

EAST DUNBARTONSHIRE COUNCIL

CONTRACT STANDING ORDERS

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STANDING ORDERS

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1. DEFINITIONS

1.1 In these Standing Orders the following words and expressions shall have the meanings assigned to them below:

“**Authorisation to Award Form**” has the meaning given in Appendix 3;

“**Authorisation to Vary Form**” has the meaning given in Appendix 3;

“**Call-Off Contract**” means the terms and conditions under which specific purchases can be made under a Framework Agreement;

“**Chief Financial Officer**” means the Chief Financial Officer of the Council for the time being and shall be taken to include any corresponding office known by any other description or any substitute(s) authorised in terms of the Council’s Administrative Scheme;

“**Chief Solicitor and Monitoring Officer**” means the Chief Solicitor and Monitoring Officer of the Council or the Legal Manager of the Council (as appropriate) for the time being and shall be taken to include any corresponding offices known by any other description or any substitute(s) authorised in terms of the Council’s Administrative Scheme;

“**Collaboration Form**” has the meaning given in Appendix 3;

“**Contract Register**” has the meaning given in Standing Order 25.1

“**Corporate Procurement Manager**” means the Corporate Procurement Manager of the Council for the time being and shall be taken to include any corresponding office known by any other description or any substitute(s) authorised in terms of the Council’s Administrative Scheme;

“**Council**” means East Dunbartonshire Council, a local authority established under and in terms of the Local Government, etc (Scotland) Act 1994, having its civic and corporate headquarters at 12 Strathkelvin Place, Southbank Marina, Kirkintilloch G66 1TJ;

“**Depute Chief Executive**” means any Depute Chief Executive and/or the Chief Executive of the Council;

“**EC Treaty Principles**” means the overarching principles of the Treaty of Rome, which are transparency, openness, non-discrimination and equal treatment;

“**ESPD**” means the European Single Procurement Document as specified in the European Procurement Regulations;

“Estimated Value” means the total aggregated estimated expenditure to be incurred over the duration of the contract, including all finance and legal charges or, where the duration of the contract is indeterminate, the total aggregated estimated expenditure including all finance and legal charges to be incurred over a period of 48 months;

“EU Procurement Regulations” means the Public Contracts (Scotland) Regulations 2015;

“Executive Officer” means: (i) in relation to the Council, the relevant Executive Officer of the Council for the time being and shall be taken to include any corresponding office known by any other description or any substitute(s) authorised in terms of the Council’s Administrative Scheme; and/or (ii) in relation to the Health and Social Care Partnership, the relevant Head of Service or Chief Social Work Officer, as appropriate;

“Framework Agreement” means an agreement which sets out terms and conditions under which specific purchases (call-offs) can be made throughout the term of the agreement;

“Form” means the Forms required for authorisation pursuant to these Standing Orders and detailed in Appendix 3;

“Legal Manager” means the Legal Manager of the Council for the time being and shall be taken to include any corresponding office known by any other description or any substitute(s) authorised in terms of the Council’s Administrative Scheme;

“OJEU Threshold” means the relevant threshold applying from time for application of the EU Procurement Regulations (or such other regulations amending, substituting or replacing those Regulations). This must be obtained from the Corporate Procurement Team prior to commencing a procurement and is also the subject of a Procurement Guidance Note;

“Procurement Guidance Notes” means procurement guidance notes issued by or on behalf of the Chief Solicitor and Executive Officer – Organisational Transformation from time to time. Such Procurement Guidance Notes are available from the Corporate Procurement Team;

“Procurement Law” means the EU Procurement Regulations, the Reform Act, the Reform Act Regulations, any other Regulations made or guidance issues by the Scottish Government under the Reform Act and/or guidance considered appropriate by the Chief Solicitor and Monitoring Officer and/or the Chief Financial Officer;

“**Reform Act**” means the Procurement Reform (Scotland) Act 2014 and any new legislation amending, substituting or replacing that Act;

“**Social Care Contract**” means, as the value of the contract dictates, (i) a contract falling within the definition of “Health or Social Care Services” in the Schedule to the Reform Act Regulations 2016 or (ii) a contract falling within the definition of “Social and Other Specific Services” in the EU Procurement Regulations;

“**Standing Orders**” means these standing orders, their appendices and associated Procurement Guidance Notes;

“**Reform Act Regulations 2016**” means The Procurement (Scotland) Regulations 2016 or such other Regulations amending, substituting or replacing those Regulations;

“**Quick Quote**” means the quick quote facility provided as part of the Scottish Government Public Contracts Scotland Portal; and

“**Waiver**” means a waiver of some or all of these Standing Orders which is obtained in accordance with Standing Order 29.

2. GENERAL

- 2.1 The purpose of these Standing Orders is to specify uniform procedures to be used throughout the Council for the procurement of supplies (goods or materials), services (including consultancy and Social Care services), and works. This will ensure a system of transparency, integrity and accountability which demonstrates that the Council and its officers are fulfilling their legal responsibilities.
- 2.2 These Standing Orders will be supplemented by Procurement Guidance Notes which will be updated as required.
- 2.3 Officers engaged in procurement must be aware of and comply with these Standing Orders and the Procurement Guidance Notes.
- 2.4 In the main Standing Orders will apply to the entering into by the Council or on its behalf of contracts or the establishment of a Framework Agreement for the supply of goods, carrying out of works or provision of services (unless indicated otherwise).
- 2.5 All procurement for supplies, services or works which are above £45,000 in value will be undertaken by Corporate Procurement in consultation with and for the relevant service, unless these Standing Orders provide otherwise.

- 2.6 Any procurement exercise may be carried out by electronic means, provided that it is to be conducted using the Public Contracts Scotland Portal or such other system approved by the Council; and to do so would not significantly restrict or distort competition.

The procedures set out in Standing Order 31 shall apply in relation to electronic procurement exercises.

3. LEGAL MATTERS

- 3.1 These Standing Orders are made under section 81 of the Local Government (Scotland) Act, 1973, as amended, and shall apply to all procurements carried out by, and in certain instances on behalf of, the Council for the provision of supplies to the Council (including goods or materials and leases for the provision of goods or materials), the provision of services (including consultancy and social care) to the Council, or the execution of works for the Council. The Standing Orders shall be interpreted and applied having regard always to the key principles of openness, fairness, equal treatment and non-discrimination.
- 3.2 Except as otherwise provided for in these Standing Orders, all contracts entered into by the Council shall, where appropriate, be in writing and will be subject to the laws of Scotland and the exclusive jurisdiction of the Scottish Courts.
- 3.3 The process and provisions contained within this document will be fully subject to the applicable legislative provisions.
- 3.4 All contracts entered into in terms of and in accordance with these Standing Orders shall be signed by either the Chief Executive, the Chief Solicitor and Monitoring Officer or the Legal Manager.

3.5 Best Value

3.5.1 All contracts must secure Best Value and maintain an appropriate balance among:-

- (a) the quality of the performance of the Council's functions;
- (b) the cost to the Council of that performance; and
- (c) the cost to persons of any Council service provided for them on a wholly or partly rechargeable basis.

3.6 Procurement Guidance Notes

Procurement Guidance Notes on tendering procedures for any contract or type of contract entered into by or on behalf of the Council may be issued by or behalf of the Chief Solicitor and Monitoring Officer and the Executive Officer – Organisational Transformation from time to time.

3.7 Compliance with EC Treaty Principles

All contracts, regardless of whether subject to the procedural requirements of the European Procurement Regulations, must be awarded in compliance with the EC Treaty Principles.

3.8 Conflicts of Interest.

The relevant Executive Officer in consultation with the Corporate Procurement Manager must take appropriate measures to prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures so as to avoid distortion of competition and to ensure equal treatment of tenderers.

4. CONTRACT VALUES

4.1 Calculation of Contract Values

Any value of a contract stated in these Standing Orders shall be the estimated aggregated value of the contract exclusive of VAT for the full life of the contract (including any potential contractual extension) and not the estimated annual value of the contract. Where a contract is for the supply of works, goods or services for a continual basis over a number of years then the estimated aggregated value of that contract shall be calculated by multiplying the estimated annual value by the number of years of the duration of the contract. All payments or payments in kind to be made to tenderers must be taken into account in calculating the Estimated Value.

4.2 Contracts must be aggregated in accordance with legislation and Standing Order 11.

5. EXEMPT CONTRACTS

5.1 All contracts for the supply of goods, carrying out of works or provision of services, where the estimated aggregated value is less than **£45,000**, shall be exempted from these Standing Orders with the exception of:

- (i) Standing Order 2 (General)
- (ii) Standing Order 3 (Legal Matters)
- (iii) Standing Order 4 (Contract Values)
- (iv) Standing Order 7 (Collaboration)
- (v) Standing Order 21 (Minimum Number of Suppliers)

- (vi) Standing Order 22.2 (e.Tendering)
- (vii) Standing Order 29 (Waivers)
- (viii) Standing Order 31 (Electronic Tendering)
- (ix) Standing Order 34 – (State Aid)
- (x) Standing Order 35 (Confidentiality)
- (xi) Standing Order 36 (Non-Compliance)
- (xii) Appendix 1(Contracts with a value of less than £45,000)
- (xiii) Appendix 2 – Waiver Process
- (xiv) Appendix 3 - Forms

5.2 The procurement of Contracts below £45,000 in value shall be undertaken in accordance with Appendix 1.

5.3 These Standing Orders will not apply to:

- (a) contracts of employment with employees of the Council;
- (b) contracts exclusively involving the acquisition, disposal, lease or other transfer of an interest in heritable property, provided that there are no ancillary or related development obligations or similar;
- (c) contracts which relate to the engagement of Counsel;
- (d) work that the Council decides to carry out internally, except where such work may involve supplies, services or works procured externally;
- (e) contracts exclusively between two or more Contracting Authorities, but only where the appropriate Executive Officer has confirmed that he or she is satisfied that there is no legal or other requirement to follow the procedures referred to herein following advice from the Chief Solicitor and Monitoring Officer. In such cases, the process to be followed in respect of the contract will be determined by the Corporate Procurement Manager, following advice from the Legal Manager;
- (f) other contracts exempted from the EU Procurement Regulations and the Reform Act Regulations but only where the appropriate Executive Officer has confirmed that he or she is satisfied that there is no legal or other requirement to follow the procedures referred to herein following advice from the Chief Solicitor and Monitoring Officer. In such cases, the process to be followed in respect of the contract will be determined by the Corporate Procurement Manager, following advice from the Legal Manager;
- (g) any contract for goods, works or services delivered: i) under the West territory Arrangements; or ii) via Scape Group or Scape Procure Scotland pursuant to an access agreement provided always that i) the Council's duty to achieve best value is maintained; ii) any relevant Procurement Law is adhered to; and iii) Standing Orders 2.5, 25 (Contract Register) and 28 (Acceptance of Tenders) are complied with in full;

- (h) any contract for goods, works or services procured and awarded on the Council's behalf by another party, subject to Standing Order 7 (Collaborations); and
- (i) any Call-Off Contract(s) awarded in accordance with Standing Order 6.2 or 6.3.

6. FRAMEWORKS

- 6.1 The Council recognises that the use of Framework Agreements offers economic and operational efficiencies, whilst complying with relevant legislative provision. Where a relevant and appropriate Framework Agreement exists, a contract should be let under that Framework Agreement, unless there are compelling financial and/or efficiency reasons not to do so. Such reasons will be considered and determined by the relevant Executive Officer in consultation with the Corporate Procurement Manager.
- 6.2 Framework Agreements established by the Council must be formed on the basis of these Standing Orders and the applicable provisions of Procurement Law. Any Call-Off Contract(s) from such Framework Agreements shall be exempt from these Standing Orders provided always that: i) the terms of the relevant Framework Agreement are complied with; ii) any relevant Procurement Law is adhered to; and iii) Standing Orders 2.5, 25 (Contract Register) and 28 (Acceptance of Tenders) are complied with in full in respect of the acceptance and award of any Call-Off Contract.
- 6.3 Any Call-Off contracts from a properly constituted Framework Agreement which has been established by Scotland Excel, the Scottish Procurement and Commercial Directorate, another local authority, Crown Commercial Services, any other public sector procurement agencies shall be exempt from these Standing Orders provided always that i) the terms of the relevant Framework Agreement are complied with; ii) any relevant Procurement Law is adhered to; and iii) Standing Orders 2.5, 25 (Contract Register) and 28 (Acceptance of Tenders) are complied with in full in respect of the acceptance and award of any Call-Off Contract.

7. COLLABORATIONS

- 7.1 In respect of every proposed collaborative procurement a contract strategy (which shall be in the format of a Collaboration Form) shall be prepared detailing the justification for the collaboration. The contract strategy shall be approved by the relevant Executive Officer.
- 7.2 Where it is proposed that the Council will act as lead authority in a collaborative procurement with other parties, the terms of these Standing Orders shall apply to that procurement and the written agreement to this of the other parties must be obtained before the procurement is commenced.

- 7.3 Where it is proposed that any other party acts as lead authority in a collaborative procurement, the procurement shall be conducted in accordance with the Standing Orders or such other governance documents of the lead authority but provided that the Corporate Procurement Manager and the Legal Manager are satisfied that such Standing Orders or governance documents reflect the principles of Best Value and ensure compliance with Procurement Law.
- 7.4 For all collaborative procurements, a written agreement must be put in place between the parties involved and this must be approved by the relevant Executive Officer and the Chief Solicitor and Monitoring Officer. This agreement should include the parameters of the procurement and appropriate monitoring arrangements.

8. ETHICS AND STANDARDS

- 8.1 The guiding principles of ethical behaviour in procurement are as follows:-
- 8.1.1 ethical behaviour must be promoted and supported by appropriate systems and the governance arrangements set out by the Council;
- 8.1.2 the conduct of employees should not foster the suspicion of any conflict between their official duty and their personal interest;
- 8.1.3 the action of employees 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;
- 8.1.4 dealings with suppliers must at all times be transparent, honest and fair; and
- 8.1.5 employees must keep sufficient records to establish an audit trail to demonstrate that appropriate standards have been observed throughout any procurement process.
- 8.2 **Bribery**
- 8.2.1 The Bribery Act 2010 introduced a number of offences relating to receiving bribes and being bribed. 2.3 Officers must (i) be aware of the Council's Anti-Bribery Policy and any relevant Procurement Guidance Notes, (ii) have signed the compliance form and (iii) contact Internal Audit for further advice where required.
- 8.2.3 It is essential that all members and employees of the Council are, and are seen to be, above reproach in their actions. They must ensure that their personal judgement and integrity cannot reasonably be seen to be compromised by the acceptance of benefits of any kind from a third party.
- 8.2.4 There may be conflicts of interest between a supplier and employees who are involved in a procurement process. If this is the case, the situation must be

assessed to determine how it can be resolved. Usually, this involves removing any conflicted individual from the procurement process so that he/she is not in a position to influence decisions made.

Examples of conflict of interest are when someone involved in the procurement process or an immediate family member:

- (i) stands to benefit from an award of a contract and that person is in a position to influence the decision about whether to make such an award; or
- (ii) has a controlling interest in a supplier as a shareholder, director or senior manager which might affect the delivery of products under a contract.

If an employee is uncertain whether or not they have a conflict of interest further advice must be obtained from Internal Audit.

- 8.2.5 All procurement activities can be subject to review by Internal Audit. Internal Audit is an independent assurance function. Auditors have unrestricted access to all Council records, cash, stores and other property. They also have unrestricted access to all locations and officials, where necessary on demand and without prior notice. Further guidance and information can be found within the Council's Anti-Bribery Policy.

9. AMENDMENT AND REVOCATION

- 9.1 These Standing Orders (including without prejudice to this generality the monetary thresholds for contracts specified throughout) shall be reviewed from time to time by the Chief Solicitor & Monitoring Officer and the Executive Officer – Organisational Transformation in consultation with the relevant Council officers.
- 9.2 Any amendments to Standing Orders arising from a review in terms of Standing Order 9.1 above or necessitated for any other reason shall be submitted to the Council for approval.
- 9.3 These Standing Orders may be revoked in full or in part by the Council in accordance with the Council's standing orders.
- 9.4 Any amendment to or revocation of Standing Orders shall take effect on the fifth working day after the conclusion of the Council meeting at which the amendment or revocation was approved, unless otherwise determined by Council.

- 9.5 The Corporate Procurement Manager will be responsible for securing the implementation of any approved change to Standing Orders and the updating of the electronic version on the Council website
- 9.6 Procurement Guidance Notes may be issued, revised, supplemented, expanded or deleted from time to time to reflect changes in procurement practice or legislation. Any amendments to Procurement Guidance Notes or new Procurement Guidance Notes issued will be reported to Members via a Technical Note for information.

10. LEGISLATION AND BEST VALUE

- 10.1 All procurement by, or on behalf of, the Council must comply where appropriate with all relevant legislation (including without prejudice to this generality regulations in respect of public supply, services and works contracts), associated case law and these Standing Orders. In the event of any conflict between Standing Orders and legislation/case law, the legislation/case law will prevail.
- 10.2 All procurement by, or on behalf of, the Council must reflect Best Value and represent value for money for the Council.

11. DISAGGREGATION AND LOTS

- 11.1 No potential procurement shall be sub-divided with the effect of avoiding the application of Standing Orders or any legislative provisions, unless that can be objectively justified.
- 11.2 A known continuing annual requirement for the same type of services or works throughout the Council must be aggregated into a procurement of a longer duration as required by Standing Orders and/or legislation and the Estimated Value so determined by the longer duration shall be the value of the contract. While the Corporate Procurement Team will carry out monitoring and research to identify opportunities for aggregation all officers with budgetary responsibility have a duty to advise the Corporate Procurement Team of any such opportunities which they become aware of.
- 11.3 Although devolved management responsibility budgets allow the budget holder to decide what use to make of the budget allocated to that budget holder, this does not dispense with the requirement to comply with the other requirements set out in these Standing Orders and relevant legislative provisions.
- 11.4 Separation of a procurement into separate, smaller lots must be considered by the appropriate Executive Officer whom failing, the Chief Solicitor and Monitoring Officer and/or the Executive Officer – Organisational

Transformation, in consultation with the Corporate Procurement Team, and reasons for the decision taken must be recorded.

12. PUBLICITY

- 12.1 The Council has a duty to ensure that all contract opportunities are given a degree of advertising which is sufficient to enable open competition and meet the principles of fairness, equal treatment, non-discrimination, and transparency.
- 12.2 All potential contracts with an Estimated Value greater than £45,000, must be notified in the first instance to Corporate Procurement in order that details may be logged and a unique contract reference allocated (a proforma is available on the Council's HUB). The contract reference must be used on all correspondence during the life of the contract. No other contract reference must be used.
- 12.3 Information on all contract opportunities relating to Contracts over £45, 000 in value will be displayed on the Council's website within the Procurement area and in the Public Contracts Scotland ("PCS") website hosted by the Scottish Government in order to be accessible to all interested parties. All contract opportunities above OJEU Thresholds will automatically be forwarded to the Official Journal of the European Union when registered on PCS. It essential to forward the details of a procurement to PCS at the earliest opportunity.

13. COUNCIL AUTHORITY

- 13.1 Subject to Standing Order 13.2, no tender shall be invited or contract entered into for the provision of supplies, provision of services, or the execution of works for the Council unless:
- 13.1.1 the estimated expenditure is included either generally or specifically in the revenue or capital budgets approved by the Council; or
- 13.1.2 the estimated expenditure is provided by a third party and has been approved by the Council.
- 13.2 Notwithstanding Standing Order 13.1, subject to the prior approval of the appropriate Committee, tenders may be invited or contracts awarded in certain circumstances. For example, towards the end of the Council's financial year where, although the estimated expenditure has not been approved by the Council in advance, inviting a tender or awarding a contract will facilitate the completion of Council projects or the delivery of services. This Standing Order

does not however dispense with the requirement to comply with the other requirements set out in Standing Orders and legislative provisions.

14. ADVERTISING OF CONTRACT OPPORTUNITIES

- 14.1 The advertising of contract opportunities from the Council is mandatory for all contract opportunities above £45,000 in value unless (i) a Waiver has been obtained (ii) the contract is exempt from these Standing Orders pursuant to Standing Order 5; or (iii) the contract is a Social Care Contract with a value below the relevant OJEU Threshold.
- 14.2 Advice must be taken from the Corporate Procurement Team in respect of the manner of publication.
- 14.3 Without prejudice to Appendix 1 for contracts below £45,000 in value, advertising may be required on an individual contract basis dependent on value/complexity of the procurement.
- 14.4 Any advert placed in the Councils' Buyers Profile for a contract opportunity above £45,000 will automatically be lodged by Corporate Procurement in the Public Contracts Scotland ("PCS") website hosted by the Scottish Government.

15. SELECTION CRITERIA

15.1 General

The appropriate Executive Officer, in consultation with the Corporate Procurement Manager and the Legal Manager will set the selection criteria for a procurement exercise taking account of the applicable requirements of Procurement Law and any guidance as the Chief Solicitor and Monitoring Officer and/or Executive Officer - Organisational Transformation consider appropriate.

15.2 Mandatory Exclusions

- 15.2.1 The appropriate Executive Officer, in consultation with the Corporate Procurement Manager and the Legal Manager, must apply the mandatory exclusions as are applicable in accordance with Procurement Law to exclude a bidder from a procurement exercise.
- 15.2.2 The appropriate Executive Officer, in consultation with the Corporate Procurement Manager and the Legal Manager may, in exceptional circumstances for overriding reasons relating to the public interest such as public health or protection of the environment, disregard any of the mandatory exclusion grounds when making a decision on the selection of a bidder.

15.3 Discretionary Exclusions

The appropriate Executive Officer, in consultation with the Corporate Procurement Manager and the Legal Manager, may apply any discretionary exclusions as are applicable to a procurement in accordance with Procurement Law to exclude a bidder from a procurement exercise.

15.4 Self-Cleansing

Where a bidder is in a situation which may result in its exclusion from a procurement process, the appropriate Executive Officer may, in accordance with Procurement Law and in consultation with the Corporate Procurement Manager and the Legal Manager give the bidder the opportunity to provide evidence that it has taken sufficient and appropriate remedial action to demonstrate its reliability despite the existence of a relevant ground of exclusion.

15.5 ESPD

15.5.1 The Council must accept an ESPD as preliminary evidence in the form of a self-declaration that:

- (a) none of the mandatory or discretionary exclusion grounds apply to a tenderer;
- (b) if any of the mandatory or discretionary grounds apply the self-cleansing measures that have been taken; and
- (c) the tenderer meets the relevant selection criteria.

15.5.2 The appropriate Executive Officer in consultation with the Corporate Procurement Manager and the Legal Manager must set out the specific requirements and minimum standards in the contract notice and tenderers will respond using the ESPD.

15.5.3 The documents in support of the information provided in the ESPD can be requested by the Council at any time during a procurement exercise but in any event:

- (a) in an open tendering procedure must be requested and checked prior to award;
- (b) in a restricted tendering procedure, competitive procedure with negotiation, competitive dialogue or innovation partnership must be requested and checked prior to issuing invitations to submit tenders; and
- (c) in any procurement exercise where the appropriate Executive Officer, the Corporate Procurement Manager and/or the Legal Manager has a genuine concern that there is a risk to the effective and proper conduct of the procurement process.

- 15.5.4 Where the capability or capacity of a sub-contractor or members of a consortium will be relied on to meet the selection criteria in respect of economic and financial standing or technical and professional ability in any procurement process the appropriate Executive Officer in consultation with the Corporate Procurement Manager and/or the Legal Manager may decide to request a separate ESPD from those parties in accordance with Procurement Law.

16. AWARD CRITERIA

16.1 Award Criteria

- 16.1.1 The award of all contracts with an Estimated Value above £45,000 shall be made on the basis of the most economically advantageous tender.
- 16.1.2 The appropriate Executive Officer, in consultation with the Corporate Procurement Manager and the Legal Manager will set the award criteria for a procurement exercise taking account of the applicable requirements of Procurement Law and any guidance as the Chief Solicitor and Monitoring Officer and/or Executive Officer – Organisational Transformation consider appropriate.

17. ABNORMALLY LOW TENDERS

- 17.1 Where a tender appears, in the opinion of the appropriate Executive Officer in consultation with the Corporate Procurement Manager and the Legal Manager, to be abnormally low having considered all factors which may affect price or costs and the effective delivery of the contract he must require a tenderer to explain the low tender.
- 17.2 A tender must be rejected as being abnormally low if:-
- 17.2.1 the appropriate Executive Officer, in consultation with the Corporate Procurement Manager and the Legal Manager, is not satisfied that the evidence supplied explains the low level of the tender; or
- 17.2.2 it has been established that the tender is abnormally low because it does not comply with environmental, social or labour law.
- 17.3 In deciding whether to exclude an abnormally low tender the appropriate Executive Officer must comply with any guidance issued by the Scottish Government and any guidance and requirements as the Chief Solicitor and Monitoring Officer and/or the Executive Officer – Organisational Transformation deem appropriate.

18. SOCIAL CARE CONTRACTS

- 18.1 Whilst the objective of Social Care Contracts is to secure and regulate service arrangements to meet the needs of individual Service Users, Officers must also meet legal and audit requirements with respect to Procurement and the achievement of Best Value.
- 18.2 Procuring Social Care Contracts is a complex area and as such it requires special consideration within the Council's overall approach to procurement. This approach must recognise that the quality and availability of these services can have a significant impact on the quality of life and health of people who use these services.
- 18.3 For these reasons, these types of services are often purchased differently to other services. The procurement of Social Care Contracts shall, as appropriate, be subject to:
- 18.3.1 the "light touch regime" detailed in Procurement Law;
 - 18.3.2 these Standing Orders;
 - 18.3.3 complying with any such guidance as the Chief Solicitor and Monitoring Officer and/or Executive Officer – Organisation Transformation considers appropriate; and
 - 18.3.4 (if the Social Care contract has a value below the relevant OJEU threshold) the terms of Appendix 4.

19. TENDER/CONTRACT DOCUMENTATION

19.1 Tender Documentation

Every set of tender documents issued shall specify as a minimum, where possible and appropriate:

- 19.1.1 the value, nature, term and purpose of the contract for which tenders are invited;
- 19.1.2 the criteria and sub-criteria (with associated weightings) by which suppliers will be selected;
- 19.1.3 the criteria and sub-criteria (with associated weightings) by which tenders will be evaluated;
- 19.1.4 the last date and time when tenders will be received;
- 19.1.5 the required format for tenders;

- 19.1.6 the place or electronic address to which tenders are to be sent;
- 19.1.7 the period during which the tender shall remain valid and open for acceptance;
- 19.1.8 that the Council reserves the right to accept a tender other than the most economically advantageous tender, to accept part of a tender, or to accept no tender at all;
- 19.1.9 that any query or request for additional information from a supplier invited to tender for a contract, in relation to the contract documentation or any other aspect of the contract, shall be answered by the officer responsible for the tender/contract documentation in consultation with the Corporate Procurement Manager and such other officers as considered necessary. Any information given to a supplier in response to such a query or request shall also be given to all other suppliers who have been invited to tender for the contract. A full written record shall be kept of any such query or request for additional information and of the response given; and
- 19.1.10 that tenders received after the closing date and time specified, shall not be considered.

19.2 Contract Documentation

All contract documentation shall include as a minimum, where possible and appropriate:

- 19.2.1 drawings, specifications and/or description of works, conditions of contract selection and evaluation criteria where appropriate, bills of quantities and schedules of rates in respect of the contract; and
- 19.2.2 the requirement that where there is a recognised British, European or International standard, applicable to any contract or goods or materials supplied as part of a contract, which is current at the date of tender, the contract shall require that the goods or materials, or services to be used or supplied, and all works, meet as a minimum the requirement of that standard or equivalent.

19.3 Contract Terms and Conditions

All contract terms and conditions must be approved in advance of agreement by the relevant Executive Officer and the Legal Manager. As both a guide and a minimum, contract terms shall include the following where possible and appropriate:

- 19.3.1 where deemed appropriate by the relevant Executive Officer and the Legal Manager, a clause requiring the payment of liquidated and ascertained damages. Such damages will be a genuine pre-estimate of any loss anticipated by a delay and must be calculated by or on behalf of the appropriate Executive Officer prior to issue of the tender and included in the contract conditions;
- 19.3.2 where a contract is estimated to exceed £500,000 in value or amount or in any other circumstance deemed appropriate by the appropriate Executive Officer in consultation with the Chief Solicitor and Monitoring Officer, the Council may require security. Such security could include, but not be limited to, a guarantee or bond. The terms of any security will be in a form approved by the Chief Solicitor and Monitoring Officer;
- 19.3.3 a provision prohibiting the supplier from transferring or assigning, directly or indirectly, to any person or persons any portion of the contract without the prior written consent of the Council. Where the value of the contract is not more than £45,000, the appropriate Executive Officer may give the required consent. Where the value of the contract is more than £45,000 the Chief Solicitor and Monitoring Officer and/or the Executive Officer – Organisational Transformation may give the required consent. All such transfers or assignments may only be affected following consent of the Chief Solicitor & Monitoring Officer and consultation with both the Corporate Procurement Manager and Legal Manager;
- 19.3.4 a clause entitling the Council to cancel the contract and to receive from the contractor the amount of any loss resulting from such cancellation if the contractor or any of their representatives (whether with or without the knowledge of the contractor) shall have practised collusion in tendering for the contract or any other contract with the Council or shall have offered, promised or given to the Council or any other public body or any person employed by or on behalf of the Council or any other public body any financial or other advantage to induce a person to perform improperly or to reward a person for the improper performance of a relevant function of activity in relation to the obtaining or carrying out the contract or any other contract with the Council or any other public body;
- 19.3.5 a clause requiring that the supplier provides full details of the following documents where current editions have not already been provided to the Council:
- (a) Equality Act 2010 policies and procedures;
 - (b) health and safety policies and procedures
 - (c) environmental and sustainability policies and procedures

- (d) business continuity management plan and procedures
- (e) financial accounts for past 3 years, or such shorter period as may be reasonable having regard to the period of time which the supplier has been in existence;

19.3.6 where a contract relates to the discharge of a Council function, a clause requiring the supplier and all sub-contractors to discharge that function in a manner which complies by the Equality Act 2010 and all other relevant statutory obligations in relation to equalities which apply in Scotland or the UK or their EU equivalents and that the supplier will indemnify the Council against any and all claims that may be made against the Council in this respect which is caused by, or arises out of, the contract or any actions or omissions of the supplier under the contract;

19.3.7 where appropriate, as determined by the Legal Manager a clause requiring the supplier and all sub-contractors to comply with the requirements of the Human Rights Act 1998 in so far as they are carrying out a function of the Council and that the supplier will indemnify the Council against any and all claims that may be made against the Council in this respect which is caused by, or arises out of, the contract or any actions or omissions of the supplier under the contract;

19.3.8 conditions relating to the performance of the contract that are reasonably necessary to ensure that the supplier and all sub-contractors comply with environmental, social and employment law provided that such conditions:

- (a) are linked to the subject matter of the contract;
- (b) are indicated in the procurement documents or call for competition

19.3.9 a clause allowing the Council to terminate the contract where:

- (a) the contract has been subject to substantial modification which would have required a new procurement exercise in accordance with Standing Order 29.
- (b) the contractor at the time of the award was subject to one of the mandatory grounds of exclusion in the European Procurement Regulations or the Reform Act Regulations 2016 and should have been excluded from the procurement exercise;
- (c) the contract should not have been awarded to the contractor in view of a serious infringement of obligations under the EU Treaties and Directives that has been declared by the European Court of Justice in a procedure under Article 258 of the Treaty on the Functioning of the EU;

19.3.10a clause requiring the contractor to be insured by an insurance company approved by the Council or to demonstrate self-insurance to the satisfaction of the relevant Executive Officer against:

- (a) liability at common law and/or under any legislation including but not restricted to liability under Employer's Liability Compulsory Insurance;
- (b) liability to third parties;
- (c) any relevant professional indemnity cover; and
- (d) any other matters relevant to the contract being entered into, to such levels as may be specified from time to time by the Legal Manager and Corporate Procurement Manager, having regard to the subject matter, or by law;

19.3.11 a condition requiring:

- (a) certificates of insurance to be exhibited to the Council's satisfaction prior to the commencement of that contract; and
- (b) on demand, any renewal receipts or current certificates of insurance shall be exhibited to the Council's satisfaction at any time;

19.3.12a clause requiring all conditions to be observed by contractors in terms of these Standing Orders and in the contract itself to apply equally to all sub-contractors and all contractors shall be responsible for the compliance with such conditions by such sub-contractors;

19.3.13a clause outlining the Council's position in regard to the Freedom of Information (Scotland) Act 2002 and the release of contract information; and

19.3.14 where the contract involves the Processing of Personal Data (both terms as defined in the General Data Protection Regulations (2016/679) ("GDPR")), appropriate clauses setting out the Council's position;

and

19.3.15 any other provision deemed appropriate by the Legal Manager.

It will be the responsibility of the appropriate Executive Officer to ensure that such documents meet the Council's requirements, and those requirements, plans, policies and procedures are implemented and complied with by the supplier.

20. METHOD OF PROCUREMENT

20.1 General

Subject to the other provisions of these Standing Orders, tenders for contracts shall be advertised in accordance with Standing Order 14 unless: (i) a Waiver has been granted; or ii) the contract is a Social Care Contract below the OJEU Threshold and the circumstances set out in Appendix 4 apply.

21. MINIMUM NUMBERS OF SUPPLIERS

- 21.1 In the case of procurement with a value of less than £45,000 the requirements set out in Appendix 1 must be met.
- 21.2 In the case of contracts above £45,000 in value the minimum number of suppliers invited to tender must comply with Procurement Law.

22. SUBMISSION OF TENDERS

- 22.1 In relation to tenders for contracts which are being procured through electronic processes, the tender submission must be fully compliant with the format and timescales as stipulated within the tender document and associated instructions. The Public Contracts Scotland advertising and Tender portals shall be used to facilitate electronic tendering. Tenders submitted by electronic means must be signed in accordance with these Standing Orders and the format stipulated within the tender document and associated instructions or will be excluded.
- 22.2 Where e.Tendering is being used the following requirements regarding the verification and authentication of the submission and the signature of the person making the submission must be complied with:
- 22.2.1 the signature of the person making the submission must be an authorised signatory of the applicant/tenderer; and
- 22.2.2 a physical signature of the successful tenderer(s) will be required prior to the award of the contract.

23. OPENING OF TENDERS

- 23.1 Tenders returned via electronic means, shall be opened by the relevant nominees following the closing date as advertised on the electronic post box. Sequential opening must be adopted for all tendering processes.

24. LATE TENDERS

- 24.1 Subject to the provisions of Standing Order 31 in relation to electronic tendering in relation to late tenders, any tender submitted after the closing date and time specified in the tender documents shall not be opened.
- 24.2 Tenders which are not submitted by the specified date and time must not be opened, and the circumstances for the late receipt of the tender must be immediately investigated. If the late submission is due to factors within the control of the Council the matter shall be referred to the Chief Solicitor & Monitoring Officer for a decision on whether the tender should be accepted for opening.
- 24.3 If the circumstances show the late submission was outwith the control of the Council, and the owner of the electronic tender platform, then the tender shall not be accepted.

25. CONTRACT REGISTER

- 25.1 A contract register shall be kept by the Corporate Procurement Manager to record details of all awarded contracts above £45,000 (including Call-Off Contracts) and Framework Agreements established by the Council in accordance with Procurement Law (the “**Contract Register**”).
- 25.2 The Contract Register shall include the following details for each awarded contract:
- 25.2.1 the date of award;
 - 25.2.2 the name of the contractor;
 - 25.2.3 the subject matter;
 - 25.2.4 the estimated value;
 - 25.2.5 the start date;
 - 25.2.6 the end date provided for in the contract (disregarding any option to extend the contract) or, where there is no date specified, a description of the circumstances in which the contract will end; and
 - 25.2.7 the duration of any period which the contract can be extended.

- 25.3 The Contract Register must be made publicly available on the internet and by such other means as considered appropriate
- 25.3 Details of the outcome of tender processes for contracts with a value in excess of relevant OJEU Threshold shall be reported quarterly to Council.

26. CLARIFICATIONS

- 26.1 All tenders shall be subject to checking by the Corporate Procurement Team
- 26.2 Between the last date and time for the receipt of tenders and the date on which a decision is taken as to which tender, if any, is to be accepted, the Corporate Procurement Manager, may instruct contact with a supplier in cases where such contact may be necessary to validate or clarify the terms of the tender or to effect any necessary adjustments but for no other purpose. A full written record shall be kept of all such communications and shall be retained with the original tender
- 26.3 Notwithstanding the other terms of this Standing Order, where examination of the tenders reveals obvious errors or discrepancies which affect the tender figures, these errors shall be dealt with in the following manner: -
- 226.3.1 any arithmetical errors will be rectified by the appropriate officer checking the tenders and the amount of the tender shall be held to be the amount of the tender so rectified and the supplier informed in writing of the corrected amount;
- 26.3.2 where there is an obvious and genuine error in rates occurring, the supplier will be given the opportunity to confirm the correct rates or withdraw the tender. This procedure must be undertaken in writing. Where the supplier confirms the correct rates these shall be incorporated into the tender amount and the supplier will be informed in writing of the corrected amount.
- 26.4 Once a decision is taken in respect of the nominated supplier, where it is deemed necessary by the appropriate Executive Officer in consultation with the Corporate Procurement Manager and the Legal Manager, post tender negotiation may be carried out with the nominated supplier provided such negotiation does not in any way distort competition. In particular the post tender negotiation must not either compromise the evaluation of tenders in accordance with the criteria specified in the tender documents or be so significant as to amount to a new tender requiring a new procurement exercise. A full written record shall be kept of all such negotiations and be retained with the original tender.

- 26.5 Post-tender negotiation must be conducted by the Corporate Procurement Team, in consultation with Legal Services for all tenders in excess of £45,000. A Procurement Guidance Note is available in this regard.
- 26.6 All clarifications must form part of the relevant contract. For contracts above £45,000 the Corporate Procurement Manager must inform the Legal Manager of the detail of all clarifications and other relevant matters when instructing acceptance of an offer and conclusion of a contract in accordance with Standing Order 28.

27. CONTRACT AWARD STANDSTILL PERIOD

- 27.1 Subject to Standing Order 27.4, all contracts shall be the subject of a contract award standstill period prior to the issue of an acceptance letter or signing of a contract.
- 27.2 As soon as possible after a decision has been taken on a contract award, the Council must give written notification to all suppliers confirming the decision and giving the following information:
- 27.2.1 the criteria for the award of the contract;
 - 27.2.2 the score(s) obtained by the supplier receiving the notification;
 - 27.2.3 the name and score of the supplier selected to be awarded the contract / to become a party to the Framework Agreement;
- and in the case of an unsuccessful supplier;
- 27.2.4 a summary of the reasons why the suppliers' tender was unsuccessful;
 - 27.2.5 the characteristics and relative advantages of the selected suppliers' tender; and
 - 27.2.6 a precise statement of the standstill provisions, including the date on which the standstill period concludes.
- 27.3 The standstill period shall be fifteen calendar days and shall commence one day after the issue of written notification advising the unsuccessful suppliers of the outcome, and the successful suppliers of their nomination. This period may be reduced to ten days if the intimation is transmitted by fax or by electronic means. If the standstill period ends on a day which is not a normal working day then the standstill period will be extended to include the next working day.
- 27.4 At the conclusion of the standstill period, provided there are no sustainable objections to the Council's decision, the contract award shall proceed. If an objection or clarification to the Council's decision is received the relevant Executive Officer, in consultation with the Chief Solicitor and Monitoring

Officer and the Legal Manager and Corporate Procurement Manager, may consider suspending the award of a contract until the objection has been dealt with to the Council's satisfaction.

- 27.5 For contracts below the relevant OJEU Threshold, the relevant Executive Officer, with approval of the Chief Solicitor and Monitoring Officer, may consider not observing a standstill period (provided no standstill period has been provided for in the tender documentation).

28. ACCEPTANCE OF TENDERS

- 28.1 The terms of this Standing Order are subject to the provisions of Appendix 1.
- 28.2 The Council shall not be obliged to accept any tender and this shall be stated in the procurement documents.
- 28.3 Where the value of a contract is estimated at below OJEU Threshold and it is found that the value of the tender recommended for acceptance is, after checking, above the OJEU Threshold, the contract shall not be progressed, the tender process will be brought to a close without award and the tender re-issued following the relevant OJEU process.
- 28.4 Where the value of a contract is estimated above the OJEU Threshold and it is found that the value of the tender recommended for acceptance is, after checking, less than the OJEU Threshold, the contract shall be processed on the basis of the higher value.
- 28.5 If, after receipt of tenders, the amount expected for the goods, works or services exceeds the anticipated spend for such a contract, the appropriate Executive Officer shall review the projected overspend and determine whether to continue with the tender process or abandon the tender. If the Executive Officer determines to proceed with the tender they must justify their decision in writing. If the Executive Officer wishes to abandon the tender the process in Standing 28.6 shall be followed.
- 28.6 If the appropriate Executive Officer, in consultation with the Corporate Procurement Manager and the Legal Manager, recommends that none of the tenders received should be accepted they shall consult with the Chief Solicitor and Monitoring Officer. If the Relevant Executive Officer and the Chief Solicitor and Monitoring Officer accept the recommendation, the suppliers shall be notified accordingly and advised of the reasons.

- 28.7 Where the revised estimate of cost for a contract, after receipt of the tenders, exceeds the amount provided in the budget, no tender shall be accepted unless the additional sum has received the approval of the appropriate Committee. Where a supplementary budget is necessary, a report to the Policy and Resources Committee will be required.
- 28.8 In this Standing Order, any reference to a tender being the most economically advantageous, means the tender which achieves the highest score following application of the evaluation criteria specified in the tender documents.
- 28.9 Prior to issuing a contract acceptance a process must be followed to evaluate the offers received, clarify any unclear aspect, select a nominated supplier, and carry out any post tender negotiation, all in accordance with Procurement Law.
- 28.10 The tender documents from the unsuccessful suppliers must be retained and securely filed with the Corporate Procurement Team for future reference.
- 28.11 Before approval to award is sought a completed Authorisation to Award Form along with the original tender documents and any clarifying or other documents, must be assembled and sent to Legal Services for review and legal approval.
- 28.11 When approval to award is received from Legal Services, the Corporate Procurement Manager will advise bidders of the outcome in accordance with Procurement Law and commence any standstill period.
- 28.12 For contracts above £45,000, the Corporate Procurement Team will then issue the Legal Manager with a memorandum instructing acceptance of the offer proposed to be accepted. Steps will then be taken to conclude the contract by whatever means the Chief Solicitor & Monitoring Officer deems appropriate.

29. WAIVER OF CONTRACT STANDING ORDERS

CONTRACTS WITH A VALUE OF OR IN EXCESS OF £45,000

- 29.1 The requirement to comply with any provision of these Standing Orders may be waived in accordance with the waiver approval process detailed in Appendix 2 if, on considering a written report by the appropriate officer(s) in the appropriate form, the Waiver is considered (by the officers referred to in Appendix 2 or the Policy and Resources Committee or the Council, as appropriate) to be in the Council's best interests having regard to each of the following, as appropriate.
- 29.1.1 where the request is to waive the requirement to advertise a contract, the availability of the negotiated procedure without competition;

- 29.1.2 Best Value;
 - 29.1.3 any potential risk of successful legal challenge;
 - 29.1.4 the principles of transparency, equal treatment, non discrimination and proportionality
 - 29.1.5 the advice of the Chief Solicitor and Monitoring Officer; and
 - 29.1.6 any impact upon services users
- 29.2 If it is requested that these Standing Orders (or part thereof) are waived in accordance with this Standing Order, a Waiver Form should be used unless Committee or Council approval is required. In line with Procurement Law, lack of sufficient planning and/or internal process delays will not constitute circumstances justifying a Waiver.

Negotiated Procedure Without Competition

- 29.3 Where a Waiver Form requests that a contract is not advertised, the negotiated procedure without competition must be the first route considered and the Waiver Form should set out the reasons that the requester believes this is available. Only where the relevant approving officers are of the view that this is not available or appropriate, in accordance with Standing Order 29.4, will procuring without advertisement be considered separately having regard to the other considerations referred to in Standing Order 29.1. Where such contract has a value in excess of the relevant OJEU threshold this will be considered by the Policy and Resources Committee of full Council. In all cases, approval to waive these Standing Orders or any aspect thereof will only be given in the most limited circumstances and having regard to the evidence provided to support the consideration in Standing Order 29.1.
- 29.4 In considering whether the negotiated procedure without competition is available and appropriate the relevant approving Executive Officers must consider (i) whether the circumstances set out in Standing Order 29.5 exist; (ii) legal advice and (iii) each of the matters in set out in Standing Order 29.1.

Circumstances where the Negotiated Procedure Without Prior Publication is Permitted

- 29.5 In respect of contracts with a value in excess of £45,000, negotiated procedure without prior publication will only be permitted where the appropriate Executive Officer, the Chief Financial Officer, the Executive Officer – Organisational Transformation and the Chief Solicitor and Monitoring Officer are satisfied that the following criteria apply:
- 29.5.1 where as a result of the publication of a contract notice no tender, no suitable tenders, no requests to participate or no suitable requests to

participate has been received provided that the initial conditions of the contract are not substantially altered; or

- 29.5.2 where the appropriate Executive Officer, the Chief Financial Officer, the Executive Officer – Organisational Transformation and the Chief Solicitor and Monitoring Officer are satisfied that the works, services or supplies can be supplied only by one suitable contractor for any of the following reasons:
- (a) the aim of the procurement is the acquisition of a unique work of art or artistic performance; or
 - (b) competition is absent for technical reasons; or
 - (c) the protection of exclusive rights including intellectual property rights, but in the cases of (b) and (c) no alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement; or
- 29.5.3 where in the case of a supplies contract for additional deliveries by the original supplier intended as a partial replacement of supplies of installations or as the extension of existing supplies or installations the appropriate Executive Officer, the Chief Financial Officer, the Executive Officer – Organisational Transformation and the Chief Solicitor and Monitoring Officer are satisfied that a change of supplier would oblige the Council to acquire supplies having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance subject to the duration of the contract not exceeding 3 years unless exceptional circumstances exist; or
- 29.5.4 where in the case of a contract for the supply of goods, the goods are manufactured purely for the purpose of research, experiment, study or development, but the contract awarded shall not include quantity production to establish their commercial viability or to recover research and development costs; or
- 29.5.5 where in the case of a supplies contract, in the opinion of the appropriate Executive Officer, the Chief Financial Officer, the Executive Officer – Organisational Transformation and the Chief Solicitor and Monitoring Officer, it is in the interests of the Council to take advantage of a particularly advantageous terms from a supplier which is definitively winding up its business activities or from a liquidator in an insolvency procedure, an arrangement with creditors or a similar procedure under national laws or regulations; or

- 29.5.6 where in the case of a supplies contract the supplies are quoted and purchased on a commodity market; or
- 29.5.7 where in the case of a services contract it follows a design contest organised in accordance with the European Procurement Regulations and is to be awarded under the rules provided for in the design contest to the winner or one of the winners of the design contest; or
- 29.5.8 where:
- (a) it is new works, services or both consisting of the repetition of similar works or services entrusted to the original contractor provided such works or services are in conformity with the project for which the original contract was awarded;
 - (b) project indicated the extent of the possible works or services and the conditions under which they would be awarded;
 - (c) the possible use of this procedure was disclosed in the procurement documents and the total estimated cost of the additional works or services was taken into account in determining if the procurement exercise would be a Regulated Procurement; and
 - (d) no more than 3 years has passed from the conclusion of the original contract;
- 29.5.9 in the view of the appropriate Executive Officer, the Chief Financial Officer, the Executive Officer – Organisational Transformation and the Chief Solicitor and Monitoring Officer, the contract is required so urgently that the use of such procedure is strictly necessary (for example, for the safety and protection of life and/or property), provided that such urgency has not arisen from circumstances attributable to the Council. In such circumstances a report will be submitted to the next meeting of the Policy and Resources Committee detailing the circumstances justifying the use of this exemption and the action taken.
- 29.6 Where the appropriate Executive Officer, the Chief Financial Officer, the Executive Officer – Organisational Transformation and the Chief Solicitor and Monitoring Officer have authorised the use of the procedure detailed in Standing Order 29.5 with a named supplier and it is decided to award the contract to that supplier the contract may be awarded without obtaining the prior approval of the Committee for the contract award. The appropriate Executive Officer shall as soon as practicable after the contract award report to the appropriate Committee the outcome of the negotiations and the contract award.
- 29.7 In all cases where the procedure detailed in Standing Order 29.5 has been used, a full written record of all contacts, discussions and communications with the

prospective supplier(s) shall be kept by the appropriate Executive Officer together with a full explanation as to why it was considered appropriate to use the Negotiated Procedure Without Prior Publication.

- 29.8 Details of all such contracts awarded must be publicly advertised on the Council's Contract Register.
- 29.9 Where the value of a contract is greater than OJEU and the negotiated procedure does not apply it shall go to Committee or full Council as appropriate. The Chief Solicitor and Monitoring Officer can also determine that any Waiver form for any value is approved by Committee or full Council as appropriate.

USE OF WAIVER FOR CONTRACTS OF ANY VALUE

- 29.10 It should be noted that waiving these Contract Standing Orders may be in breach of Procurement Law and pose significant risk to the Council. Following the procedure herein may not provide protection from a legal challenge and simply allows consideration of other imperatives. Consequently, Waivers should only be used in exceptional circumstances. If a Waiver is requested or relied upon inappropriately or without full justification then this may result in disciplinary action against the relevant officers.
- 29.11 A record of the decision approving a Waiver must be kept by the relevant decision maker and a copy of such approved Waiver provided to the Corporate Procurement Manager who shall, where appropriate, make an entry in the Contract Register
- 29.12 Where a Waiver, Council or Committee decision or other procedure allows the direct award of a contract which exceeds £45,000 then a contract award notice must be recorded on the Public Contracts Scotland portal and the relevant Executive Officer must notify the Corporate Procurement Manager of the details to allow entry on the Contract Register and any other appropriate register,
- 29.13 Where these Standing Orders have been waived in accordance with this Standing Order 29 the relevant Executive Officer shall inform the Corporate Procurement Manager and ensure appropriate plans are made for future tendering requirements and/or putting a contract in place where appropriate.

30. VARIATIONS TO CONTRACT PRICE

- 30.1 If there is a proposal to vary an existing contract with the effect (i) that the original contract price will increase by more than 10% for goods and services or 15% for works, in aggregate; or (ii) the contract price will increase by more

than £50,000 in aggregate or (iii) the modification alters the overall nature of the contract, then such variation may only be permitted in very limited circumstances in line with legislation and the approval of the appropriate Executive Officer, the Chief Financial Officer, the Executive Officer – Organisational Transformation and the Chief Solicitor and Monitoring Officer, must be obtained before the proposed variation is agreed. An Authorisation to Vary Form should be used for this purpose.

- 30.2 This provision will apply (a) whether the proposed variation alone or whether the proposed variation in conjunction with previous variations of the contract results in the contract price being increased by more than 10% or 15% as relevant or £50, 000 (whichever is lower) in aggregate and (b) whether or not previous variations to the contract price have been agreed by the appropriate Committee or the appropriate officers referred to in Standing Order 30.1.
- 30.3 Contracts may be awarded subject to standard terms and conditions (for example ICE standard contract terms) which may contain mechanisms for dealing with requests by a contractor for increases in a contract sum due to specified events. The relevant Executive Officer shall submit an Authorisation to Vary Form for approval to the Chief Financial Officer, the Executive Officer – Organisational Transformation and the Chief Solicitor and Monitoring Officer, in relation to any such contract where any approved increases in the contract sum collectively exceed the original contract sum by more than the lower of (i) 10% or 15% (as relevant) and (ii) £50,000 or where such modification alters the overall nature of the contract.

31. ELECTRONIC TENDERING

- 31.1 This Standing Order 31 shall apply to any tendering procedure or contract entered into using electronic means, hereinafter referred to as e.Tendering. This does not apply to the procurement of contracts through Quick Quote.
- 31.2 Where a tender exercise is to be conducted electronically, the tender documents for that exercise shall state:-
- 31.2.1 that e-tendering will be used in the procurement and submission of tenders will be subject to the supplier registering as a user of the Public Contracts Scotland Portal or such other system approved by the Council;
- 31.2.2 the last date and time when tenders will be received, noting in particular that any such timeous submission of an electronic tender requires the tender to have been submitted and uploaded in full onto the Public Contracts Scotland Portal or other system approved by the Council

before the closing date and time and that partial submissions will not be accepted;

31.2.3 that submission of hard copy tenders, or electronic submission of tenders other than through the Public Contracts Scotland portal or other system approved by the Council is not permitted without the Council's express prior written consent, which consent shall only be issued (at the Council's sole discretion) in exceptional circumstances;

31.2.4 the website/ system details/ electronic address through which the electronic tender is to be submitted; and

31.2.5 that while tenders must be submitted electronically, the successful tenderer will, where requested by the Council, require to submit original hard copies of the tender certificates (specifically, the form of tender, non-collusion certificate, and any other certificates included in the Invitation to Tender) before contract award.

Verification and Authentication.

31.3 The Executive Officer – Organisational Transformation and the Corporate Procurement Manager or their nominee shall impose any specific requirements regarding verification and authentication of the electronic tender submission and the signature of the person making the submission as may be considered reasonably necessary.

31.4 Where e.Tendering is being used the following requirements regarding the verification and authentication of the submission and the signature of the person making the submission must be complied with:

31.4.1 the signature of the person making the submission must be an authorised signatory of the applicant/tenderer; and

31.4.2 a physical signature of the successful tenderer(s) will be required prior to the award of the contract.

31.5 Any tender document issued using e.Tendering must state whether the Council has any specific requirements relating to authentication or verification of the tender submission or of the signature of the person making the submission.

Receipt and Custody

- 31.6 No tender submitted using e.Tendering will be considered unless it is received in the format required by the Council in the tender documents and at the electronic address specified by the Council and unless it is received prior to the deadline for the receipt of tenders, as stated in the tender documents.
- 31.7 The Corporate Procurement Manager shall ensure that each tender is kept unopened in a single secure electronic mailbox which cannot be opened before the deadline for the receipt of tenders.
- 31.8 The Corporate Procurement Manager shall ensure that for each procurement project, the system used shall keep and, if required, produce a record showing the time and date of receipt of all tenders received and contracts awarded.
- 31.9 The relevant Executive Officer, in consultation with the Corporate Procurement Manager and/or the Legal Manager may extend the deadline for the submission of bids but only if this is notified to all potential tenderers before any bids are opened by the Council, and the return date and time has not passed.

Award of Contract

- 31.10 Following the evaluation of tenders and the notification to suppliers of the outcome of the tender process, the final contract shall be entered into between the Council and the successful tenderer either through (i) the completion of a written contract executed in accordance with Scots Law (unless otherwise agreed by the Chief Solicitor & Monitoring Officer) and signed on behalf of the Council by the Legal Manager, or Chief Solicitor & Monitoring Officer, or the Chief Executive or (ii) by the issuing of a letter of award by the Legal Manager, or Chief Solicitor & Monitoring Officer, or the Chief Executive and the return of that letter duly executed by the tenderer signifying their acceptance of the appointment on the terms and conditions stated therein. The Legal Manager shall determine which of these options should be adopted.

32. PROCUREMENT STRATEGY

The Corporate Procurement Manager will prepare an annual Procurement Strategy in accordance with the requirements of Procurement Law and guidance published by the Scottish Government.

33. GRANTS

- 33.1 Grants from the Council to other organisations may not be subject to the full application of Procurement Law. Advice must be taken on this and to the allocation

of grants from the Corporate Procurement Manager and the Legal Manager. In addition, all grants must be subject to the requirement to:

33.1.1 secure Best Value;

33.1.2 comply with the Council's Financial Regulations; and

33.1.3 adhere to the values of fairness, transparency, equality of treatment and non-discrimination.

34. STATE AID

34.1 State Aid refers to any assistance or subsidy given by a member state of the EU (This includes local authorities because they are part of the national apparatus of government) to any organisation (legally known as an undertaking), which distorts or threatens to distort competition.

34.2 The beneficiary of State Aid is always an enterprise but the beneficiary may not be simply the enterprise that receives the funding – it can be any enterprise that receives a benefit from that funding.

34.3 The EC controls State Aid to ensure competitiveness and to emphasise development with innovation rather than forms of subsidised trading. Regulations are in place to achieve a fair commercial environment throughout the EU.

34.4 It is the responsibility of the relevant Executive Officer to consider whether there could be any State Aid involved in a contract and guidance and advice must be sought from the Chief Solicitor and Monitoring Officer or her nominee(s).

35. CONFIDENTIALITY

35.1 All tender documentation, agreements or contracts shall not prohibit disclosure of information which would otherwise be disclosed in compliance with the Freedom of Information (Scotland) Act 2002 or the Environmental Information (Scotland) Regulations 2004 or any other legislation amending or replacing it or any guidance and/or codes of practice issued by the Scottish Information Commissioner in relation to such legislation.

35.2 No tender documentation, agreement or contract should contain a condition that restricts unjustifiably the disclosure of information held by the Council as a Scottish Public Authority in relation to the tender documentation, agreement or contract.

36. NON-COMPLIANCE

Any breach of these Standing Orders or Procurement Guidance Notes must be immediately reported within the line management structure and to the

Corporate Procurement Manager. Any failure to do so and/or to comply with these Standing Orders will be dealt with in accordance with the Council's fact finding and disciplinary procedures

37. PROCUREMENT GUIDANCE

Advice and assistance in regard to legal and procurement matters will be available through the Corporate Procurement Manager and Legal Manager.

APPENDIX 1 - CONTRACTS WITH A VALUE OF LESS THAN £45,000

1. INTRODUCTION

- 1.1 The provisions of this Appendix shall apply to all contracts for the supply of goods or materials, or for the provision of services or the execution of works, where the Estimated Value is not more than £45,000. Detailed Procurement Guidance Notes will be issued to support officers in this process.
- 1.2 All potential contracts with an Estimated Value below £45,000, must be notified in the first instance to Corporate Procurement in order that details may be logged and a unique contract reference allocated (a proforma is available on the Council's HUB). The allocated contract reference must be used on all correspondence during the life of the contract. No other contract reference must be used.
- 1.3 Quick Quote is an online formal quotation facility enabling the Council to obtain competitive quotes electronically for lower value requirements and is available for use for these contracts, where appropriate.

2. EXEMPTIONS

- 2.1 The following requirements shall be exempt from the provisions of the procedure described within this Appendix (but not from the requirement to seek Best Value or the requirement to comply with the Council's Financial Regulations):
 - 2.1.1 any requirement which is already the subject of a contract or framework agreement complying with the provisions of these Standing Orders; and
 - 2.1.2 any requirement which a Waiver has been obtained in respect of.
- 2.2 Immediately prior to entering into a contract where the Estimated Value is not more than £45,000, at least four competitive quotes in writing should be obtained where possible either via Quick Quote or such other means as is appropriate having regard to the circumstances

3. PROCEDURE

- 3.1 Subject to the exemptions detailed within these Standing Orders, where a contract for the supply of goods or materials, for the provision of services or the execution of works, with an Estimated Value within the monetary band specified within Paragraph 1.1 above is required four written quotations shall be invited.
- 3.2 Where appropriate, suppliers shall be selected from those registered for that category on the Public Contracts Scotland web portal and the selection shall not be restricted to existing suppliers. Otherwise, the relevant service may approach known suppliers for

a quote. As a minimum, wherever possible, two of the selected suppliers should be either (i) a small or medium sized enterprise with its principal place of business in East Dunbartonshire; or (ii) a supported business or factory being a service or establishment whose main aim is the social and professional integration of disabled or disadvantaged persons and where more than 30% of the workers are disabled or disadvantaged persons; or (iii) a new supplier that the Council has not worked with before.

- 3.3 Where the requirement is of a particularly specialised nature and less than four potential sources of supply can be identified, all qualifying suppliers shall be invited to submit quotations. A file note shall be maintained by the procuring service, providing an explanation as to why less than four suppliers have been invited. If the number of potential sources of supply is less than two, the advice of the Corporate Procurement Team should be obtained before the Quick Quote process is commenced.
- 3.4 It is an essential requirement that any Officers using Quick Quote must be registered on www.publiccontractsscotland.gov.uk. In addition, before using Quick Quote officers must have received procurement governance training on the procedure from the Corporate Procurement Team.

4. INVITATIONS TO QUOTE

- 4.1 Every invitation to quote on Quick Quote (an “**Invitation to Quote**”) shall contain as a minimum:-
- 4.1.1 a full description of the goods, works or services required;
 - 4.1.2 information about how the Council will pay for the goods, works or services;
 - 4.1.3 details of the level of service to be provided under the contract, including, but not restricted to, term of contract, timescales for delivery or performance and any performance measures set by the Council;
 - 4.1.4 the evaluation criteria to be used for the award of the contract;
 - 4.1.5 the Council’s terms and conditions applicable to the contract;
 - 4.1.6 the appropriate level of insurance; and
 - 4.1.7 and a closing date for the receipt of quotes.
- 4.2 The timescale permitted for the return of quotations must be sufficient to allow all of those invited the same opportunity to respond.

5. RECEIPT OF QUOTATIONS

- 5.1 No quotation shall be considered unless it is received in the format required by the Council and by the deadline set for the receipt of quotations.
- 5.2 The deadline for the receipt of quotations may be extended by the procuring service but only if this is notified to all potential bidders before any bids are submitted.
- 5.3 The quotation post-box will be opened by the service and the Corporate Procurement Team via the unlock facility on the portal.

6. EVALUATION OF QUOTATIONS

- 6.1 Each quotation shall be evaluated in accordance with the criteria detailed in the relevant Invitation to Quote.
- 6.2 Where it is considered that, as appropriate to the evaluation criteria specified in the relevant Invitation to Quote, the offer lowest in price or that the most economically advantageous offer should not be accepted the prior approval of the Corporate Procurement Manager must be obtained before an alternative offer is accepted.

7. AWARD OF CONTRACTS

- 7.1 Once the evaluation process has been completed an award notification will be issued to the successful bidder following the process in Standing Order 28. This notification will be issued by the procuring service to the supplier using an approved template provided by the Corporate Procurement Team. The procuring service will also be responsible for intimating the outcome of the process to unsuccessful suppliers.

8. PUBLICATION OF AN AWARD NOTICE

- 8.1 Following the evaluation of quotations received and the selection of a successful supplier, an award notice shall be published on Quick Quote.

9 CANCELLATION OF A QUICK QUOTE EXERCISE

- 9.1 Where it has been decided not to progress to the award of the Quick Quote the exercise must be cancelled on the Quick Quote system with an explanatory note being provided.

10. AUDIT OF PROCEDURE.

- 10.1 In order to confirm that the Quick Quote procedure has been followed, confirmation and brief details of the Quick Quote reference and date should be added to the order text of any related purchase order.

11. GUIDANCE AND TRAINING.

- 11.1 Guidance and training on the use of the Quick Quote procedure will be provided by the Corporate Procurement Team.

APPENDIX 2 - WAIVER PROCEDURE

1. The procedure described in Standing Order 28 and below should be followed in respect of Waivers.
2. If a Waiver is sought in accordance with Standing Order 28, a draft of the relevant Form must be completed and sent to the Corporate Procurement Manager for approval of the content. Following such approval the draft form must be set on to the Legal Manager for approval of the content. Following such approval the finalised Form must be reviewed and signed by the relevant officers referred to below.
3. For procurements above the relevant OJEU Threshold where the Relevant Executive Officer, Chief Solicitor and Monitoring Officer, Chief Finance Officer and Executive Officer – Organisational Transformation (or the relevant Depute Chief Executive where circumstances require) do not consider that the negotiated procedure without publication is available and appropriate a draft committee or Council report must be prepared narrating the recommendation of relevant Depute Chief Executive and including advice from the Chief Solicitor and Monitoring Officer. The draft must be sent to the Corporate Procurement Manager for approval and then to the Legal Manager for approval. Following such approval the draft report should be sent to the Chief Solicitor and Monitoring Officer in accordance with normal committee report procedures.

Total Value of Contract	Approval Required From	Form Required
Between £45,000 and relevant OJEU threshold	Relevant Executive Officer, Chief Solicitor and Monitoring Officer, Chief Finance Officer and Executive Officer – Organisational Transformation	Waiver Form
Above the relevant OJEU threshold	Relevant Executive Officer, Chief Solicitor and Monitoring Officer, Chief Finance Officer and Executive Officer – Organisational Transformation except where the request is to waive the requirement to advertise a contract and each of such officers are not satisfied that the negotiated procedure without prior publication is available or appropriate, in which case approval is required from the Policy and Resources Committee or full Council, as appropriate.	Waiver Form or , where approval required from the Policy and Resources Committee or full Council, a Committee or Council Report narrating recommendation of relevant Depute Chief Executive and including advice from the Chief Solicitor and Monitoring Officer

The Chief Solicitor and Monitoring Officer may determine that approval of a Waiver Form for any value of contract is required from Committee or full Council. In which case a Committee or Council report will be required narrating recommendation of relevant Depute Chief Executive and including advice from the Chief Solicitor and Monitoring Officer.

APPENDIX 3 - FORMS

The following Forms are required pursuant to the requirements of these Standing Orders and can be obtained from the Corporate Procurement Team:

FORM	STANDING ORDER	FORM TITLE	APPROVAL REQUIRED FROM
Waiver Form	29	Approval to waive these Standing Orders or any part thereof.	Relevant Executive Officer Chief Financial Officer Executive Officer – Organisational Transformation Chief Solicitor and Monitoring Officer (or relevant Depute Chief Executive where circumstances require)
Authorisation to Award Form	28	Approval to award contracts	Relevant Executive Officer (or relevant Depute Chief Executive where circumstances require)
Authorisation to Vary Form	30	Variation to existing contract	Relevant Executive Officer Chief Financial Officer Executive Officer – Organisational Transformation Chief Solicitor and Monitoring Officer (or relevant Depute Chief Executive where circumstances require)
Authorisation to Collaborate at Contract Level	6	Collaborations	Relevant Executive Officer (or relevant Depute Chief Executive where circumstances require)

APPENDIX 4 - SOCIAL CARE CONTRACTS

TO FOLLOW