Scotland) Act 2003; and
 - (d) Any other function of the Council covered by the definition of care service in Section 2(1) of the Regulation of Care (Scotland) Act 2001, not specifically mentioned elsewhere;

1.2 The title of every officer referred to in the Standing Orders 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 stand assigned to that other officer(s).

1.3 **For the avoidance of doubt, if the procuring service wishes to procure works, goods or services with a value greater than £250,000, in terms of the Financial Regulations, the approval of the committee to which the procuring service reports is required before tender documents are issued.**

2.0 EXTENT

2.1 General

2.1.1 These Standing Orders (which are referred to in the Council's Standing Orders as 'Contract Regulations' and are hereinafter referred to as 'Orders') are made under Section 81 of the Local Government (Scotland) Act 1973 and shall apply, unless otherwise stated, to the making by the Council or on their behalf or on behalf of other persons/parties as part of a collaborative purchasing arrangement to all contracts for the supply of goods or materials or for the execution of works or for the provision of services. Any power exercisable by elected members and officials in terms of these Orders shall be subject to the provision of the Council's Scheme of Delegation whether or not referred to therein.

2.1.2 Officers must also have regard to the following:-

- (i) the Council's Financial Regulations. Where there is a conflict between the terms of these Orders and the Council's Financial Regulations, whether in relation to financial limits or otherwise, the terms of these Orders shall take precedence;
- (ii) the Corporate Procurement Manual and the procedure rules contained therein issued from time to time by the Corporate Procurement Manager;
- (iii) Rules of Procedure for National Contracts set up by Scotland Excel and Procurement Scotland; and
- (iv) the Guidance on compliance with the European Procurement Regime, issued from time to time by the Head of Legal & Democratic Services and/or the Corporate Procurement Manager.

2.1.3 These Orders shall also apply to all contracts which are subject to UK legislation or the European Procurement Regime provided that, where there is any conflict between these Orders and such legislation or rules, the legislation and rules shall take precedence over these Orders.

2.1.4 Where any tender is likely to:-

- (i) equal or exceed the thresholds for the application of the European Procurement; or
- (ii) exceed the thresholds applicable to lower value contracts.¹

the Corporate Director or the officers concerned shall refer the matter to the Corporate Procurement Manager, in consultation where appropriate with the Head of Legal & Democratic Services who will be responsible for ensuring that the various requirements of the European Procurement Regime are complied with fully.

2.2 Variation and Revocation

2.2.1 These Orders may from time to time be varied or revoked by the Council pursuant to a recommendation from the Policy and Resources Committee, meeting in its normal

¹ For advice on lower value contracts, please refer to Procurement Manual

cycle. Such alteration shall not be effected except on a resolution adopted by a majority of the Members of the Council.

2.2.2 The Corporate Procurement Manual and Guidance may from time to time be varied or revoked by the Head of Legal & Democratic Services and/or the Corporate Procurement Manager.

2.3 Suspension

2.3.1 The appropriate Committee, on receiving a joint recommendation from the relevant Corporate Director, the Head of Legal & Democratic and the Chief Financial Officer that there are special circumstances justifying suspension of one or more provisions of these Orders 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. Suspension in this regard shall be by a simple majority of members present and voting.

2.3.2 The Chief Executive, in terms of the specific delegation to him by the Council to deal with matters of urgency and following appropriate consultation, may authorise action which otherwise would require suspension of one or more provisions of these orders.

2.4 Review

2.4.1 These Orders shall be reviewed at least every two years.

3.0 EXEMPTIONS

3.1 Thresholds

3.1.1 There shall be exempted from the provisions of these Orders but not from the requirement to seek competitive quotes or the requirement to comply with the Council's Financial Regulations, all contracts for the supply of goods and materials, including second hand goods or materials, or for the execution of works or for the provision of services where the estimated price of the contract does not exceed:

Supply of Goods or Materials:	£25,000
Provision of Services	£25,000
Execution of Works	£50,000

3.1.2 It is not permitted to divide any procurement exercise into two or more contracts to avoid the application of the financial thresholds referred to above, or those specified in the European Procurement Rules.

3.2 Excluded contracts

3.2.1 There shall be exempted from the provisions of these Orders (**but not exempted from the need to comply fully with the European Procurement Regime, where applicable**):-

- (i) 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 the Chief Executive, in consultation with the relevant Corporate Director & Statutory Officers, are urgently required for the prevention of damage to life or property or 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 to the appropriate Committee as soon as possible after the event;

- (ii) contracts of employment;
- (iii) the appointment of legal agents, except where such appointment relates to a specific project and adequate time is available to carry out a proper procurement exercise;
- (iv) the appointment of legal counsel;
- (iv) with the exception of Standing Order 22, any contract relating to heritable property which shall be subject to separate procedures contained within the Corporate Procurement Manual; and
- (vi) contracts for the supply of goods or materials up to the value of £100,000 which are required by a Service where the goods and materials are required for the purposes of a contract already in place, always provided that the steps taken to ensure that Best Value in the price or prices obtained and contracted for are fully documented by the relevant Head of Service and the advice of the Corporate Procurement Manager has been sought before the supply has been secured.

3.3 Contracts for Social Care Services

3.3.1 The Rules of Procedure contained within the Corporate Procurement Manual shall apply to contracts for the procurement of Social Care Services and in the event of any ambiguity between the Rules and any specific Order, the provisions of the Rules shall apply.

3.4 Collaborative Purchasing

3.4.1 In addition to clause 3.2 above and subject to the Financial Regulations, these Orders shall not apply to any contract for the supply of goods or materials or the provision of services made on behalf of the Council by Scotland Excel, or Procurement Scotland or any equivalent or 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 .

3.4.2 All contracts secured through collaborative purchasing in terms of Clause 3.4.1, irrespective of value, shall be signed on behalf of the Council by the Head of Legal & Democratic Services, and in her absence by a Legal Services Manager.

3.4.3 The appropriate Corporate Director or Head of a procuring service shall not separately seek tenders for the supply of goods and materials or the provision of services where arrangements for such collaborative purchasing have been established unless he believes that such collaborative purchasing is not achieving Best Value and he/she has confirmed the position with the Chief Financial Officer and the Head of Legal and Democratic Services.

4.0 ESTIMATES OF COST

- 4.1 No tender shall be invited or offer made or accepted for any contract for the supply of goods or materials or for the provision of services or for the execution of works unless there is sufficient financial provision within approved budgets for the net estimated expenditure.
- 4.2 The values stated in these Orders are the total estimated values of the contract concerned, over the duration of the contract, and not the estimated annual value of the contract. Where it is likely that a supply of goods or services will be required on a continuing basis for a number of years, for example, a maintenance contract, the anticipated duration of the continuing supply shall be taken into account when estimating the value of the contract for the purposes of these Orders.

5.0 TENDERING PROCEDURES – EU PROCUREMENT

- 5.1 Where the European Procurement Regime applies to a particular contract, the appropriate Corporate Director or Head of Service shall in consultation with the Head of Legal and Democratic Services and the Corporate Procurement Manager have authority to decide, subject to complying with the terms of the European Procurement Regime, whether to adopt the open or restricted procedures.
- 5.2 Where it is considered that the use of competitive dialogue or the negotiated procedure is the most appropriate method of procuring a particular contract, the matter shall be referred to the appropriate committee for consideration.

6.0 TENDERING PROCEDURES - GENERAL

- 6.1 Subject to Order 6.6 hereof, all contracts over the values specified in Order 3 require to be advertised in a sufficiently open manner to ensure that the principles of openness, transparency and equality are fully met.
- 6.2 Public Notice shall be given of all contracts over the values specified in Order 3 on the Public Contract 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.
- 6.3 A sufficient number of tenderers must be invited to tender to ensure genuine competition which must not except as hereinafter provided, be less than four. Where fewer than four contractors express an interest, all those contractors meeting the minimum evaluation criteria must be invited to tender.
- 6.4 The Corporate Procurement Manual shall contain guidance in relation to the selection of tenderers where inviting all those who have expressed an interest in submitting a tender would result in the Council incurring disproportionate costs.
- 6.5 Where tenders are invited, no tender shall be considered unless it is contained within a plain envelope securely sealed and bearing the word 'Tender.....' followed by the subject matter to which the tender relates. The envelope shall not bear any mark that identifies the tenderer. All tenderers shall be advised of these requirements in the invitation to tender.

6.6 Evaluation

- 6.6.1 The evaluation methodology to be adopted in relation to a contract shall be transparent, fair, comply with Council guidance on Evaluation Criteria and shall be fully disclosed to prospective tenderers in the tender documentation.
- 6.6.2 In all contracts, whether above or below the European Procurement Thresholds, where the contract is to be awarded to the 'most economically advantageous tender', the balance between cost/quality shall not fall below 60/40, where 60 represents cost. Where the relevant Corporate Director is of the opinion that this ratio requires to be varied to the extent that cost represents a smaller percentage of the overall total, then prior to commencing the procurement process, he/she shall prepare a report for the consideration and approval of the appropriate committee. Any such report shall set out clear and robust reasons for the proposed variation and shall be prepared in consultation with the Chief Finance Officer and Head of Legal & Democratic Services.
- 6.6 **Where the estimated value of the contract exceeds the European Procurement Thresholds, the requirements for advertisement, evaluation and selection specified within the relevant regulations shall apply.**

7.0 LATE TENDERS

- 7.1 No tenders received after the closing date and time for submission shall be considered and arrangements shall be made for their rejection and return to the tenderer without further consideration. Tenderers shall be advised of this provision in the invitation to tender.

8.0 OPENING OF TENDERS

- 8.1 All tenders relating to a specific project shall be opened at the one time.
- 8.2 Tenders shall be opened in the presence of:
- (i) in the case of contracts where the estimated value is not more than £250,000, an officer within or acting on behalf of the procuring service and an officer within Legal and Democratic Services, both of whom must be at not lower than Grade I; and
 - (ii) in the case of contracts where the estimated value or amount exceeds the levels specified in sub-para (i) above, an officer within the procuring Service and an Officer within Legal and Democratic Services, both of whom must be at not lower than Grade I and two Elected Members.

9.0 ACCEPTANCE OF TENDERS

- 9.1 Except as hereinafter provided, the lowest or the most economically advantageous tender shall be accepted.
- 9.2 Tenders may only be accepted on behalf of the Council:-

- (i) in the case of tenders where the value or the amount does not exceed £250,000 by the appropriate Corporate Director or the Head of Legal & Democratic Services;
- (ii) in the case of contracts where the value or amount exceeds £250,000 by the Head of Legal & Democratic Services with authority from the appropriate Committee;
- (iii) in any case, regardless of value, where the tender recommended for acceptance is **not** the lowest/most economically advantageous only by the Head of Legal & Democratic Services with authority from the appropriate Committee.

9.3 **For the avoidance of doubt, it is specifically provided that no tender may be accepted unless it is the winning tender in terms of the relevant evaluation process.**

9.4 If the appropriate Corporate Director or Head of Service recommends that none of the tenders submitted should be accepted, the Head of Legal & Democratic Services or his/her authorised representative shall notify all tenderers accordingly.

9.5 No tender shall be accepted unless the appropriate Corporate 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.

10.0 REGISTER OF TENDERS

10.1 The Head of Legal & Democratic Services shall keep and maintain a register of all tenders received with the exception of those tenders relating to the procurement of Social Care Services under the value of £250,000 which 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;
- (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; and
- (v) a statement of the names and addresses of persons to whom tender documents were issued but who declined or failed to submit a tender.

10.2 The relevant Head of Service shall keep and maintain a register of tenders relating to Social Care Services containing the information (where relevant) outlined in (i) – (v) above.

11.0 NEGOTIATED TENDERS AND EXTENSION OF EXISTING CONTRACTS

11.1 In **exceptional** cases, where the appropriate Corporate Director or Head of Service considers on the application of Best Value principles that a tender should be negotiated with one person, he/she shall, before entering into negotiations, obtain the approval of the appropriate committee both in respect of the negotiation and of the

person with whom the tender is to be negotiated. In such cases, advice must be obtained from the Head of Legal & Democratic Services and the Corporate Procurement Manager before referring the matter to the appropriate committee.

- 11.2 An existing contract may be extended in the circumstances outlined in para 26.3 of the Council's Financial Regulations. Notwithstanding the provisions of para 26.3 of the Council's Financial Regulations it is specifically provided that an existing contract may only be extended provided its terms and conditions authorise such an extension.²
- 11.3 Where an existing contract was not let under EU Procurement Rules and a proposed extension to that contract will bring the total amount of the contract above the relevant EU Threshold, an extension to that contract is specifically prohibited.
- 11.4 In all cases where it is proposed to extend an existing contract, the relevant Head of Service must consult with the Corporate Procurement Manager.
- 11.5 **Where the European Procurement Regime applies to a contract, the Negotiated Procedure and the Competitive Dialogue Procedure may only be used where permitted by and on a ground specified in the Regulations.**

12.0 FRAMEWORK AGREEMENTS

- 12.1 Subject to Standing Order 1.3 hereof, where a Corporate Director or Head of Service deems it best value, they may enter into or participate in a Framework Agreement. Before doing so, or before presenting a report to the appropriate committee, the Corporate Director or Head of Service shall consult fully with the Head of Legal and Democratic Services and the Corporate Procurement Manager.
- 12.2 A Framework Agreement may be established/ utilised by:-
- (i) adopting the procedure outlined in the Council's Procurement Manual, the terms of which shall be binding; or
 - (ii) by call off or by conducting a mini competition under an existing Framework that has been properly established by another local authority, the Scottish Executive for contracts on a national basis, the Office of Government Commerce or any other agency of the UK or Scottish Government. Any such contracts must be entered into in accordance with the conditions applicable to the relevant Framework.
- 12.3 Where, in order to participate in an existing Framework of the type described in Standing Order 12.2(ii), the Council is required to enter into a participation agreement or other similar agreement regulating the use of the Framework by the Council, the Chief Executive shall have the authority to enter into the agreement on behalf of the Council, following discussion with the Chief Finance Officer and Head of Legal & Democratic Services.

² This alteration has been made to reflect the EU Rules and also to aid transparency. As previously worded, it also conflicted with the Fin. Regs.

13 POST TENDER CLARIFICATION

13.1 Where examination of tenders received reveals obvious errors or discrepancies 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.
- (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 providing such course of action does not put other tenderers at a disadvantage or otherwise distorts competition, 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 not be given the opportunity to submit an amended tender.**

13.2 A full written record shall be kept by the appropriate Corporate Director 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.

14.0 CONSULTANTS

14.1 Where appropriate, it shall be a condition of engagement of consultants that:-

- (i) they shall comply with these Orders as though they were officers of the Council;
- (ii) at any time during the performance of the contract the consultant 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 contractor in the course of providing the services shall vest and remain vested in the Council.

14.2 In the event that a Head of Service wishes to deviate from these requirements, he shall only do so with the agreement of the Head of Legal & Democratic Services and the Corporate Procurement Manager.

15.0 FORM OF CONTRACT

15.1 Except where otherwise agreed between the appropriate Corporate 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 officer designated by him/her for the purpose and shall be subject to the Laws of Scotland.

16.0 FREEDOM OF INFORMATION

16.1 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.

17.0 EUROPEAN STANDARDS

17.1 All tenders for the supply of goods and materials or for the execution of works shall be based on a defined specification except where the Council otherwise decides.

17.2 Where there is an appropriate European Standard current at the date of tender, every contract shall require, as the case may be, that all goods, materials used or supplied, and all workmanship shall at least meet the requirements of that European Standard.

17.3 Where there is no such European Standard, if there is an equivalent International Standard, that shall be used.

17.4 In the absence of either European or International Standard an appropriate British Standard "or equivalent" shall be used, where available.

18.0 EQUALITIES & PREVENTION OF DISCRIMINATION

18.1 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 Race Relations (Amendment) Act 2000 in relation to discrimination in employment.

18.2 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 Race Relations Act 1976 (as amended).

19.0 ASSIGNATION/NOVATION

19.1 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.

20.0 APPLICATION TO THIRD PARTIES

20.1 Any third party or person (not being an official of the Council) who is responsible to the Council for a contract on its behalf shall in relation to that contract:

- (i) comply with these Orders as though he/she were an official of the Council;
- (ii) at any time during the currency of the contract, produce on request to the appropriate Corporate Director all records maintained by him/her in relation to that contract, including evidence of insurances; and
- (iii) on completion of the contract, transmit to the appropriate Corporate Director all such records relating to that contract.

21.0 APPLICATION TO SUB-CONTRACTORS

21.1.1 All conditions to be observed by contractors in terms of these Orders shall mutatis mutandis also apply to sub-contractors, and all contractors shall be responsible for the observance of such conditions by such sub-contractors.

22.0 DISPOSAL OF LAND

22.1 Where the Council wishes to dispose of land, officers shall have regard to Section 74 of the Local Government (Scotland) Act 1973, the Disposal of Land by Local Authorities (Scotland) Regulations 2010 and the relevant Statutory Guidance, and any and all amendments which may from time to time be in force (the Framework).

22.2 In circumstances where the value of the land to be disposed is more than £10,000 and the difference between the proposed consideration and the best value consideration that can be obtained is greater than 25%, then the relevant Head of Service shall present a report to the appropriate committee which shall:-

- (i) appraise and compare the costs and other disbenefits with the benefits of disposal at less than best value consideration;
- (ii) state whether the disposal for the proposed consideration is reasonable and explain why it is reasonable; and
- (iii) outline whether the proposal is likely to contribute towards (a) promotion or improvement of economic development or regeneration, (b) health, (c) social well-being or (d) environmental wellbeing, for the whole or any part of the area in question or any person resident or present in that area of land.

22.3 In determining the best value consideration which could be achieved for land, the Framework provides that this should be determined by a suitably qualified valuer who shall:-

- (i) be a chartered member of or authorised to practice by the Royal Institute of Chartered Surveyors;
- (ii) be suitably experienced in the valuation of the type of property concerned with a reasonable knowledge of the locality concerned; and

- (iii) take into account, when valuing the land, the requirements of the latest edition of the RICS valuation standards applicable at the date when he is undertaking the valuation.
- 22.4 The Corporate Procurement Manual shall contain detailed provisions which shall be applied in relation to the procedures to be followed in relation to the disposal of land.
- 22.5 For the avoidance of doubt, 'disposal of land' includes sale, lease, license to occupy or other arrangement whereby the Council cedes ownership or occupation of land and/or buildings.

23.0 THE COUNCIL AS CONTRACTOR

- 23.1 The prior approval of the appropriate committee is required where a Corporate Director considers it appropriate to tender for external work.
- 23.2 Before submitting a report to the committee, the Corporate Director shall consult fully with the Chief Financial Officer and the Head of Legal & Democratic Services to ensure that the proposal is financially prudent and legally competent and the Head of Organisational Development, Human Resources & Performance in relation to TUPE or other personnel issues.

APPENDIX 2

Inverclyde Council

STANDING ORDERS RELATING TO CONTRACTS

19 April 2007

STANDING ORDERS RELATING TO CONTRACTS

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1.0 DEFINITIONS

1.1 For the avoidance of doubt, it is understood that in these Standing Orders the following definitions and provisions shall apply:

- (i) "Corporate Directors" shall be deemed to include the Chief Executive;
- (ii) the values specified herein are the total estimated values of the contracts and not the estimated annual values;
- (iii) the values specified herein are exclusive of any Value Added Tax that may be levied;
- (iv) "emergency" shall be deemed to mean an actual or potential event involving or likely to involve any of the following:
 - (a) danger to life or health;
 - (b) serious damage or destruction of property;
 - (c) major financial penalties.

1.2 The title of every Officer referred to in the Standing Orders 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 stand assigned to that other Officer(s).

2.0 EXTENT

2.1 These Standing Orders (which are referred to in the Council's Standing Orders as 'Contract Regulations') are made under Section 81 of the Local Government (Scotland) Act 1973 and shall apply, unless otherwise stated, to the making by the Council or on their behalf or on behalf of other persons/parties as part of a collaborative purchasing arrangement of all contracts for the supply of goods or materials or for the execution of works or for the provision of services (but not including contracts of employment). Any power exercisable by elected members and officials in terms of these Orders shall be subject to the provision of the Council's Scheme of Delegation whether or not referred to therein.

2.2 Officers must also have regard to the following:-

2.2.1 The Council's Financial Regulations. It is specifically provided that any financial limit with respect to a particular circumstance specified herein shall take precedence over a lower limit specified for the same circumstance in the Financial Regulations.

2.2.2 Rules of Procedure - Contracts for Building and Civil Engineering Works.

2.2.3 Rules of Procedure - Contracts for Supplies and Services.

2.2.4 Rules of Procedure - Contracts for Social Care Services.

2.2.5 Rules of Procedure - Disposal of Interest in Land and Buildings.

2.2.6 Rules of Procedure - Contracts/Electronic Procurement Systems and Tendering Processes.

- 2.2.7 Guidance on compliance with European Union (EU) Rules on Public Procurement.
- 2.3 These Orders shall apply to all contracts which are subject to UK legislation or EU rules on public procurement provided that, where there is any conflict between these Orders and such legislation or rules, the legislation and rules shall take precedence over these Orders.
- 2.4 Where in the opinion of the Corporate Director or Head of the procuring Service, any tender is likely to equal or exceed the thresholds for the application of the EU Procurement Directives for public works, the supply of goods and materials or the supply of services, the Corporate Director or the Officers concerned shall refer the matter to the Chief Legal Officer who will be responsible for ensuring that the various requirements of the EU Directives as implemented by UK Law are followed.
- 2.5.1 These Orders shall not apply to any contract for the supply of goods or materials or the provision of services made on behalf of the Council by the Authorities Buying Consortium or any equivalent or successor body 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 ("piggy-backing"). The appropriate Corporate Director or Head of a procuring Service shall not separately seek tenders for the supply of goods and materials or the provision of services where arrangements for collaborative purchasing have been established. In the event of a Corporate Director or Head of a procuring Service seeking tenders for the supply of goods and materials where he/she believes that collaborative purchasing is not achieving Best Value, he/she shall not seek such tenders until he/she has confirmed the position with the Chief Financial Officer.
- 2.5.2 These Orders shall not apply to any contract for the supply of goods or materials up to the value of £100,000 which are required by a service operating a trading account and requires to purchase the same for the purposes of a contract always provided the officer carrying out the seeking of quotations documents fully the steps taken in the process and is able to demonstrate Best Value in the price or prices obtained and contracted for.
- 2.6.1 With respect to the purchase and/or lease of all ICT related acquisitions and developments (including, for the avoidance of doubt, hardware, software, datasets, communication media and applications), it is specifically provided that such contractual arrangements are to be made through the Head of Service principally responsible for the provision, development and maintenance of ICT and no Officer has authority to enter into contracts for such acquisitions unless he/she has consulted with and obtained approval from the Head of Service principally responsible for the provision, development and maintenance of ICT .
- 2.6.2 With respect to the purchase and/or lease/hire of all vehicles, plant and similar equipment, it is specifically provided that such contractual arrangements are to be made through the Head of Service principally responsible for fleet management and plant purchase/hire and no other officer except the Chief Executive has authority to enter into such contractual arrangements.
- 2.7 Variation and Revocation**
- 2.7.1 These Orders may from time to time be varied or revoked by the Council pursuant to a recommendation from the Policy and Strategy Committee, meeting in its normal cycle. Such alteration shall not be effected except on a resolution adopted by a majority of the Members of the Council.

2.7.2 The Rules of Procedure and Guidance from time to time may be varied or revoked by the Chief Legal Officer, following consultation with the Chief Executive and the Chief Financial Officer, and reported to the appropriate Committee for information in due course.

2.8 **Suspension**

The appropriate Committee, on receiving a joint recommendation from the appropriate Director, the Chief Legal Officer and the Chief Financial Officer that there are special circumstances justifying suspension of one or more provisions of these Orders 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.

2.9 **Review**

These Standing Orders and the Rules of Procedure and Guidance shall be reviewed at least every four years.

3.0 **EXEMPTIONS**

3.1 There shall be exempted from the provisions of these Orders but not from the requirement to seek competitive quotes or the requirement to comply with the Council's Financial regulations, all contracts for the supply of goods and materials, including second hand goods or materials, or for the execution of works or for the provision of services where the estimated price of the contract does not exceed:

Supply of Goods or Materials:	£10,000
Execution of Works	£25,000
Provision of Services	£10,000

3.2 There shall be exempted from the provisions of these Orders:-

3.2.1 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 the appropriate Director or Head of Service, are urgently required for the prevention of damage to life or property or which the appropriate Director or Head of Service believes would avert, alleviate or eradicate the effects or potential of an emergency. Any such contracts, and the relevant circumstances, shall be reported to the appropriate Committee as soon as possible after the event.

3.2.2 Any contract for the procurement of social care services served by Social Work Services shall be the subject of separate rules of procedure approved by the Council. These rules of procedure shall be deemed to be part of these Orders.

3.3.3 Contracts of employment; and

3.3.4 The appointment of legal agents or Counsel.

3.3.5 Any contract relating to heritable property which shall be subject to separate rules of procedure etc.

3.3.6 Contracts for the supply of goods or materials up to the value of £100,000 made by a service operating a trading account in the circumstances detailed in 2.5.2 above.

4.0 ESTIMATES OF COST

- 4.1 No tender shall be invited or offer made or accepted for any contract for the supply of goods or materials or for the provision of services or for the execution of works unless there is sufficient financial provision within approved budgets for the net estimated expenditure.

5.0 STANDING RESTRICTED LIST

- 5.1 The Head of Performance Management and Procurement shall keep a list of persons for use by all Council Services to be invited to tender for contracts for the supply of goods or materials or for the provision of services, including consultancy services, of specified categories, values or amounts, or for the execution of specified categories and values of works and except as provided for in Orders 6 and 7, invitation to tender for a contract shall be limited to persons whose names appear on the list. The list held by the Head of Performance Management and Procurement shall require to be approved by the Best Value and Corporate Services Committee before it may be used.

- 5.2 The list shall:

- (i) be compiled and maintained by the Head of Performance Management and Procurement in consultation with the appropriate Director or Head of Service and shall be subject to the approval of the Best Value and Corporate Services Committee;
- (ii) contain the names of all persons who would wish to be included in it and are approved by the Best Value and Corporate Services Committee; and
- (iii) in the case of contractors and consultants, but not suppliers indicate whether a person whose name is included in it is approved for contracts for all or only some of the specified categories, values or amounts.

Provided that no person shall be included in a list unless:

- (a) they have provided satisfactory evidence of their technical capability and professional fitness, including two satisfactory references;
- (b) they have given an assurance in writing to the Council that they will comply with the appropriate conditions of contract laid down by the Council.

Persons who have satisfied the requirements of sub-paras (iii)(a) and (iii)(b) and who have been approved by the Head of Performance Management and Procurement to perform contracts up to the value of £50,000, shall form the Trades Directory within the Standing Restricted List.

- 5.3 At least eight weeks before the list is first compiled, notices inviting applications for inclusion in it shall be published in one or more newspaper circulating in the Authority's area and also in such trade journals as the Head of Performance Management and Procurement may consider necessary.
- 5.4 In the event that a contractor is removed from the list or has an application to be added to the list refused, the Head of Performance Management and Procurement shall keep a record listing the name and address of the contractor and explaining the

reason why the contractor has been removed from the list or why the application to be added to the list has been refused.

- 5.5 The Best Value and Corporate Services Committee may amend the list at any time, and shall review the list every three years. At least eight weeks before such review, each person whose name appears on the list shall be asked whether they wish to remain on the list and shall be asked to provide such information as is considered necessary to carry out the review and notices inviting applications for inclusion on the list shall be published in the manner provided for in Paragraph 5.3 of this Order.
- 5.6 Notwithstanding the provision of Order 5.1 where the list is inappropriate for a proposed contract or where there is no list of approved contractors for a proposed contract, the appropriate Corporate Director or Head of Service shall submit for approval of the Best Value and Corporate Services Committee a list of persons whom he considers competent to carry out such a contract, and on approval by the Committee an invitation to tender shall be limited to the persons whose names appear on that list.
- 5.7 An invitation to tender for a contract shall be sent to at least four persons whose names appear on the list as being approved for a contract of that category or for that value or amount or, if there are four or fewer than four persons, to all such persons. If there are more than four such persons, the appropriate Corporate Director or Head of Service shall select four or more such persons to whom invitations to tender shall be sent.

6.0 **AD HOC RESTRICTED LIST**

- 6.1 This Order shall have effect where the Best Value and Corporate Services Committee has authorised that invitations to tender for a particular contract shall not be limited to persons whose names appear on the list kept by the Committee under Order 5, but shall be limited instead to persons who reply to a public notice.
- 6.2 Public notice shall be given in one or more newspaper circulating in the Authority's area and in such trade journals as the appropriate Corporate Director or Head of Service may consider necessary, setting out particulars of the contract into which the Council wishes to enter and inviting persons interested to apply within such period, being not less than fourteen days, as may be specified, for permission to tender.
- 6.3 After expiration of the period specified in the public notice, if more than four persons have applied for permission to tender, invitations to tender for the contract shall be sent to four or more persons selected in the manner provided for in Order 5.7 or, if four or fewer than four persons have applied and are considered suitable by the appropriate Corporate Director or Head of Service, to all such persons. Provided that no person shall be invited to tender unless they have complied with the provisions of Order 5.2 (iii)(a) and (b).

7.0 PUBLIC CONTRACTS REGULATIONS

7.1 Tendering Procedures

Where the Public Contracts (Scotland) Regulations 2006, (“The Public Contracts Regulations”) apply to a particular contract, the appropriate Corporate Director or Head of Service shall have authority to decide, subject to complying with the terms of the Public Contracts Regulations, whether to adopt the open or restricted procedures.

7.2 The Best Value and Corporate Services Committee may approve the application of the negotiated procedure for the purpose of seeking offers as prescribed by the Public Contracts Regulations.

8.0 LATE TENDERS

8.1 No tenders received after the closing date and time for submission shall be considered and arrangements shall be made for their rejection and return to the tenderer without further consideration.

9.0 OPENING OF TENDERS

9.1 Tenders shall be opened in the presence of:

- (i) in the case of contracts where the subject matter is not the procurement of social care services and where the estimated value is not more than £250,000, an officer within or acting on behalf of the procuring service and an officer within Legal and Administration, one of whom must be at not lower than Principal Officer grade; and
- (ii) in the case of contracts where the estimated value or amount exceeds the levels specified in sub-para (i) above, an officer within the procuring service and an officer within Legal and Administration, one of whom must be at not lower than Principal Officer grade and two Elected Members.

10.0 ACCEPTANCE OF TENDERS

10.1 Except as hereinafter provided, the most cost effective or the most economically advantageous tender shall be accepted.

10.2 Tenders may be accepted on behalf of the Authority by:

- (i) In the case of tenders where the value or the amount does not exceed £250,000 by the appropriate Corporate Director or Head of Service or the Chief Legal Officer;
- (ii) In the case of contracts where the value or amount exceeds £250,000 by the Chief Legal Officer with authority from the appropriate Committee.
- (iii) In any case, regardless of value, where the tender recommended for acceptance is not the lowest/most economically advantageous only by the Chief Legal Officer with authority from the appropriate Committee.

10.3 If the appropriate Corporate Director or Head of Service recommends that none of the tenders submitted should be accepted, the Chief Legal Officer or his/her authorised representative shall notify all tenderers accordingly.

10.4 No tender shall be accepted unless the appropriate Corporate 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.

11.0 REGISTER OF TENDERS

11.1 The Chief Legal Officer shall keep and maintain a register of all tenders received with the exception of those tenders relating to the procurement of social care services under the value of £250,000 which 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;

(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; and

(iv) a statement of the names and addresses of persons to whom tender documents were issued but who declined or failed to submit a tender.

11.2 In the case of tenders invited under Orders 5 and 6, the register shall also include the names and addresses of persons to whom tender documents were issued but who declined or failed to submit a tender.

12.0 SERIAL, TWO STAGE AND NEGOTIATED TENDERS AND EXISTING CONTRACTS

12.1 Where the appropriate Corporate Director or Head of Service considers that tenders should be obtained for a series of projects or in two stages for any proposed works, he/she shall first obtain the approval of the appropriate Committee to that course both in respect of the execution of works and the tendering procedures.

12.2 Notwithstanding the provisions of Order 5.6 and 5.7, where the appropriate Corporate Director or Head of Service considers on the application of Best Value principles that a tender should be negotiated with one person, he/she shall, before entering into negotiations, obtain the approval of the appropriate Committee both in respect of the negotiation and of the person with whom the tender is to be negotiated.

12.3 Where the appropriate Corporate Director or Head of Service considers that an existing contract should be extended, he/she shall, before entering into negotiations, obtain the approval of the appropriate Committee in respect of such extension of contract.

13.0 RECURRING SUPPLIES

- 13.1 Where a contract is for the supply of goods or materials which will require to be delivered from time to time during a specified period the requirements of Orders 5 to 11 shall be carried out only once prior to the commencement of such period.

14.0 FORM OF CONTRACT

- 14.1 Except where otherwise agreed between the appropriate Corporate Director and the Chief Legal Officer, every contract shall be in writing, shall be signed by the Chief Legal Officer or other Officer designated by him/her for the purpose and shall be subject to the Law of Scotland.

15.0 EUROPEAN STANDARDS

- 15.1 All tenders for the supply of goods and materials or for the execution of works shall be based on a defined specification except where the Council otherwise decides.
- 15.2 Where there is an appropriate European Standard current at the date of tender, every contract shall require, as the case may be, that all goods, materials used or supplied, and all workmanship shall at least meet the requirements of that European Standard.
- 15.3 Where there is no such European Standard, if there is an equivalent International Standard that shall be used.
- 15.4 In the absence of either European or International standard an appropriate British Standard "or equivalent" shall be used, where available.

16.0 ASSIGNATION

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

17.0 APPLICATION TO THIRD PARTIES

- 17.1 Any third party or person (not being an official of the Council) who is responsible to the Council for a contract on its behalf shall in relation to that contract:
- (i) comply with these Orders as though he/she were an official of the Council;
 - (ii) at any time during the currency of the contract, produce on request to the appropriate Corporate Director all records maintained by him/her in relation to that contract, including evidence of insurances; and
 - (iii) on completion of the contract, transmit to the appropriate Corporate Director all such records relating to that contract.

18.0 **APPLICATION TO SUB-CONTRACTORS**

- 18.1 All conditions to be observed by contractors in terms of these Orders shall mutatis mutandis also apply to sub-contractors, and all contractors shall be responsible for the observance of such conditions by such sub-contractors.