

# **EAST DUNBARTONSHIRE COUNCIL**

## **CONTRACT STANDING ORDERS**

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## **1. DEFINITIONS**

- 1.1 In these Contract 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;

**“Best Value”** has the meaning given in section 1 of the Local Government in Scotland Act 2003;

**“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 Social Work Officer”** means the Chief Social Work Officer (or the Depute Chief Social Work Officer in the event of the absence of the Chief Social Work Officer) of the Council for the time being and shall be taken to include any corresponding office or role 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 for the time being and shall be taken to include any corresponding office or role 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;

**“Contracting Authority”** has the meaning given in regulation 2 of the Public Procurement Regulations;

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

**“Contract Standing Orders”** means these Contract Standing Orders, including appendices;

**“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;

**“Council Employed Head of Service”** means the Head of Service employed by the Council for the time being and shall be taken to include any corresponding office or role known by any other description, or any substitute(s) authorised in terms of the Council’s Administrative Scheme;

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

**“Dynamic Purchasing System”** means an electronic system used for the purchase of commonly purchased supplies, services or works where the characteristics of those supplies, services or works, as generally available on the market, meet the Council’s requirements;

**“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;

**“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 Contract Standing Orders and detailed in Appendix 3;

**“GPA Threshold”** means the relevant threshold applying from time to time for application of the Public 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;

**“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;

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

**“Procurement Law”** means the Public Procurement Regulations, the Reform Act, the Reform Act Regulations 2016, any other Regulations made or guidance issued 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;

**“Public Procurement Regulations”** means the Public Contracts (Scotland) Regulations 2015, and any subsequent legislative amendments;

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

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

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

**“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 Public Procurement Regulations;

**“SPD”** means the Single Procurement Document as specified in the Public Procurement Regulations;

**“Sustainable Procurement Duty”** has the meaning given in the Reform Act as supplemented by any guidance published by the Scottish Government under the Reform Act;

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

**“UK GDPR”** has the meaning given in regulation 2 of the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019; and

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

## **2. GENERAL**

- 2.1 The purpose of these Contract 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 Contract 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 Contract Standing Orders and the Procurement Guidance Notes.
- 2.4 In the main, Contract Standing Orders will apply to the commissioning of all goods, supplies and services by the Council (whether directly or by another organisation on its behalf), by –
- the entering into a contract or agreement,
- the establishment of a Framework Agreement or Dynamic Purchasing System, or
- any call-off or draw down from an applicable Framework Agreement.
- 2.5 All procurement for supplies, services or works which are above £50,000 in value will be undertaken by Corporate Procurement in consultation with and for the relevant service, unless these Contracts Standing Orders provide otherwise.
- 2.6 Any procurement exercise will be carried out by electronic means using the Public Contracts Scotland Portal or such other system approved by the Council, provided that doing so does not significantly restrict or distort competition and there are no circumstances, such as the requirement for specific equipment or requirements relating to secrecy, that would prevent the procurement exercise being carried out entirely by electronic means.

## **3. LEGAL MATTERS**

- 3.1 These Contract 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 Contract 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 Contract 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 Contract 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;
- (b) the cost to the Council of that performance; and
- (c) the cost to recipients of any Council service affected by a contract.

### 3.6 **Procurement Guidance Notes**

Procurement Guidance Notes on any matter affecting or relevant to these Contract Standing Orders may be issued by or on behalf of the Chief Solicitor and Monitoring Officer and the Executive Officer – Organisational Transformation from time to time. Officers undertaking procurement activity are required to comply with the provisions of the Procurement Guidance Notes.

### 3.7 **Compliance with Treaty Principles**

All contracts, regardless of value or subject matter, must be awarded in compliance with the 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**

The value of any contract covered by these Contract Standing Orders shall be the estimated aggregated value of the contract (exclusive of VAT) for the full life of the contract (including any potential extension to the scope or duration) and not the estimated annual value of the contract. Where a contract is for the continual supply of works, goods or services over a number of years, then the estimated aggregated value of that contract shall be calculated by multiplying the estimated annual value by 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 Contract 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 **£50,000**, shall be exempted from these Contract Standing Orders with the exception of the following provisions:

- (i) Contract Standing Order 2 (General)
- (ii) Contract Standing Order 3 (Legal Matters)
- (iii) Contract Standing Order 4 (Contract Values)
- (iv) Contract Standing Order 7 (Collaboration)
- (v) Contract Standing Order 21 (Minimum Number of Suppliers)
- (vi) Contract Standing Order 22 (Submission of Tenders)
- (vii) Contract Standing Order 29 (Waivers)
- (viii) Contract Standing Order 31 (Electronic Tendering)
- (ix) Contract Standing Order 34 (Subsidy)
- (x) Contract Standing Order 35 (Confidentiality)
- (xi) Contract Standing Order 36 (Non-Compliance)
- (xii) Appendix 1 Contracts with a value of less than £50,000
- (xiii) Appendix 2 Waiver Process
- (xiv) Appendix 3 Forms

- 5.2 The procurement of contracts below £50,000 in value shall be undertaken in accordance with Appendix 1.

- 5.3 In addition to the above, these Contract 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 legal Counsel;
- (d) work that the Council decides to carry out in-house, except where such work may involve the external procurement of supplies, services or works;
- (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 Public Procurement Regulations and the Reform Act Regulations 2016 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; and
- (g) any contract for goods, works or services procured and awarded on the Council's behalf by another party, subject to Contract Standing Order 7 (Collaborations).

## **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 Contract Standing Orders and the applicable provisions of Procurement Law. Any Call-Off Contract(s) from such Framework Agreements shall be exempt from these Contract 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) Contract 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 Property Directorate, another local authority, Crown Commercial Services, any other public sector procurement agencies shall be exempt from these Contract Standing Orders provided always that i) the terms of the relevant Framework Agreement are complied with; ii) the Legal Manager or the Chief Solicitor and Monitoring Officer has been consulted to ensure that any relevant Procurement Law is adhered to; and iii) Contract

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. COLLABORATION**

- 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 Contract Standing Orders shall apply to that procurement. The written consent of the other parties to the use of these Contract Standing Orders 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 these Contract Standing Orders or such other governance documents of the lead authority, provided that the Corporate Procurement Manager and the Legal Manager are satisfied that such 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 entered into between the parties involved in terms acceptable to the Chief Solicitor and Monitoring Officer. This agreement should include the parameters of the procurement, provisions dealing with risk and liability, and appropriate monitoring arrangements.

## **8. ETHICS AND STANDARDS**

- 8.1 The guiding principles of ethical behaviour in procurement must be followed in relation to all procurement activity undertaken by or on behalf of the Council.
- 8.2 **Bribery**
  - 8.2.1 Officers undertaking procurement activity must (i) comply with the provisions of the Bribery Act 2010 (ii) be aware of and comply with the Council's Anti-Bribery Policy and any relevant Procurement Guidance Notes, (iii) have signed the compliance form and (iv) contact Internal Audit or the Chief Solicitor & Monitoring Officer, as appropriate, for further advice where required.
  - 8.2.2 In the event of a conflict of interest between a supplier and employee who is involved in a procurement process, the employee must immediately bring any potential conflict of interest to the attention of the relevant Executive Officer.

## **9. AMENDMENT AND REVOCATION**

- 9.1 These Contract 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 Contract Standing Orders arising from a review in terms of Contract Standing Order 9.1 above or necessitated for any other reason shall be submitted to the Council for approval.
- 9.3 These Contract 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 Contract Standing Orders shall take effect on the fifth working day after the conclusion of the Council meeting at which the amendment or revocation is approved, unless otherwise determined by Council.
- 9.5 The Corporate Procurement Manager will be responsible for securing the implementation of any approved change to Contract 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 notified to Officers and reported to Members via a Technical Note for information.

## **10. LEGISLATION**

All procurement by, or on behalf of, the Council must comply with all relevant legislation, associated case law and these Contract Standing Orders. In the event of any conflict between Contract Standing Orders and legislation/case law, the legislation/case law will prevail.

## **11. DISAGGREGATION AND LOTS**

- 11.1 No potential procurement shall be sub-divided with the effect of avoiding the application of Contract Standing Orders or any legislative provisions, unless sub-division can be objectively justified.
- 11.2 A known continuing annual requirement for the same type of services or works across Council Services must be aggregated into a procurement of a longer duration as required by these Contract Standing Orders and/or legislation. 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 The allocation or approval of budgets and the devolved management of budgets does not dispense with the requirement to comply with the provisions of these Contract Standing Orders and relevant legislative provisions.
- 11.4 Separation of a procurement into separate, smaller lots must be approved 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 approval must be recorded.

## **12. COUNCIL AUTHORITY**

- 12.1 Subject to Contract Standing Order 12.2, 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:
- 12.1.1 the estimated expenditure is included either generally or specifically in the revenue or capital budgets approved by the Council, or has otherwise been approved by the Council or relevant Committee; or
- 12.1.2 the estimated expenditure is provided by a third party and has been approved by the Council.
- 12.2 Notwithstanding Contract Standing Order 12.1, subject to the prior approval of the appropriate Committee, tenders may be invited or contracts awarded in certain circumstances. This does not however dispense with the requirement to comply with the other requirements set out in these Contract Standing Orders and legislative provisions.

## **13. PUBLICITY**

- 13.1 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.
- 13.2 All potential contracts with an Estimated Value greater than £50,000, 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.
- 13.3 Information on all contract opportunities relating to contracts over £50,000 in value will be displayed on the Council's website within the Procurement area and

in the Public Contracts Scotland (“PCS”) website in order to be accessible to all interested parties. All contract opportunities above GPA Thresholds will automatically be forwarded to the UK e-notification Service (commonly referred to as the Find a Tender Service or FTS) when registered on PCS. It is essential to forward the details of a procurement to PCS at the earliest opportunity.

## **14. ADVERTISING OF CONTRACT OPPORTUNITIES**

- 14.1 The advertising of the Council's contract opportunities is mandatory for all potential contracts above £50,000 in value unless (i) a Waiver has been obtained, (ii) the contract is exempt from these Contract Standing Orders pursuant to Contract Standing Order 5, (iii) the contract is a Social Care Contract with a value below the relevant GPA Threshold, or (iv) the options appraisal process has been complied with.
- 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 £50,000 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 Council's Buyers Profile for a contract opportunity above £50,000 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 such 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 applicable mandatory exclusions in accordance with Procurement Law to exclude a tenderer 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 disregard any of the mandatory exclusion grounds when making a decision on the selection of a

tenderer, but only where there are overriding reasons relating to the public interest.

### **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 tenderer from a procurement exercise.

### **15.4 Self-Cleansing**

Where a tenderer is subject to circumstances 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 tenderer 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 SPD**

15.5.1 The Council must accept an SPD 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 SPD.

## **16. AWARD CRITERIA**

16.1 The award of all contracts with an Estimated Value above £50,000 shall be made on the basis of the most economically advantageous tender.

16.2 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 such 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 or she 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 such 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 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 particular procurement regime for social and other specific services detailed in Procurement Law;
  - 18.3.2 these Contract Standing Orders;
  - 18.3.3 complying with 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 GPA threshold) the terms of Appendix 4.



## **19 TENDER/CONTRACT DOCUMENTATION**

### **19.1 Tender Documentation**

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

19.1.1 the value, nature, term (specifying both the initial term and any potential extensions) 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 tenderer, in relation to the tender documents, 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 tenderer in response to such a query or request shall be given to all tenderers 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, may not be considered.

19.2 In addition to the above, 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 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 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;
- 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 relevant Executive Officer in consultation with the Chief Solicitor and Monitoring Officer, the Council may require security. 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 £50,000, the appropriate Executive Officer may give the required consent. Where the value of the contract is more than £50,000 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 supplier the amount of any loss resulting from such cancellation if the supplier or any of their representatives (whether with or without the knowledge of the supplier) shall have practised collusion in tendering for the contract or any other contract with the Council or shall have 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 or activity in relation to the obtaining or carrying out of the contract or any other contract with the Council or any other public body;

19.3.5 Such other clauses as the Legal Manager or Chief Solicitor & Monitoring Officer shall deem necessary to protect the Council's interests, including those relating to compliance with Freedom of Information and Data Protection legislation, where applicable, Insurance, Equalities, Health & Safety, business continuity arrangements, sub-contracting, rights of termination, and any other provision deemed appropriate by the Legal Manager.

19.4 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 provisions of these Contract Standing Orders, tenders shall be advertised in accordance with Contract Standing Order 14 unless: (i) a Waiver has been granted; (ii) the options appraisal process has identified the use of an appropriate framework; or (iii) the contract is a Social Care Contract below the GPA 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 £50,000 the requirements set out in Appendix 1 must be met.

21.2 In the case of contracts above £50,000 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 Contract Standing Orders and the format stipulated within the tender document and associated instructions or the tender 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 Contract Standing Order 31 in relation to late tenders, any tender submitted after the closing date and time specified in the tender documents will not normally be accepted and, if the tender documents say they will not be accepted, 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. 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 may not be accepted, subject to approval by the Executive Officer – Organisational Transformation and the Chief Solicitor and Monitoring Officer. Provided always that, where the tender documents state that late submission will not be accepted, such late documents will not be accepted.

## **25. CONTRACT REGISTER**

25.1 A contract register shall be kept by the Corporate Procurement Manager to record details of all contracts exceeding a value of £50,000 awarded by the Council, (including Call-Off Contracts) and Framework Agreements and Dynamic Purchasing Systems established by the Council in accordance with Procurement Law (the “**Contract Register**”). The Contract Register shall include information required by law and otherwise as the Corporate Procurement Manager so determines.

25.2 The Contract Register shall be made publicly available on the Council’s website and by such other means as considered appropriate by the Chief Solicitor & Monitoring Officer and/or Executive Officer – Organisational Transformation

## **26. CLARIFICATIONS**

- 26.1 All tenders shall be subject to checking by the Corporate Procurement Team
- 26.2 Between the receipt of tenders and the decision to accept a tender, the Corporate Procurement Manager may contact a tenderer where it is 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 above, 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: -
- 26.3.1 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 tenderer informed in writing of the corrected amount;
- 26.3.2 where there is an obvious and genuine error in rates occurring, the tenderer will be given the opportunity to confirm the correct rates or withdraw the tender. This procedure must be undertaken in writing. Where the tenderer confirms the correct rates these shall be incorporated into the tender amount and the tenderer will be informed in writing of the corrected amount.
- 26.4 Once a decision is taken in respect of the nominated tenderer, where it is deemed necessary by the appropriate Executive Officer in consultation with the Corporate Procurement Manager and the Legal Manager, post tender discussions may be carried out with that nominated tenderer provided such discussions do not in any way distort competition. In particular any post tender discussions must not compromise the evaluation of tenders in accordance with the criteria specified in the tender documents, nor 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 discussions and shall be retained with the original tender.
- 26.5 Post-tender discussions must be conducted by the Corporate Procurement Team, in consultation with Legal Services for all tenders in excess of £50,000. A Procurement Guidance Note is available.
- 26.6 All clarifications must form part of the relevant contract. For contracts above £50,000, the Corporate Procurement Manager must inform the Legal Manager of the detail of all clarifications and other relevant matters when instructing acceptance of a tender and conclusion of a contract in accordance with Contract Standing Order 28.

## **27. CONTRACT AWARD STANDSTILL PERIOD**

- 27.1 Subject to Contract Standing Order 27.2, applicable 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 At the conclusion of the standstill period, provided there are no sustainable objections to the Council's decision and no legal challenge to the Council's decision has commenced, 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. If a legal challenge to the Council's decision is received, the relevant Executive Officer must suspend the award of the contract and refer the matter to the Chief Solicitor and Monitoring Officer and the Legal Manager.
- 27.3 For contracts below the relevant GPA Threshold, the relevant Executive Officer, with approval of the Chief Solicitor and Monitoring Officer, may consider not observing a standstill period (so long as no standstill period has been provided for in the tender documentation).

## **28. ACCEPTANCE OF TENDERS**

- 28.1 The terms of this Contract 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 GPA Threshold and it is found that the value of the tender recommended for acceptance is, after checking, above the GPA 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 process provided by the Public Procurement Regulations.
- 28.4 Where the value of a contract is estimated above the GPA Threshold and it is found that the value of the tender recommended for acceptance is, after checking, less than the GPA 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, consent of Council or the relevant Committee will be required.
- 28.8 In this Contract 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.

## **29. WAIVERS**

### **CONTRACTS WITH A VALUE OF OR IN EXCESS OF £50,000**

- 29.1 The requirement to comply with any provision of these Contract 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 prior publication;
  - 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 service users
- 29.2 If it is requested that these Contract Standing Orders (or part thereof) are waived in accordance with this Contract 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 Prior Publication**

- 29.3 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 process detailed in Contract Standing Order 29.1 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.

- 29.4 In all cases where the process detailed in Contract Standing Order 29.1 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.
- 29.5 Details of all such contracts awarded must be publicly advertised on the Council's Contract Register.
- 29.6 Where the value of a contract is greater than the GPA Threshold and the negotiated procedure without prior publication 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 requires to be approved by Committee or Council as appropriate.

#### **USE OF WAIVER FOR CONTRACTS OF ANY VALUE**

- 29.7 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 process 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.
- 29.8 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.
- 29.9 Where a Waiver, Council or Committee decision or other procedure allows the direct award of a contract which exceeds £50,000 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.
- 29.10 Where these Contract Standing Orders have been waived in accordance with this Contract 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 is otherwise substantial, for example because it alters the overall nature of the contract or changes the balance of risk in favour of the supplier, 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 Contract 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 supplier 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 Wherever possible all procurements shall be carried out electronically, and in accordance with the relevant Procurement Guidance Note. The specific electronic tendering processes or platforms shall be determined by the Corporate Procurement Manager having regard to current/best practice from time to time.

#### **Award of Contract**

- 31.2 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. SUBSIDY**

34.1 Subsidy refers to any assistance or subsidy given by the UK or 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 economic actor), which distorts or threatens to distort competition.

34.2 The beneficiary of Subsidy 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 Trade and Cooperation Agreement between the UK and the EU controls Subsidy 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.

34.4 It is the responsibility of the relevant Executive Officer to consider whether there could be any Subsidy 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 Contract 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 Contract 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.

### **38. TERMINATION**

- 38.1 The relevant Executive Officer may terminate or suspend a contract or Framework Agreement in accordance with the express or implied terms of the contract and may also take such further action with regard to any contract or Framework Agreement as the Council is legally entitled to take, subject to consultation with the Chief Solicitor and Monitoring Officer.
- 38.2 Any termination shall be subject to the relevant Executive Officer seeking appropriate legal advice and the Chief Solicitor and Monitoring Officer being satisfied that it is reasonable and in the interests of the Council to exercise that power.
- 38.3 Details of all terminations must be in writing and copies forwarded to the Corporate Procurement Manager.

### **39. SUSTAINABILITY**

- 39.1 All procurement for supplies, services or works which are above £50,000 in value will comply with the Sustainable Procurement Duty and shall as far as possible encourage fair working practices.

- 39.2 In complying with the Sustainable Procurement Duty the appropriate Executive Officer must comply with the requirements of the Reform Act, any statutory guidance issued by the Scottish Government under the Reform Act, any guidance and requirements as the Executive Officer – Organisational Transformation and the Chief Solicitor and Monitoring Officer consider appropriate.
- 39.3 The appropriate Executive Officer shall comply with requirements to procure recycled and recyclable products as contained in any regulations made by the Scottish Government under Procurement Law, any such guidance as the Executive Officer – Organisational Transformation and the Chief Solicitor and Monitoring Officer consider appropriate and any relevant governance requirements. All contracts shall include terms providing that no goods, products or services shall be supplied which may (i) endanger the health of any person, (ii) cause significant damage to the environment during manufacture, use or disposal, (iii) consume a disproportionate amount of energy during manufacture, use or disposal, (iv) cause unnecessary waste, or (v) contain materials derived from threatened species or environments.
- 39.4 Sustainable procurement outcomes must be incorporated in a way that does not result in the inappropriate exclusion of, or discrimination between, potential suppliers, or in anti-competitive behaviour on the part of the Council. Sustainable procurement outcomes cannot be used as the sole criteria for contract award.
- 39.5 In complying with the Council's Sustainable Procurement Duty the appropriate Executive Officer should consider how the Council's procurement processes can facilitate the involvement of Small or Medium Enterprises (SMEs), third sector bodies and supported businesses and how innovation can be promoted.

#### **40. COMMUNITY BENEFITS**

- 40.1 All procurement for supplies, services or works which are above £50,000 in value will comply with the Council's approach of promoting community benefits.
- 40.2 In complying with the Council's policy of promoting community benefits the appropriate Executive Officer must comply with the Reform Act, any statutory guidance issued by the Scottish Government under the Reform Act, any guidance and requirements as the Executive Officer – Organisational Transformation and the Chief Solicitor and Monitoring Officer consider appropriate and any relevant procurement process.

## **APPENDIX 1 - CONTRACTS WITH A VALUE OF LESS THAN £50,000**

### **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 £50,000. Detailed Procurement Guidance Notes will be issued to support officers in this process.
- 1.2 All potential contracts with an Estimated Value above £16,500, 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 For potential contracts in excess of £16,500 and below £50,000 Procurement will advise on the relevant roles and responsibilities specific to each request. These will include the option for the Service to self-serve or where procurement will lead on the quotation process.
- 1.4 All potential contracts with an estimated value below £16,500 do not require to be notified to Corporate Procurement in the first instance, however if quotes are returned in excess of £16,500, Procurement guidance must be sought.
- 1.5 For those Services utilising Iprocurement, quotations for requirements below £1,000 are not required where the goods are being included on a purchase order or from a contracted supplier. This applies where no contract for the goods, services, or works exists.
- 1.6 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 contracts below £50,000, 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 Contract 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 £16,500, 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 Contract Standing Orders, where a contract for the supply of goods or materials, for the provision of services or the execution of works, with (i) an Estimated Value within the monetary value specified within Paragraph 1.3 above, engagement with Procurement is required to establish the procedure to be followed; and (ii) where the estimated value is within the monetary value specified within Paragraph 1.4 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](http://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 (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 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 Where the Quick Quote system has been used, 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 tenderer either by (i) following the process in Contract Standing Order 28; or (ii) via the online Quick Quote portal. 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 (i) notified to the successful tenderer via creation of a purchase order: or (ii) published via the online Quick Quote portal.

## **9 CANCELLATION OF A QUICK QUOTE EXERCISE**

- 9.1 Where it has been decided not to progress to award, the exercise must be cancelled via (i) emailed notification to all parties; or (ii) on the Quick Quote portal with an explanatory note being provided.

## **10. AUDIT OF PROCEDURE.**

- 10.1 In order to confirm that the quotation procedure has been followed, confirmation and brief details of the Quotation 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 Quotation procedure will be provided by the Corporate Procurement Team.



## **APPENDIX 2 - WAIVER PROCESS**

1. The process described in Contract Standing Order 29 and below should be followed in respect of Waivers.
2. If a Waiver is sought in accordance with Contract Standing Order 29, a proforma must be emailed to the Corporate Procurement team, where a contract reference will be allocated and the necessary paperwork emailed for completion. A draft of the relevant Waiver Form must be completed and sent to the Corporate Procurement Manager for review and approval of the content. Following such approval the draft form must be sent 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 GPA Threshold where the relevant Executive Officer, Chief Solicitor and Monitoring Officer, Chief Finance Officer and Executive Officer – Organisational Transformation (or two of the three named Officers where absence is a factor) 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 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.

<b>Total Value of Contract</b>	<b>Approval Required From</b>	<b>Form Required</b>
<b>Below £50,000</b>	<b>Relevant Executive Officer</b>	<b>Waiver Form</b>
<b>Between £50,000 and relevant GPA threshold</b>	<b>Relevant Executive Officer, Chief Solicitor and Monitoring Officer, Chief Finance Officer and Executive Officer – Organisational Transformation</b>	<b>Waiver Form</b>
<b>Above the relevant GPA threshold</b>	<b>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.</b>	<b>Waiver Form or , where approval required from the Policy and Resources Committee or full Council, a Committee or Council Report narrating recommendation and including advice from the Chief Solicitor and Monitoring Officer</b>



**The Chief Solicitor and Monitoring Officer may determine that approval of a Waiver Form for any value of contract requires to be submitted to Committee or Council for determination. In these circumstances, a report must be submitted to the relevant Committee or Council, narrating the circumstances and recommendation and including advice from the Chief Solicitor and Monitoring Officer.**

## APPENDIX 3 - FORMS

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

FORM	CONTRACT STANDING ORDER	FORM TITLE	APPROVAL REQUIRED FROM
Authorisation to Collaborate at Contract Level	7	Collaborations	Relevant Executive Officer and Chief Solicitor and Monitoring Officer
Social Care – Waiver Form	18	Approval to waive these Contract Standing Orders or any part thereof.	Chief Social Work Officer, Chief Financial Officer, Executive Officer – Organisational Transformation, Chief Solicitor and Monitoring Officer (or two of the three named Officers where absence is a factor)
Options Appraisal	20	Authorisation to award on completion of the Options Appraisal process	Relevant Executive Officer, Chief Financial Officer Executive Officer – Organisational Transformation Chief Solicitor and Monitoring Officer (or two of the three named Officers where absence is a factor)
Waiver Form	29	Approval to waive these Contract Standing Orders or any part thereof.	Relevant Executive Officer Chief Financial Officer Executive Officer – Organisational Transformation Chief Solicitor and Monitoring Officer (or two of the three named Officers where absence is a factor)
Authorisation to Award Form	28	Approval to award contracts	Relevant Executive Officer
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 two of the three named Officers where absence is a factor)
Authorisation to Procure Consultant	Appendix 5	Approval to Commence with Procurement of Consultant	Relevant Executive Officer Executive Officer – Organisational Transformation

## **APPENDIX 4 - SOCIAL CARE CONTRACTS**

1. Social Care Contracts shall be procured in accordance with Procurement Law, the Guidance on the Procurement of Care and Support Services 2016 published by the Scottish Government and any other statutory guidance issued under Procurement Law. The Council will follow a procedure that satisfies the Council's duties set out in the Public Procurement Regulations where the total or aggregated value of the Contract is valued at or above the relevant GPA Threshold. For Social Care Contracts below the relevant GPA Threshold, the Council's Contract Standing Orders will apply, capturing a lighter touch approach to the Procurement process on a case by case basis.
2. Social Care Contracts should be subject to a degree of competition unless: -
  - a) The contract in question is a call-off contract for a Care Home or Care at Home Service to which the relevant provisions apply; or
  - b) The service is already subject to a tendered contract arrangement; or
  - c) Grounds exist to justify the use of the negotiated procedure without prior publication as set out in paragraph 10.2 below
3. All Social Care Contracts with an Estimated Value below £50,000, 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.
4. Where the Estimated Value of a Social Care Contract is less than £50,000 the procedures set out in Appendix 1 of these Standing Orders shall apply unless the relevant Chief Social Work Officer or Council employed Head of Service decides that offers shall not be sought. In determining whether a Social Care Contract may be awarded without advertisement and competition, the Chief Social Work Officer or Council employed Head of Service must take into account the individual circumstances of the contract including the subject matter and estimated value of the contract, the specifics of the service sector concerned and the geographic location of the place of the performance of the contract to firstly identify whether there is likely to be a cross-border interest in the contract. The Chief Social Work Officer or Council employed Head of Service, following consultation with the Procurement Manager and the Legal Manager, may determine that there is no cross-border interest in the contract where:
  - 4.3.1 The service is of such a specialised nature that no cross-border market of suitable service providers exists; and/or
  - 4.3.2 Advertising the contract would result in the loss of a linked service/service continuity; and/or
  - 4.3.3 The service is one that in accordance with the Social Care (Self Directed Support) (Scotland) Act 2013 the individual service user has a choice in selecting the provider
5. Where the Chief Social Work Officer or Council employed Head of Service decides under paragraph 4 above that a Social Care Contract is likely to attract cross-border interest,

the contract should be procured by way of a competitive process in accordance with Contract Standing Orders.

6. Where the Estimated Value of a Social Care Contract is greater than £50,000 but less than the relevant GPA Threshold the Chief Social Worker or Council employed Head of Service may decide to follow the procedures set out in the Reform Act. Alternatively, the Chief Social Work Officer or Council employed Head of Service may decide, taking account of the considerations set out in paragraph 4, that offers shall not be sought. Procurement advice must always be obtained in relation to any direct award and a compliant process completed including obtaining the relevant authorisations (see Table A below).
7. For all Social Care Contracts in excess of £50,000, a Procurement Proforma must be completed and forwarded to the Procurement Team prior to commencement of services. The proforma captures the required contract information and must include the relevant approvals to progress the contract requirement. The Procurement Team will liaise directly with the Commissioning team on all Social Care Contract requirements. The Procurement Team will allocate a Procurement reference on receipt of the proforma from the Commissioning Team, and this reference will be utilised throughout the life of the tender/contract. A Procurement resource will be allocated to the requirement and the Procurement process will progress with the Commissioning Team and the relevant Service involvement. The relevant Social Work Service shall be responsible for instructing commencement of the Procurement process through the Commissioning Team.
8. Where the Estimated Value of a Social Care Contract is equal to or greater than the relevant GPA threshold, the relevant procedures for such services as set out in Procurement Law shall be followed. A decision must be made on a case-by-case basis whether to seek offers in relation to the proposed contract or whether to directly award the contract to a particular Provider. Procurement advice must always be obtained in relation to any direct award and a compliant process completed. The relevant authorisations (see Table A below) must be obtained in advance.
9. The requirement to comply with any provision of these Contract Standing Orders may be waived in relation to Social Care Contracts in accordance with the waiver approval process detailed in Appendix 2, if the Chief Social Work Officer or Council employed Head of Service considers that the use of the Negotiated Procedure without prior publication would be in the Council's best interests having regard to each of the following, as appropriate:-
  - (a) the availability of the negotiated procedure without prior publication;
  - (b) the principles set out in the Guidance on the Procurement of Care and Support Services 2016;
  - (c) the requirement to secure Best Value;
  - (d) any potential risk of successful legal challenge;
  - (e) the principles of transparency, equal treatment, non-discrimination and proportionality;
  - (f) the advice of the Chief Solicitor and Monitoring Officer; and

- (g) any impact upon services user

**10. Circumstances where the Negotiated Procedure without prior publication is available**

10.1 The Chief Social Work Officer or Council employed Head of Service, with the agreement of the Procurement Manager and the Legal Manager, will decide on a case by case basis whether there are circumstances justifying a departure from competitive process which would allow the use of the negotiated procedure without prior publication as set out in paragraph 10.2 below:-

10.2 For the purposes of paragraph 10.1 above the negotiated procedure without prior publication is available where in the opinion of the Chief Social Work Officer or Council employed Head of Service and/or the relevant Executive Officer/s (dependent on process and authorisations required in line with the Waiver process):-

- (a) the needs of the individual(s) concerned would be best met by a particular provider; or
- (b) due to the type and nature of the service and taking account of environmental and regulatory requirements there is only one provider capable of delivering the service to meet the needs of the individual(s) concerned; or
- (c) the nature of the service is such that it should not/cannot be adequately specified in advance because of the nature of the social care needs of the individual(s) concerned; or
- (d) there are special circumstances such as ownership of land or property, geographic locations or particular skills or experience of providers of social care which limit the choice to one provider; or
- (e) the service user wishes in terms of the National Strategy on Self Directed Support to arrange services with a particular provider but wishes the Council to arrange this on his behalf; or
- (f) it is in the best interests of the service user to use a particular provider; or
- (g) there are reasons of extreme urgency brought about by unforeseen events which are not attributable to the Council.

11 The decision in relation to the procurement process must be signed off by the relevant Officer in accordance with Table A.

12. When competition is the appropriate route, the Procurement Officer will arrange for a Contract Notice or Prior Information Notice (PIN) to be published, in accordance with legislative requirements, to alert interested parties to the contracting opportunity. These notices will comply with the relevant/ legislative timescales, and this must be factored in to the timeline for contract commencement.

13. When the Chief Social Work Officer or Council employed Head of Service wishes to directly award a contract rather than seek offers, the relevant approvals (see Table A below) must be sought and obtained in advance of award. Alternatively, a degree of

advertising in accordance with Contract Standing Orders must take place. The relevant Procurement Officer will discuss this following confirmation of the relevant approvals.

14. Where the Chief Social Work Officer or Council employed Head of Service considers in relation to any Social Care Contract that there are circumstances:-
- (a) Which justify the use of the negotiated procedure without prior publication; or
  - (b) Which justify the extension/modification of an existing contract with any Provider

the Chief Social Work Officer or Council employed Head of Service will prepare a written report recording the specific circumstances which justify the use of either of the options set out in paragraphs 14 (a) or (b) above. This will be in accordance with legislative provision and the requirements within these Contract Standing Orders. The Chief Social Work Officer or Council employed Head of Service must obtain approval prior to the contract being awarded and completion of the approval process will be sufficient to permit the use of the option set out in paragraph 14 (a) or (b), subject to any conditions that the relevant authorisation process may impose. If the total or Aggregated Value of the resulting contract is above the relevant GPA Threshold, the Chief Social Work Officer will require to publish a Contract Award Notice via the Procurement Team.

## **15. Emergency Process**

- 15.1 Where a service user requires the provision of services in an emergency or outwith normal working hours, the emergency process for contract award set out in this paragraph 15 must be followed.
- 15.2 All emergency contract awards must be approved in advance by the Chief Social Work Officer or Council employed Head of Service. Thereafter, the approving Chief Social Work Officer or Council employed Head of Service must seek any necessary retrospective authority for the contract award and ensure that the process has been documented and otherwise regularised, via the Commissioning Team Manager and then the Procurement Team, as soon as reasonably practical following the commencement of service and no later than the next normal working day. This will entail the submission of the Procurement Proforma and the reasons why the emergency process was used. The Chief Social Work Officer or Council employed Head of Service must ensure that the relevant process and authorisations are retrospectively put in place. In these circumstances, the contract period must be detailed, and the timescales for review documented to ensure the required Procurement process is undertaken at the appropriate time.
16. The relevant approvals must be obtained for all Social Work contracts, whether there is a requirement to advertise, a direct award is being sought or an emergency process has been followed.
17. The Chief Social Work Officer or Council employed Head of Service shall be required to maintain a list of all proposed contracts which he/she decides do not require to be advertised on the basis of the determinations made. He/she shall provide a list to CMT for reporting to the Council on an annual basis.

18. In addition to demonstrating how Best Value has been achieved, the Chief Social Work Officer or Council employed Head of Service will be responsible for evidencing the reasons for the chosen procurement route.

## **19. Application**

- 19.1 These Contract Standing Orders apply to all Social Work contracts and commissioning undertaken by the Council's Social Work Service or otherwise in furtherance of the delivery of social work services.
- 19.2 It shall be a requirement of these Contract Standing Orders that completion of mandatory training to be provided by the Corporate Procurement Manager and Legal Manager shall be a pre-requisite of budget holders leading or managing a procurement covered by the terms of this Appendix.

**Table A**

Route	Threshold	Authorisations
1	Total Value of Contract Requirement is less than £50,000	Relevant Head of Service/Chief Social Work Officer, and Executive Officer- Organisational Transformation,  (May also be referred for Financial & Legal sign off, or to Committee/Council)
2	Total Value of Contract Requirement is equal to or above £50,000	Relevant Head of Service/ Chief Social Work Officer, and Executive Officer- Organisational Transformation, Chief Finance Officer, Chief Solicitor & Monitoring Officer  (May also be referred to Committee/Council)
3	Emergency/Non-standard Requirements – All Values	Relevant Head of Service/ Chief Social Work Officer, Executive Officer- Organisational Transformation, Chief Finance Officer,



		Chief Solicitor & Monitoring Officer  (May also be referred to Committee/Council)
4	Use of negotiated procedure without prior publication, , Extension or modification – All Values	Relevant Head of Service Chief Social Work Officer Executive Officer- Organisational Transformation, Chief Finance Officer, Chief Solicitor & Monitoring Officer  (May also be referred to Committee/Council)

NB. The total value is the estimated total value of a contract over its life where an end date is known. Where a contract does not have an end date, the Aggregated Value is equal to 4 times the most contemporary annual value of the contract and this Aggregated Value will determine its approval, award and reporting requirements.

## **APPENDIX 5 – GUIDANCE ON THE APPOINTMENT OF CONSULTANTS**

### **1. Introduction**

- 1.1 This Appendix relates specifically to the appointment of consultants. Guidance is intended to ensure consultants are used only where necessary and in a manner which achieves Best Value for the Council.
- 1.2 When appointing a consultant, the relevant budget holder shall comply with the terms of Contract Standing Orders
- 1.3 For purposes of this Appendix, a consultant is a specialist who charges a fee for providing advice or services in a particular area of expertise. Examples include project management, human resources, IT systems, property, estates, financial services, etc., but excluding (i) agency, secondments and temporary workers, (ii) professional services provided by solicitors, counsel and actuaries, and (iii) technical or specialist services required for works contracts or proposed works contracts such as quantity surveyors, cost consultants, design engineers and architects.
- 1.4 All consultancy requirements must be instructed via the Procurement Team.

### **2. Principles to be applied when appointing consultants**

- 2.1 Authorisation – See Section 3 – Approval of Consultancy Resource
- 2.2 No available alternative resource – budget holders shall only appoint a consultant where the service in question cannot be provided internally due to a lack of expertise or capacity
- 2.3 Within approved budget - the cost of appointing a consultant shall be contained within the budget of the service or project for which the consultant is to be appointed.
- 2.4 Definition of outcomes - budget holders shall prepare a clear task definition and identify the required outcomes of the service prior to procuring a consultant.
- 2.5 Monitoring of outcomes - budget holders shall ensure that appropriate monitoring arrangements, are in place prior to a consultant's appointment in order that payments to the consultant are only made in accordance with the satisfactory achievement of measurable outcomes.
- 2.6 Knowledge transfer - where consultants are appointed budget holders shall ensure that, where appropriate, Council staff fill key project roles and work closely with consultants to maximise the potential for transfer of skills and knowledge to Council staff.

### **3. Approval of Consultancy Resource**

- 3.1 The appointment of a consultant for a service (or series of related services) for any value must be approved by the relevant Executive Officer and the Executive Officer –

Organisational Transformation, before any engagement process is commenced. The Authorisation for Appointment of a Consultant Form (available from Procurement) should be used to make the request.

- 3.2 This approval shall not be required for services that are essential to the completion of a Pre-Approved Council Project. For the purposes of these Contract Standing Orders, a Pre-Approved Council Project is a project for which there is a Council or appropriate Committee authorisation to commence the project which includes an explicit reference to the requirement for consultants in the delivery of that project.
- 3.3 Where a consultant is to be appointed and the services are of a financial nature, the Chief Financial Officer must be consulted on the scope and specification of the services prior to appointment
- 3.4 For all other appointments the relevant Executive Officer shall approve the scope and specification where the services (or series of services) are anticipated to be provided.
- 3.5 The Legal Manager shall provide or approve appropriate contractual terms and conditions for the appointment of a consultant. Where appropriate, these shall include provisions dealing with the ownership of any output or intellectual property developed as a result of the appointment.
- 3.6 Where the use of a consultant is required as a matter of urgency, the provisions set out in Contract Standing Order 29 – Waiver of Contract Standing Orders

#### **4. Re-engagement of former employees as consultants.**

- 4.1 A budget holder or procuring officer shall not appoint a former employee who has been granted early retirement or been given a voluntary redundancy or severance package (“former employee”) as a Consultant without the express consent of the Depute Chief Executive. If the proposed consultant is a former employee then that must be disclosed as part of the information provided to the Depute Chief Executive

#### **5. IR35/Employment Status Assessment**

Any proposed engagement of a consultant must include the appropriate assessment as per HRMC requirements. Further information relating to this assessment is available via the Council HUB.