



**Finance and Corporate Resources  
Administration and Legal Services**

# **Standing Orders on Contracts (Together with Guidance Notes)**

**Approved by South Lanarkshire Council on 18 May 2017**

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## STANDING ORDERS ON CONTRACTS

### 1 Definitions

The following words and expressions used in these Standing Orders shall have the meanings hereby assigned to them:-

'Call-Off Contract'	means the terms and conditions under which specific purchases can be made under a Framework Agreement
'Council'	means South Lanarkshire Council, constituted by Section 2 of the Local Government etc. (Scotland) Act 1994 and having its principal office at the Council Offices, Almada Street, Hamilton, ML3 0AA
'Committee'	means a Standing Committee of the Council and the expressions 'Chair' and 'Depute Chair' shall be construed accordingly and shall be taken to include any corresponding office known by any other description
'Chief Executive'	means the Head of Paid Service 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 Scheme of Delegations except in cases where it is stated that substitutes cannot act
'Competitive Dialogue'	means such a tendering procedure as defined in the European Procurement Regulations
'Community Benefit Requirement'	means that contractual requirement as defined in the Reform Act and any guidance published by the Scottish Government under the Reform Act
'Concession'	means a works or services concession as defined in the Concession Contracts (Scotland) Regulations 2016 or such other Regulations amending, substituting or replacing those Regulations
'Contracting Authorities'	means the authorities or bodies as defined in the European Procurement Regulations and includes the Council
'Dynamic Purchasing System'	means such a system as defined in the European Procurement Regulations
'EC Treaty Principles'	means the overarching principles of the Treaty of Rome, which are transparency, openness, non-discrimination and equal treatment
'E-procurement'	means the carrying out of the procurement of a contract for the supply of goods, carrying out of works or provision of services by electronic means
'Electronic Auction'	means a repetitive process, involving an electronic device for the presentation of new prices, revised downwards and/or new values concerning certain elements of tenders, which occurs after an initial full evaluation of the tenders,

	enabling them to be ranked using the stated evaluation methods
‘Equal Opportunities’	means the prevention, elimination, or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds or on grounds of disability, age, sexual orientation, language or social origin, or other personal attributes including religion (or lack thereof), beliefs or opinions, such as religious beliefs or political opinions or lack of such religious or philosophical beliefs as detailed in the Equalities Legislation
‘Equalities Legislation’	means the Equality Act 2010 and all other relevant statutory obligations in relation to equalities which apply in the UK or their EU equivalent
‘ESPD’	means the European Single Procurement Document as specified in the European Procurement Regulations
‘European Procurement Regulations’	means the Public Contracts (Scotland) Regulations 2015 or such other Regulations amending, substituting or replacing those Regulations
‘EU Regulated Procurement’	means a procurement exercise subject to the European Procurement Regulations
‘E U Thresholds’	means the thresholds in the value of a contract above which make the procurement of the contract subject to the European Procurement Regulations as may be set from time to time <sup>1</sup>
‘Executive Director’	means an Executive Director of a Resource of the Council for the time being and shall be taken to include any corresponding office known by any other description or any person to whom authority is delegated by the appropriate Executive Director in terms of the Council’s Scheme of Delegations except in cases where it is stated that substitutes cannot act
‘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

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<sup>1</sup> The thresholds are reviewed in alternate years and a Practice Note will be issued in terms of Standing Order 2.8 to notify of changes to the thresholds. The current threshold values prescribed by the European Union as at 1 January 2016 are as follows

(a)	contracts for the supply of goods or materials	£ 164,176
(b)	contracts for the provision of services (other than social and specific services)	£ 164,176
(c)	contracts for the execution of works	£4,104,394
(d)	contracts for the provision of social and specific services	£ 589,148



‘Head of Administration and Legal Services’	means the Head of Administration and Legal Services (Finance and Corporate Resources) 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 Scheme of Delegations except in cases where it is stated that substitutes cannot act
‘Head of Finance’(Transactions)	means the Head of Finance (Transactions), Finance and Corporate Resources 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 Scheme of Delegations except in cases where it is stated that substitutes cannot act
‘Innovation Partnership’	means that procurement process as specified in the European Procurement Regulations
‘Life-Cycle Costing’	means such costs as are specified in the European Procurement Regulations
‘PCS System’	means the Public Contracts Scotland system
‘PIN’	means a prior information notice
‘Practice Notes’	means all practice notes, toolkits, briefing notes and/or documents issued pursuant to <b>Standing Order 2.8</b>
‘Procurement Process’	means a procurement process approved by the Council’s Procurement Network in relation to the conduct of a procurement exercise
‘Procurement Strategy’	means the strategy which the Council must prepare in accordance with <b>Standing Order 37</b>
‘Proper Officer’	means a proper officer authorised to execute deeds on behalf of the Council in terms of Section 194 of the Local Government (Scotland) Act 1973 as amended by the Requirements of Writing (Scotland) Act 1995 and any new and/or subsequent amending legislation as detailed in the Council’s Scheme of Delegation
‘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
‘Regulated Procurement’	has the meaning defined in the Reform Act and excludes a European Regulated Procurement unless stated otherwise



with or upon direction by the Head of Administration and Legal Services and/or Head of Finance (Transactions)

- 2.2 **Internal Arrangements** (a) Any action taken on the Council's behalf must also be in terms of the Council's Scheme of Delegation, Financial Regulations and the Standing Orders on Procedures
- (b) These Standing Orders are intended to comply with and be subject to the Code of Corporate Governance made by the Council from time to time. If there is a discrepancy between the terms of these Standing Orders and those of the Code, the provisions of the Code in force at the time shall take precedence
- 2.3 **Form of contract and Scots Law** Unless otherwise authorised by the appropriate Executive Director in consultation with the Head of Administration and Legal Services in special circumstances all contracts entered into in terms of and in accordance with these Standing Orders shall be:-
- (a) in writing;
- (b) in the name of the Council; and
- (c) subject to the law of Scotland and the exclusive jurisdiction of the Scottish Courts
- 2.4a **Calculation of Contract Values** Any value of a contract stated in these Standing Orders shall be the estimated aggregated value of the contract exclusive of VAT for the full life of the contract (including any potential contractual extension) and not the estimated annual value of the contract. Where a contract is for the supply of works, goods or services for a continual basis over a number of years then the estimated aggregated value of that contract shall be calculated by multiplying the estimated annual value by the number of years of the duration of the contract. All prizes and/or payments to be made to tenderers must be taken into account in calculating the estimated value.
- 2.4b **Prohibition on Division of Contract Values** It is not permitted to deliberately divide any procurement exercise into two or more contracts if the intention for doing so is to reduce the estimated aggregated value of the contract in order to avoid the application of any financial thresholds set out in these Standing Orders, the application of the EU Thresholds or the effect of the European Procurement Regulations.
- 2.4c **Calculation of Contract Value - Match Funding** If the cost of a contract is only being met in part by the Council the total value of the contract including the funding from a third party shall be, for the purposes of these Standing Orders, calculated by totalling all the contributions to be made towards the cost.
- 2.4d **Calculation of Contract Value - Funding in Kind** Where a contract includes the provision of services or other funding in kind to the Contractor by either the Council or a third party, the value of the contract shall be calculated by including the value of the services being provided or the funding in kind in addition to any monetary consideration.
- 2.4e **Mixed Procurement** The following rules will apply when determining how to treat a mixed procurement of any contract for the supply of goods, provision of services and the carrying out of works:-

- (i) **Services/Supplies**  
Determining factor is the main subject matter identified by reference to the element which has the highest estimated value i.e. if the value attributed to services exceeds that attributable to supplies then it will be treated as a services contract.
- (ii) **Services/Social and Specific Services**  
Determining factor is the main subject matter identified by reference to the element which has the highest estimated value i.e. if the value attributed to services exceeds that attributable to the Social and Specific Services then it will be treated as a services contract
- (iii) **Concession/ Works, Services and/or Supplies**  
If the estimated value of the works/services/supplies element exceeds the EU Thresholds it will be treated as a public contract for works/services/supplies and not a Concession contract
- (iv) **Works/ Services or Supplies**  
Determining factor is the main subject of the contract in question regardless of the relative values of the elements and then the relevant EU Threshold applies to determine the applicable rules

- 2.4f **Franchises** Where a Contract relates to the provision of services to the public under which the Council gives to the Contractor the right to exploit the provision of the services, the total value of that Contract shall be taken as including the value of that right to exploit the provision and monetary payments made by the Council to the Contractor. All sums paid by the Contractor to the Council shall be disregarded in connection with the calculation of the value of the Contract.
- 2.5 **Signing** All contracts entered into in terms of and in accordance with these Standing Orders shall be signed by either the appropriate Executive Director of a Resource or a Proper Officer.
- 2.6 **Best Value** All contracts must secure Best Value and maintain an appropriate balance among:-
- ◆ the quality of the performance of the Council's functions
  - ◆ the cost to the Council of that performance; and
  - ◆ the cost to persons of any Council service provided for them on a wholly or partly rechargeable basis
- having regard to:-
- a) efficiency
  - b) effectiveness
  - c) economy
  - d) the need to meet equal opportunity requirements; and
  - e) the need to ensure sustainable development.
- 2.7 **Guidance** When entering into a contract, due regard must be given to any guidance issued by the Scottish Ministers in terms of the Local Government in Scotland Act 2003
- 2.8 **Practice Notes** Practice Notes on tendering procedures for any contract or type of contract entered into by or on behalf of the Council may be issued by the Head of Administration and Legal Services and/or the Head of

Finance (Transactions) (with the prior approval of the Head of Administration and Legal Services). Any Practice Notes shall form part of these Standing Orders.

- 2.9 **Prohibition on anti-competitive contract terms** In preparation of any contract terms and in the award of any contract, there must be no terms, which are either:-
- (a) anti-competitive as defined in the Competition Act 1998 (where applicable) or
  - (b) non-compliant with any other legal requirement
- 2.10 **Compliance with EC Treaty Principles** All contracts, regardless of value and/or whether subject to the procedural requirements of the European Procurement Regulations, must be awarded in compliance with the EC Treaty Principles.
- 2.11 **Conflict of Interest** In carrying out all procurement exercises employees must comply with the measures introduced by the Council to prevent, identify and remedy conflicts of interest as specified in the relevant Procurement Process.
- 3 **Exempt and Partially Exempt Contracts**
- 3.1 **Estimated Value Below £2,500** These Standing Orders shall not apply to any contract for the supply of goods, the provision of services and the carrying out of works where the estimated aggregated value does **not exceed £2,500** including items of a recurring nature the **total** value of which is no more than that amount, subject always when entering into such contracts:-
- (a) to the need to demonstrate Best Value (as set out in **Standing Order 2.6**) and
  - (b) compliance with the Council's Code of Corporate Governance and
  - (c) ordered using the Council's official Purchase Order and the i-procurement system (unless otherwise exempted by the Council's Certified Payment Policy)
- 3.2 **Estimated Value Between £2,500 and £50,000**
- (a) All contracts for the supply of goods, carrying out of works or provision of services, where the estimated aggregated value does **not exceed £50,000**, shall be exempted from these Standing Orders with the exception of:-
    - (i) **Standing Order 2 (General)**
    - (ii) **Standing Order 4.2 (Contract Reference Number)**
    - (iii) **Standing Order 16 (Assurances – Tendering)**
    - (iv) **Standing Order 17 (Confidentiality and Requests for Information)**
    - (v) **Standing Order 18 (E-Procurement)** and, where appropriate,
    - (vi) **Standing Order 4.3 (Sourcing Methodology)** (if, in the opinion of the appropriate Executive Director, the contract is of high risk and/or there are special circumstances);
    - (vii) **Standing Order 16A (Data Protection Act 1998)**;
    - (viii) **Standing Order 25 (Contract Performance Security)** and
    - (ix) All **Standing Orders** relating to contract conditions
  - (b) Immediately prior to entering into a contract referred to in Standing Order 3.2(a) at least 5 competitive quotes/bids in writing (including

2 quotes/bids from SMEs having their place of business within the local government area of South Lanarkshire if such SMEs are available) must be obtained by the appropriate Executive Director using Quick Quote via Public Contracts website or PCS System unless the Executive Director concerned is satisfied that:-

- (i) good reasons exist for not doing so. Such good reasons may include but are not limited to the circumstances justifying the use of the negotiated tendering procedure as set out in **Standing Order 9 (Negotiated Tendering Procedure – General)** and
- (ii) the contract secures Best Value (as set out in **Standing Order 2.6**)

and the contract must include a condition which allows for it to be reviewed as a minimum annually to ensure Best Value (as set out in Standing Order 2.6)

- 3.3 Conditions of Funding** Where a public authority or similar body provides funding for a particular project (including the provision of services by the Council to others) and that funding is subject to conditions which specify:-
- (i) particular contractors or a particular class of contractors with whom/which the Council are required to or restricted to contract with in the provision of the services or carrying out of the works as part of the project, or
  - (ii) specific goods or materials which must be used in the project or specific services which must be delivered as part of the project such contracts may be excluded from these Standing Orders with the exception of:-
    - (i) **Standing Order 2 (General)**,
    - (ii) **Standing Order 4.2 (Contract Reference Number)**,
    - (iii) **Standing Order 4.3 (Sourcing Methodology)**,
    - (iv) **Standing Order 16 (Assurances - Tendering)**,
    - (v) **Standing Order 16A (Data Protection Act 1998)** (if appropriate)
    - (vi) **Standing Order 17 (Confidentiality and Requests for Information)**,
    - (vii) **Standing Order 18 (E-Procurement)**
    - (viii) All **Standing Orders** relating to contract conditions

in so far as the said funding condition makes, in the view of the relevant Executive Director, the tendering processes set out in these Standing Orders impracticable or impossible, subject always to the requirements of the Reform Act, the Reform Act Regulations and/or the European Procurement Regulations

- 3.4 Employment** These Standing Orders do not apply to any contract of employment.
- 3.5 Land** These Standing Orders do not apply to any contract for the acquisition, disposal or rental of heritable property (including leases and licences) or any right, servitude or other interest in or over heritable property. However, this does not exempt any acquisition or disposal from the European Procurement Regulations or any other requirements set out in law or from the Council's Scheme of Delegation, Financial Regulations or Standing Orders on Procedures in relation to the acquisition or disposal of land or buildings.

- 3.6 **Special Circumstances** The Council or one of its Committees/Sub-Committees may exempt from the terms of these Standing Orders, or any part of them as the case may be, any contract if, subject to any requirements in terms of the European Procurement Regulations and following consultation with the Head of Administration and Legal Services they are satisfied that the exemption is justified by special circumstances.
- 3.7 **Contracts between public sector entities** (a) These Standing Orders do not apply to the procurement for the award of contracts between public sector bodies or a contract exclusively between 2 or more Contracting Authorities  
(b) The approval of the appropriate Committee will be required to award contracts in the circumstances referred to in **Standing Order 3.7 (a)**
- 4 **Pre-Tender Requirements**
- 4.1 **Approval of estimates of contract values** No tender shall be invited or offer made or accepted for any contract for the supply of goods, or the carrying out of works or the provision of services unless either:-  
(a) appropriate financial provisions have been made and approved by the Council in terms of the Council's Financial Regulations or  
(b) where funding is provided by a third party for a specific purpose involving the award of contracts of whatever nature, that purpose has been approved by the Council
- 4.2 **Contract Reference Number** No tender shall be invited or offer made or accepted for any contract for the supply of goods, or the carrying out of works or the provision of services where the estimated aggregated value exceeds £2,500 without a contract reference number having been obtained using the template approved by the Head of Finance (Transactions).
- 4.3 **Sourcing Methodology** (a) A Sourcing Methodology must be created for all tender opportunities (including the setting up of a Framework Agreement in accordance with **Standing Order 12 (Framework Agreement – internal)** and all Call Off Contracts from a Framework Agreement permitted in terms of **Standing Order 12 (Framework Agreement – internal)** or **Standing Order 13 (Framework Agreement – external)** ) where the estimated aggregated value exceeds £50,000 using the template approved by the Head of Finance (Transactions)  
(b) However a Sourcing Methodology will not require to be created for Call Off Contracts from a Framework Agreement established by the Council in accordance with **Standing Order 12 (Framework Agreement-internal)** or **Standing Order 13 (Framework Agreement – external)** unless, in the opinion of the appropriate Executive Director, that Call Off Contract is of high value and/or high risk.
- 4.4 **Committee Authority** Where, in the opinion of the appropriate Executive Director, a contract for the supply of goods, the carrying out of works or the provision of services is of high value and/or high risk no tender shall be invited for such a contract without approval from the relevant Committee.

## 4.5 Selection and Award Criteria

### 4.5.1 Selection Criteria

- (a) The appropriate Executive Director will set the selection criteria for a procurement exercise taking account of the applicable requirements of
- ◆ the Reform Act Regulations;
  - ◆ any other Regulations made or guidance issued by the Scottish Government under the Reform Act
  - ◆ the European Procurement Regulations
  - ◆ any such guidance as the Head of Administration and Legal Services and/or Head of Finance (Transactions) consider appropriate; and
  - ◆ any relevant Procurement Process
- (b) The selection criteria must be:-
- ◆ proportionate taking account of the nature, scope and size of the contract and
  - ◆ related to the subject matter of the contract
- (c) The selection criteria must be stated in the contact notice or the invitation to confirm interest and the procurement documents to enable the bidder to complete and submit an ESPD (refer to **Standing Order 19.6**)

### 4.5.2 Award Criteria

- (a) The procurement documents will state the award criteria that will apply to the procurement exercise as follows:-
- (i) The award of a contract for services and supplies with an estimated value above £50,000 shall be made on the basis of the most economically advantageous tender;
  - (ii) The award of a contract for works with an estimated value above £50,000 and below £2,000,000 shall be made, at the discretion of the relevant Executive Director, on the basis of lowest price or most economically advantageous tender;
  - (iii) The award of a works contract where the estimated value exceeds £2,000,000 shall be on the basis of the most economically advantageous tender; and
  - (iv) The award of all contracts which exceed the EU Thresholds shall be made on the basis of the most economically advantageous tender
- (b) The most economically advantageous tender must be identified on the basis of the best – price quality ratio assessed on the basis of criteria linked to the subject matter of the contract and include price or cost. This requirement applies even if the cost element takes the form of a fixed price or cost. The cost element may also at the discretion of the appropriate Executive Director include Life-Cycle Costing.
- (c) In determining the award criteria the appropriate Executive Director must take account of the requirements of the European Procurement Regulations, any such guidance as the Head of Administration and Legal Services and/or Head of Finance



(Transactions) consider appropriate and any relevant Procurement Process

**4.6 Reserved Contracts**

- (a) The appropriate Executive Director may in respect of a Regulated Procurement or an EU Regulated Procurement:-
  - (i) reserve the right to participate in a procurement exercise to a Supported Business; or
  - (ii) provide for a contract to be performed in a Supported Employment Programme

and the decision must be recorded in the Sourcing Methodology

**4.7 Preliminary Market Testing**

- (a) Preliminary market consultation may be carried out at the discretion of the appropriate Executive Director before carrying out any procurement exercise.
- (b) Advice may be sought or accepted from an independent expert or authority or from persons operating in the particular market relevant to the subject matter of the contract to be procured. That advice may be used in the planning and conduct of the procurement exercise provided that it does not distort competition or breach the EC Treaty Principles.
- (c) Employees involved in a procurement exercise where preliminary market consultation has been conducted must comply with the provisions of the relevant Procurement Process.

**4.8 Time limits**

- (a) For all procurement exercises other than those subject to the European Procurement Regulations the time limits for the receipt of tenders or requests to participate shall be determined taking account of the following factors:-
  - (i) the complexity of the contract; and/or
  - (ii) the time required for preparing a tender; and/or
  - (iii) whether a site visit is required
- (b) The time limit for receipt of tenders must be extended in a proportionate manner where:-
  - (i) the Council supplies additional information to a bidder (whether or not it was requested in good time) less than 6 days before the expiry of the tender return date; and
  - (ii) significant changes had been made to the procurement documents
- (c) An extension to the tender return date is not required in the following circumstances:-
  - (i) where additional information has not been requested in good time; or
  - (ii) where the additional information requested is of insignificant importance to the tender response
- (d) For any procurement exercise where the estimated value is below the EU Thresholds the appropriate Executive Director can decide as good practice to follow the time limits provided in the European Procurement Regulations

- 4.9 **Variant Bids** The Head of Administration and Legal Services must authorise the allowing or seeking of variant bids in a procurement exercise and the decision must be recorded in the Sourcing Methodology.
- 4.10 **Division of Contracts into Lots**
- (1) Where the appropriate Executive Director decides not to divide a contract into lots the main reasons for that decision must be indicated in the Sourcing Methodology, procurement document and the Report on Tenders.
  - (2) Where the appropriate Executive Director has decided to divide the contract into lots the Contract Notice or invitation to confirm interest must indicate:-
    - (i) whether tenders may be submitted for one, several or all lots;
    - (ii) where a decision to limit the number of lots that may be awarded to one tender has been taken by the appropriate Executive Director, the maximum limit of all lots that may be awarded to one bidder;
    - (iii) the criteria that will apply to determine how lots will be awarded where the award criteria would result in one tenderer being awarded more lots than the maximum number; and
    - (iv) whether the Council reserves the right to award the contract combining several or all lots if a tenderer can be awarded more than one lot and if so indicate that the lots are groups of lots that may be combined
- 4.11 **Use of PINs**
- (a) The appropriate Executive Director may, subject to the prior approval of the Head of Administration and Legal Services, use a PIN as a call for competition in a restricted tendering procedure or competitive procedure with negotiation.
  - (b) The use of a PIN as a call for competition shall be subject to the European Procurement Regulations and any such guidance and requirements as the Head of Administration and Legal Services and/or Head of Finance (Transactions) considers appropriate.
- 4.12 **Examining tenders before checking compliance with selection criteria**
- (a) In an open tendering procedure the appropriate Executive Director may, subject to the prior approval of the Head of Administration and Legal Services, decide to evaluate tenders before checking the absence of the exclusion grounds and checking a tenderer's compliance with the selection criteria
  - (b) If the option referred to in **Standing Order 4.12(a)** is approved:-
    - (i) the decision must be recorded in the Sourcing Methodology and
    - (ii) the procurement exercise must comply with the European Procurement Regulations and such guidance and requirements as the Head of Administration and Legal Services and/or Head of Finance (Transactions) considers appropriate
- 4.13 **Sustainable Procurement Duty**
- (a) From 1 June 2016 in carrying out any Regulated Procurements (Other than Call Offs) or EU Regulated Procurement (other than contracts for Social Care Services which are awarded without

advertising) the appropriate Executive Director will comply with the Sustainable Procurement Duty

(b) In complying with the Sustainable Procurement Duty the appropriate Executive Director must comply with the Reform Act, any guidance issued by the Scottish Government under the Reform Act, any guidance and requirements as the Head of Administration and Legal Services and/or Head of Finance (Transactions) considers appropriate and any relevant Procurement Process

4.14 **Community Benefit Requirement**

(a) From 1 June 2016 in carrying out any Regulated Procurement or EU Regulated Procurement (including any Call Off Contract and excluding any contracts for Social Care Services which are awarded without advertising) where the estimated value of the contract is equal to or exceeds £4million the appropriate Executive Director will comply with the Community Benefit Requirement

(b) In complying with the Community Benefit Requirement appropriate Executive Director must comply with the Reform Act, any guidance issued by the Scottish Government under the Reform Act, any guidance and requirements as the Head of Administration and Legal Services and/or Head of Finance (Transactions) considers appropriate and any relevant Procurement Process

(c) In addition to complying with the Community Benefit Requirement the appropriate Executive Director must, in carrying out all relevant procurement exercises where the estimated value is in excess of £50,000 comply with the Council's policy of promoting community benefits and any relevant Procurement Process

4.15 **Compliance with Procurement Strategy**

The appropriate Executive Director shall carry out all Regulated Procurements and EU Regulated Procurements, so far as reasonably practicable, in accordance with the Procurement Strategy applicable to the financial year during which the procurement exercise commenced

4.16 **Procurement of Recycled and Recyclable products**

The appropriate Executive Director shall comply with requirements to procure recycled and recyclable products as contained in any Regulations made by the Scottish Government under the Reform Act, any such guidance as the Head of Administration and Legal Services and/or Head of Finance (Transactions) consider appropriate and any relevant Procurement Process

5 **Competition Requirement**

5.1 **Contracts over £50,000 subject to competition**

All contracts where the estimated aggregated value is equal to or in excess of £50,000 but equal to or below the EU Thresholds (refer to **Standing Order 15 (European Procurement Regulations)**) may only be awarded after steps have been taken for the purpose of ensuring genuine competition by seeking from tenders by public advertisement in accordance **with the requirements of Standing Order 5.3** and the

terms of **Standing Orders 6 (Restricted Tendering), 7 (Open Tendering), 11 (Competitive Dialogue Procedure), 11A (Innovation Partnership) or 11B (Competitive Procedure with Negotiation)**

- 5.2 **Exceptions to the competition requirement** The requirement in **Standing Order 5.1** does not apply where:-
- (a) the use of the negotiated tendering procedure under **Standing Order 9 (Negotiated Tendering Procedure – General) or Standing Order 10 (Negotiated Tendering Procedure – Social Care Services Contracts)** is justified; or
  - (b) tender(s) are invited from person(s) whose name(s) appear for the time being on the relevant approved list(s) of providers held by the Council for that purpose in terms of **Standing Order 8A (List of Approved Providers for Self-Directed Support)**; or
  - (c) tenderers are selected via Constructionline following a selection procedure approved by the Head of Administration and Legal Services as permitted in terms of **Standing Order 8.1 (External Lists)** but only in respect of works contracts where the estimated value is less than £2million
- 5.3 **Publication of Notices** All PINs, contract notices and contract award notices must be published via the Public Contracts website and OJEU (if applicable) in accordance with applicable provisions of the European Procurement Regulations, the Reform Act, the Reform Act Regulations 2016, any other Regulations made by the Scottish Government under the Reform Act and any guidance issued by the Scottish Government under the Reform Act.
- 6 **Restricted Tendering**
- 6.1 **Period for seeking expressions of interest** The requirements of **Standing Order 4.8** shall be complied with in determining the period allowed in the PIN (when used a call for competition) or the contract notice to express an interest in tendering for a proposed contract.
- 6.2 **Obtaining Assurances** Prior to issuing any invitations to tender, the Executive Director shall seek the assurances as required by **Standing Order 16.1** but only insofar as they relate to the subject matter of the contract
- 6.3 **Invitation to Tender** Invitations to tender shall be sent to at least five persons selected from those who have expressed an interest in tendering for the proposed contract or, if fewer than five persons have expressed an interest to all such persons who have done so. However no person shall be invited to tender unless:-
- (a) they have provided the assurances required in terms of **Standing Order 6.2**;
  - (b) the technical capability and financial standing of such persons has been satisfactorily investigated;
  - (c) the requirements of **Standing Order 19 (Selection of Tenderers)** have been complied with and
  - (d) the Council has complied with the requirements of **Standing Order 16A (Data Protection Act 1998)**
- 7 **Open Tendering**
- 7.1 **Time Limit** The requirements of **Standing Order 4.8** shall be complied with in determining the period allowed in the contract notice

- 7.2 **Obtaining Assurances** All documents detailing the selection criteria will specify that selection will include the obtaining by the Council of satisfactory assurances in terms of **Standing Order 16.1 (Assurances – Tendering)** and comply with the requirements of **Standing Order 16A (Data Protection Act 1998)**
- 8 **Lists of Approved Contractors**
- 8.1 **External Lists**
- (a) In the procurement of a works contracts where the estimated value is less than £2million, the appropriate Executive Director may elect to use a list of acceptable contractors maintained by a third party in relation to the assessment of financial or technical standing and/or health and safety but only where the selection criteria adopted by that third party are equal to or more stringent than the selection criteria of the Council.
  - (b) The selection procedure used to select contractors from a third party list as permitted in **Standing Order 8.1(a)** shall be approved by the Head of Administration and Legal Services and a copy of the methodology used for each procurement process retained in the contract file
  - (c) However nothing in this Standing Order prohibits the consideration of tenderers who are not members of the third party list referred to in **Standing Order 8.1(a)** provided the tenderer would have met the selection criteria set out by such third party
- 8A **Lists of Approved Providers for Self-Directed Support**
- 8A.1 **Power to Keep List** This Standing Order shall apply to all contracts where the Council has been asked to make arrangements for the provision of support by a supported person in terms of the Social Care (Self-Directed Support)(Scotland) Act 2013 or where the grounds for a negotiated contract as set out in **Standing Order 10** would be met. To enable the award of such contracts the Director, Health and Social Care may keep a list of persons to be invited to enter into a contract to carry out such range of services as the Director sees fit.
- 8A.2 **Use of List** The Director, Health and Social Care may use the list to encourage competition by inviting persons whose name appears on the list to tender where appropriate or may enter into a contract directly where it would be appropriate to do so
- 8A.3 **Contents of List** Each list shall:-
- (i) Be compiled and maintained by the Director, Health and Social Care
  - (ii) Contain the names of all persons who wish to be included in it and who have been approved by the Director, Health and Social Care for that purpose;
  - (iii) Indicate what services or range of services each named person is approved to carry out with details of the prices, range of service(s) and times available and such other details as is required for each service or range of services; and
  - (iv) No person shall be included on the list unless their technical and

financial standing has been satisfactorily investigated and they have provided assurances as required in terms of **Standing Order 16 (Assurances – Tendering)**, they have complied with any requirements arising from the provisions of **Standing Order 16A (Data Protection Act 1998)** have been complied with and they have given an assurance that they will comply with the appropriate conditions of contract required by the Council in terms of these Standing Orders.

- 8A.4 **Advert** Not less than 4 weeks before a list is first compiled a Notice inviting applications for inclusion in such list shall be published in a way that complies with the EC Treaty Principles using the Council's e-procurement portal and such other means as the Director, Health and Social Care considers appropriate.
- 8A.5 **Review of List** The Director, Health and Social Care shall review the list prepared and maintained by him/her in accordance with this Standing Order:-
- (a) at least once every three years or at such other regular period that the Director, Health and Social Care considers appropriate;
  - (b) not less than four weeks before each review each person whose name appears on the list shall be invited to reapply and an advert inviting applications for inclusion on the list shall be published in the manner provided for in this Standing Order. No application for inclusion on the list shall be considered unless it is in writing;
  - (c) for the avoidance of doubt those invited to remain on the list shall be subject to the requirements of **Standing Order 8A.3 (iv)** at the time of the review;
  - (d) On completion of a review of a list under this Standing Order the Director, Health and Social Care, must report the composition of members on the list to the Social Work Resources Committee at the earliest opportunity
- 8A.6 **Amendment of List** The Director, Health and Social Care may amend the list at any time including the addition and removal of a person to and from the list. No person shall be added to the list unless they comply with the requirements of **Standing Order 8A.3**. The Director, Health and Social Care shall provide an annual report to the Social Work Resources Committee detailing any amendments made to the list in terms of this Standing Order.
- 8A.7 **Removal from List**
- (a) In the event of a person being removed from the list or having their application to be added to the list refused, that person shall be advised of this decision as soon as possible.
  - (b) Director, Health and Social Care shall keep a record listing:-
    - (i) the name and address of that person;
    - (ii) the explanation or reason why that person has been removed from the list or why that person's application to be added has been refused; and
  - (c) The Director shall provide an annual report to the Social Work Resources Committee detailing any persons removed from the list in terms of this **Standing Order 8A.7**
- 8A.8 **Suspension from List** The Director, Health and Social Care may suspend a person from the list prepared and maintained in accordance with this Standing Order where the Director has serious concerns regarding the person's fitness

or otherwise to remain on the list to carry out the type of services in relation to which the person is on the list. The purpose of the suspension shall be to allow the Director to carry out investigations regarding the person's fitness or otherwise to remain on the list. The suspension shall be for a period not exceeding 6 calendar months or until the end of the investigation, whichever is the earlier, at which point the Director must reinstate the person to the list or remove the person from the list (when the requirements of **Standing Order 8A.7** shall apply).

**9 Negotiated Tendering Procedure– General**

- 9.1 Use of the Negotiated Tendering Procedure** This Standing Order shall apply to all Regulated Procurements which are conducted without advertisement (other than the procurement of Social Care Services)
- 9.2 Conditions for using Negotiated Procedure** The negotiated tendering procedure may only be used if:-  
(a) the circumstances set out in **Standing Order 9.3** exist;  
(b) it is in the Council's interest to use the negotiated tendering procedure and  
(c) the contract will secure Best Value (as set out in **Standing Order 2.6**)
- 9.3.1 Circumstances where Negotiated Procedure is Permitted (Below E U Thresholds)** The appropriate Executive Director, in consultation with the Chair (or in his/her absence) the Depute Chair of the appropriate Committee must approve the existence of the following circumstances:-  
(a) Where as a result of the publication of a contract notice no tender, no suitable tenders, no requests to participate or no suitable requests to participate has been received provided that the initial conditions of the contract are not substantially altered; or  
(b) Where the works, services or supplies can be supplied only by one suitable contractor for any of the following reasons:-  
(i) the aim of the procurement is the acquisition of a unique work of art or artistic performance; or  
(ii) competition is absent for technical reasons; or  
(iii) the protection of exclusive rights including intellectual property rights;  
but in the cases of (ii) and (iii) no alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement; or  
(c) Where in the case of a supplies contract for additional deliveries by the original supplier intended as a partial replacement of supplies or installations or as the extension of existing supplies or installations that a change of supplier would oblige the Council to acquire supplies having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance subject to the duration of the contract not exceeding 3 years unless exceptional circumstances exist; or  
(d) Where in the case of a contract for the supply of goods, the goods are manufactured purely for the purpose of research, experiment, study or development, but the contract awarded shall not include quantity production to establish their commercial

- viability or to recover research and development costs; or
- (e) Where in the case of a supplies contract, it is in the interests of the Council to take advantage of particularly advantageous terms from a supplier which is definitively winding up its business activities or from a liquidator in an insolvency procedure, an arrangement with creditors or a similar procedure under national laws or regulations; or
- (f) Where in the case of a supplies contract the supplies are quoted and purchased on a commodity market; or
- (g) Where in the case of a services contract it follows a design contest organised in accordance with the European Procurement Regulations and is to be awarded under the rules provided for in the design contest to the winner or one of the winners of the design contest; or
- (h) Where:
  - (i) it is new works, services or both consisting of the repetition of similar works or services entrusted to the original contractor provided such works or services are in conformity with the project for which the original contract was awarded;
  - (ii) project indicated the extent of the possible works or services and the conditions under which they would be awarded;
  - (iii) the possible use of this procedure was disclosed in the procurement documents and the total estimated cost of the additional works or services was taken into account in determining if the procurement exercise would be a Regulated Procurement;
  - (iv) no more than 3 years has passed from the conclusion of the original contract.

- 9.3.2 In the view of the appropriate Executive Director (but only if it is strictly necessary) for reasons of extreme urgency either brought about by events outwith the control of the Council or to prevent danger to life, serious risk to health or damage to property, the contract must be awarded without delay.
- 9.4 **Reporting to Committee** Where the negotiated tendering procedure has been used, the appropriate Executive Director shall report to the next meeting of the appropriate Committee explaining the circumstances justifying the use of this **Standing Order 9**.
- 9.5 **Keeping Records** In all cases where the negotiated procedure has been used in terms of this Standing Order, a full written record of all contacts, discussions and communications with the prospective contractors shall be kept by the appropriate Executive Director together with a full explanation as to why the Executive Director considered it appropriate to use the negotiated procedure and confirming that the contract secures Best Value (as set out in **Standing Order 2.6**)
- 10 **Negotiated Tendering Procedure – Social Care Services Contracts**



- 10.1 **Application** This Standing Order only applies to contracts in relation to the provision of Social Care Services which are below the EU Threshold for Social or Other Specific Services.
- 10.2 **Negotiated Procedure and Social Care Contracts** If the appropriate Executive Director/Director, Health and Social Care has decided that the procedures in **Standing Orders 6 (Restricted Tendering), 7 (Open Tendering), 11 (Competitive Dialogue Procedure), 11A (Innovation Partnership) or 11B (Competitive Procedure with Negotiation)** or seeking offers from a list maintained under **Standing Order 8A (Approved List of Providers for Self-Directed Support)** would be inappropriate for a particular contract he/she may approve the negotiated procedure for the purpose of seeking offers to enter into contracts
- 10.3 **Call Off Contracts – Social Care Services Contracts** Where a provider holding the appropriate registration with the Social Care and Social Work Improvement Scotland on the appropriate list maintained by the Executive Director for those services offers to provide Social Care Services, the Executive Director, following consultation with the Chair or (in his/her absence) Depute Chair of the appropriate Committee, is authorised to receive, negotiate and approve a Call Off Contract, provided that such contracts are in standard format approved by the Head of Administration and Legal Services and there is no commitment on the Council to use any given level of service. The Executive Director shall report to the appropriate Committee on a quarterly basis those Call Off Contracts negotiated with such providers
- 10.4a **Social Care Services**
- (a) The appropriate Executive Director, having taken account of the principles and guidance set out in the Procurement of Care and Support Services Guidance and, following consultation with the Chair or (in his/her absence) Depute Chair of the appropriate Committee may also enter into negotiations with one or more providers holding the appropriate registration with the Social Care and Social Work Improvement Scotland in one or more of the following circumstances, namely if:
- (i) in the opinion of the Executive Director the needs of the individual(s) concerned would be best met by a particular provider; or
  - (ii) in the opinion of the Executive Director there is only one provider capable of delivering the service to meet the needs of the individual(s) concerned; or
  - (iii) the nature of the service is such that it should not or cannot be adequately specified in advance because of the nature of the social care needs of the individual(s) concerned; or
  - (iv) 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
  - (v) where 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
  - (vi) in any other circumstances where the Executive Director is of the view that it is in the best interests of the service user to use a particular provider

In all of these circumstances the Executive Director must be satisfied that the negotiations and the contract secures Best Value (as set out in **Standing Order 2.6**) and the provider will meet the service users' outcomes

- 10.4b **Reporting To Committee** (b) On completion of such negotiations, the Executive Director must report the outcome to the appropriate Committee and advise as to the reasons for entering into negotiations in terms of this Standing Order and confirming that the negotiations and any contract secures Best Value (as set out in **Standing Order 2.6**).
- 10.4c **Keeping records** (c) In all cases where the negotiated procedure has been used in terms of this Standing Order, a full written record of all contacts, discussions and communications with the prospective providers shall be kept by the appropriate Executive Director together with a full explanation as to why the Executive Director considered it appropriate to use the negotiated procedure and confirming that the contract secures Best Value (as set out in **Standing Order 2.6**)
- 10.4d **Complying with the Reform Act** (d) When procuring Social Care Services the appropriate Executive Director shall ensure that the requirements of  
(i) **Standing Order 4.5.2 (Award Criteria)**;  
(ii) **Standing Order 4.13 (Sustainable Procurement Duty)**  
(iii) **Standing Order 19.1 – 19.5 (Selection of Tenders – exclusion)**  
(iv) **Standing Order 21.1, 21.2, 21.3, 21.5, 21.8, and 21.12 (Acceptance of Tenders)**  
are complied with
- 11 **Competitive Dialogue Procedure**
- 11.1 **Committee Approval** The Competitive Dialogue Procedure provided for in the European Procurement Regulations may only be used where the prior approval of the appropriate Committee has been given to its use
- 11.2 **Use of Competitive Dialogue Procedure** The use of the Competitive Dialogue Procedure in any contract approved by Committee shall be subject to the EU Procurement Regulations and such guidance and requirements as the Head of Finance (Transactions) and the Head of Administration and Legal Services consider appropriate
- 11.3 **Prizes/Payments** The provision of prizes and/or the making of payments to participants in a Competitive Dialogue Procedure shall be subject to the prior approval of the Head of Administration and Legal Services
- 11A **Innovation Partnerships**
- 11A.1 **Committee Approval** An Innovation Partnership provided for in the European Procurement Regulations may only be used where the prior approval of the appropriate Committee has been given to its use

11A.2	<b>Use of Innovation Partnership</b>	The use of an Innovation Partnership shall be subject to the European Procurement Regulations and such guidance and requirements as the Head of Finance (Transactions) and/or Head of Administration and Legal Services considers appropriate
11B	<b>Competitive Procedure with Negotiation</b>	
11B.1	<b>Approval</b>	The Competitive Procedure with Negotiation provided for in the European Procurement Regulations may only be used when the prior approval of the Head of Administration and Legal Services has been given to its use.
11B.2	<b>Use of the Procedure</b>	The use of the Competitive Procedure with Negotiation in any contract shall be subject to the European Procurement Regulations and such guidance and requirements as the Head of Administration and Legal Services and/or Head of Finance (Transactions) considers appropriate.
12	<b>Framework Agreements – Internal</b>	
12.1	<b>Framework Agreements – General</b>	Framework Agreements established by the Council must be formed on the basis of these Standing Orders and the applicable provisions of 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 the European Procurement Regulations (if appropriate).
12.2	<b>Framework Agreements conditions</b>	All Framework Agreements established by the Council in terms of this Standing Order must set out:- <ul style="list-style-type: none"> <li>(i) the terms and conditions that will apply to any Call Off Contract awarded from the Framework Agreement;</li> <li>(ii) the procedures to be followed in awarding a Call Off Contract either via direct award from or carrying out a mini-competition under the Framework Agreement;</li> <li>(iii) the maximum period for the Framework Agreement (which must not exceed four years except in exceptional circumstances which relate to the subject matter of the Framework Agreement); and</li> <li>(iv) the maximum period for any Call Off Contract awarded under the Framework Agreement</li> </ul>
12.3	<b>Framework Agreements – Calling Off</b>	Any Call Off Contract to be made under a Framework Agreement established under this Standing Order (either as a direct award or following a mini-competition) must comply with: <ul style="list-style-type: none"> <li>◆ the procedures specified in the Framework Agreement for the making of such a Call Off Contract,</li> <li>◆ be awarded using the criteria used to establish the Framework Agreement or as laid down in the Framework Agreement and</li> <li>◆ where the estimated aggregated value of a Call Off Contract exceeds £50,000 the following requirements must be complied with:-</li> </ul>

- (i) **Standing Order 4.2 (Contract Reference Number)**
- (ii) **Standing Order 4.3 (Sourcing Methodology)** (if in the opinion of the appropriate Executive Director the Call Off Contract is of high value and/or high risk)
- (iii) **Standing Order 4.14 (Community Benefit Requirement)**
- (iv) **Standing Order 18 (E-Procurement)** (where carrying out a mini-competition)
- (v) **Standing Order 20 (Checking of Tenders and Reporting)** unless a direct award is being placed via the i-procurement system and from an electronic catalogue on the i-procurement system
- (vi) **Standing Order 21 (Acceptance of Tenders)** unless a direct award is being placed via the i-procurement system or from an electronic catalogue on an i-procurement system and
- (vii) **Standing Order 21.12 (Acceptance of Tenders – Contract Award Notices)** (for Regulated Procurements)

- 12.4 **Framework Agreements – access by other contracting authorities** A Call Off Contract under a Framework Agreement established in terms of this Standing Order may only be made by those Contracting Authorities clearly identified for that purpose in the PIN/contract notice
- 13 **Framework Agreements – External**
- 13.1 **Framework Agreements - General**
- (a) The Standing Orders do not apply to Call Off contracts to be awarded by the Council using Framework Agreements made by other organisations, including but not restricted to the Scotland Excel, Procurement Scotland, the Crown Commercial Service or any other public sector organisation who have made specific provision for collaboration with or allow the use by the Council in their Framework Agreements, subject to **Standing Order 13.2**
  - (b) The Council shall not seek offers for contracts which these organisations are entitled to seek on the Council's behalf, except in such cases as the Council deems it likely that Best Value (as set out in **Standing Order 2.6**) will be obtained by seeking tenders by other means, or as otherwise permitted by the Framework Agreements. All such Framework Agreements must permit the Council to obtain tenders independent of the Framework Agreement if it is likely to be in the interests of Best Value (as set out in **Standing Order 2.6**) to do so
- 13.2 **Framework Agreements – Conditions** **Standing Order 13.1** only applies to Framework Agreements which have been formed on the basis of competitive tenders and in full compliance with any legal requirements such as the duty to promote Equal Opportunities, EC Treaty Principles, the requirements of the Reform Act, Reform Act Regulations and/or European Procurement Regulations (if applicable) and provided that the Framework Agreement contains or allows any Call Off Contract awarded under this **Standing Order 13** to contain the following matters:-
- (i) **Standing Order 2.3 (Form of Contract and Scots Law),**
  - (ii) **Standing Order 2.6 (Best Value),**
  - (iii) **Standing Order 16A (Data Protection Act 1998)**

- (iv) **Standing Order 17 (Confidentiality and Requests for Information),**
- (v) **Standing Order 18 (E-Procurement),**
- (vi) and, where appropriate, all **Standing Orders** relating to contract conditions

13.3 **Framework Agreements – Procedure for Calling Off**

Any Call Off Contract to be made under an external Framework Agreement (either as a direct award or following a mini-competition) must comply with:-

- (a) the procedures specified in the Framework Agreement for the making of such a Call Off Contract,
- (b) be awarded using the criteria used to establish the Framework Agreement or as laid down in the Framework Agreement and
- (c) where the estimated aggregated value of a Call Off Contract exceeds £50,000 the following requirements must be complied with:-
  - (i) **Standing Order 4.2 (Contract Reference Number);**
  - (ii) **Standing Order 4.3 (Sourcing Methodology)** (if in the opinion of the appropriate Executive Director the Call Off Contract is of high value and/or high risk);
  - (iii) **Standing Order 4.14 (Community Benefit Requirement)**
  - (iv) **Standing Order 20 (Checking of Tenders and Reporting)** unless a direct award is being placed via an i-procurement Purchase Order or from an electronic catalogue on an i-procurement system;
  - (v) **Standing Order 21 (Acceptance of Tenders)** unless a direct award is being placed via an i-procurement Purchase Order or from an electronic catalogue on an i-procurement system; and
  - (vi) **Standing Order 21.12 (Acceptance of Tenders – Contract Award Notices)** (for Regulated Procurements)

14 **Collaborations**

14.1 **Application**

This Standing Order applies where the Council are entering into Category C collaborative arrangements. The prior approval of the Head of Administration and Legal Services will be required to enter into any collaborative arrangement.

14.2 **Non-partnership Clause**

It shall be an essential express condition in every such collaborative arrangement that it is not intended that there is a legal partnership being created.

14.3a **Tendering**

Where in terms of the collaborative arrangements consultants/specialists or other third parties are to be appointed by either the Council or by the other lead partner then such appointment is to be awarded subject to competitive tendering procedures the same as those procedures specified in **Standing Orders 6 (Restricted Tendering), 7 (Open Tendering) or 8A (Approved List of Contractors for Self-Directed Support)** or the negotiated procedure if permitted in terms of **Standing Orders 9 (Negotiated Tendering Procedure – General) or 10 (Negotiated Tendering Procedure – Social Care Contracts).**

14.3b	<b>In-house/Direct Labour Packages</b>	Despite the terms of <b>Standing Order 14.3(a)</b> , where the collaborative arrangement allows for the other lead organisation to offer to provide an in-house or a Direct Labour Package, then that in-house service may be viewed as to be treated as if they are a Trading Operation in terms of <b>Standing Order 32</b> .
14.3c	<b>European Procurement Regulations</b>	However <b>Standing Order 14.3 (b)</b> will not apply if the estimated aggregated value of the works/goods or services would exceed the EU Thresholds. In that case any contract to be awarded shall need to be awarded in terms of <b>Standing Order 15 (European Procurement Regulations)</b> regardless of whether it is the Council or another lead organisation seeking to award the contract in terms of the collaborative arrangements
14.4	<b>Joint responsibility</b>	Contracting authorities will be jointly responsible for ensuring compliance with the European Procurement Regulations where:- (i) the procurement exercise is carried out in its entirety in the name of and on behalf of all the Contracting Authorities involved; or (ii) one of the contracting authorities manages the procurement exercise as lead and on behalf of all the Contracting Authorities involved
15	<b>European Procurement Regulations</b>	
15.1	<b>Application</b>	The European Procurement Regulations apply to contracts over the relevant EU Thresholds
15.2	<b>Tendering Processes</b>	The procedures set out in the European Procurement Regulations are to be followed in relation to the award or extension of a contract and the following Standing Orders shall be complied with:- (i) <b>Standing Order 2 (General)</b> (ii) <b>Standing Order 4 (Pre-Tender Requirements)</b> (iii) <b>Standing Order 5.3 (Publication of Notices)</b> (iv) approvals in terms of <b>Standing Order 9 (Negotiated Tendering Procedure – General), 11 (Competitive Dialogue), 11A (Innovation Partnerships), 11B (Competitive Procedure with Negotiation) or 14 (Collaborations)</b> (v) <b>Standing Order 16 (Assurances – Tendering)</b> (vi) <b>Standing Order 16A (Data Protection Act 1998)</b> (vii) <b>Standing Order 17 (Confidentiality and Requests for Information)</b> (viii) <b>Standing Order 18 (E-Procurement)</b> (ix) <b>Standing Order 19 (Selection of Tenderers)</b> (x) <b>Standing Order 20 (Checking of Pre-Qualification/Tenders and Reporting)</b> (xi) <b>Standing Order 21 (Acceptance of Tenders)</b> (xii) Approvals in terms of <b>Standing Order 22 (Extension of Contracts)</b> (xiii) <b>Standing Order 24 (Responsible Third Party)</b> (xiv) <b>Standing Order 25 (Contract Performance Security)</b> (xv) <b>Standing Order 36 (Retention of Contract Documents)</b> and (xvi) All <b>Standing Orders</b> relating to contract conditions

- 15.3 **Light Touch Regime** The procurement of Social and Other Specific Services shall be subject to the:-
- (a) light touch regime as detailed in the European Procurement Regulations which comprises:-
    - (i) publishing a contract notice (unless procuring without advertisement) and contract award notice
    - (ii) complying with the process for the selection of tenderers as set out in **Standing Order 19 (selection of tenderers)**;
    - (iii) complying with the EC Treaty Principles; and
    - (iv) determining a procurement procedure taking account of the specificities of the services and the requirements and needs of the service user;
  - (b) requirements of these Standing Orders as set out in **Standing Order 15.2** above
  - (c) following requirements of the Reform Act and the Reform Act Regulations 2016:-
    - (i) Complying with the Sustainable Procurement Duty (refer to **Standing Order 4.13**); and
  - (d) complying with any such guidance as the Head of Administration and Legal Services and/or Head of Finance (Transactions) consider appropriate
- 16 **Assurances – Tendering**
- 16.1 **As part of Assessment Process** As part of any tendering process, the Council shall obtain from tenderers satisfactory assurances in writing in the form determined by the Head of Administration and Legal Services, that:-
- (a) the tenderer has complied with all statutory requirements in respect of observing the Equalities Legislation;
  - (b) where the contract is for the provision of services of a public nature the tenderer has complied with the terms of the Human Rights Act 1998 in relation to the previous provisions of such services;
  - (c) the tenderer has not practised collusion in tendering for any contract with the Council or offered, promised or given any financial or other advantage to the Council or any person employed by or on behalf of the Council in connection with the obtaining or carrying out of any contract with the Council;
  - (d) the tenderer has not engaged in serious and organised criminal activities;
  - (e) where the contract is for the carrying out of works and/or the provision of construction services and/or supplies the tenderer has not engaged in blacklisting activities in the employment of their staff; and
  - (f) the tenderer commits to prompt payment of subcontractors
  - (g) the tenderer has complied with the requirements of the Modern Slavery Act 2015
- 16.2 **Supporting Evidence and signing** (a) Such assurances as may be required for a particular contract in terms of **Standing Order 16.1** must be supported by satisfactory evidence (if required).

		(b) Where the contractor is a corporate body then the assurances must be provided by a director of the corporate body or other person authorised to bind the corporate body personally
		(c) Reference should be made to the relevant Practice Notes or Procurement Processes and guidance sought from Legal Services on the appropriate requirements (if required) on the appropriate requirements (if required) in relation to Equal Opportunities
16.3	<b>Selection Criteria - Obtaining Assurances</b>	All documents detailing the selection criteria will specify that selection will include the obtaining by the Council of satisfactory assurances in terms of <b>Standing Order 16.1</b>
16A	<b>Data Protection Act 1998</b>	
16A.1	<b>To be in compliance with the Data Protection Act 1998</b>	Where the contractor will be a Data Processor (as defined in Data Protection Act 1998 and any legislation amending same) the Council must comply with the requirements of the Council's Toolkit on Data Protection and Procurement/Contracting Toolkit No3 and any Practice Notes
17	<b>Confidentiality and Requests for Information</b>	
17.1.1	<b>Giving out of Information not to be unreasonably excluded</b>	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
17.1.2		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
17.2	<b>Procurement/ Contracting Toolkits</b>	Reference should be made to the Practice Notes and specifically the Council's Confidentiality and Procurement/Contracting Toolkit No1 and the Requests for Information and Procurement/Contracting Toolkit No2 for guidance on the appropriate requirements
18	<b>E- Procurement</b>	
18.1	<b>Use of E-Procurement</b>	All procurement exercises where the estimated value of the contract exceeds £2,500 must be conducted using E-procurement using a system approved by the Council or by another secure electronic system as approved by the Head of Administration and Legal Services (Call Off contracts only).
18.2	<b>Verification and Authentication</b>	(a) Where E-procurement 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:-

- (i) the signature of the person making the submission must be an authorised signatory of the applicant/tenderer and
- (ii) a physical signature of the successful tenderer(s) will be required prior to the award of the contract

- (b) Any document issued using electronic means must state the Council's requirements relating to authentication or verification of the submission or of the signature of the person making the submission

- 18.3 **Receipt and Custody**
- (a) No pre-qualification document/tender submitted using E-procurement will be considered unless:-
    - (i) it is received in the format specified in the documents;
    - (ii) at the electronic address specified by the Council; and
    - (iii) the electronic submission has been received by the time and date specified as the pre-qualification documents/tender deadline (in all cases being 12 noon).

- 18.4 **Late Submissions**
- The electronic mailbox identifies pre-qualification documents/tenders received after the date and time deadline specified for return as being late. Pre-qualification documents/tenders received after the date and time deadline specified for return cannot be considered under any circumstances

- 18.5 **Opening of pre-qualification documents/tenders**
- (a) All pre-qualification documents/tenders submitted using E-procurement shall be opened and be made available for download at the same time via the Council's approved e-procurement system
  - (b) Sequential opening must be adopted for all tendering processes

- 18.6 **Electronic Auctions**
- (a) The Head of Finance (Transactions) and the Head of Administration and Legal Services may authorise the carrying out of an Electronic Auction where satisfied that:-
    - (i) it is in the interests of the Council to do so and where they are satisfied that the electronic auction is in accordance with the European Procurement Regulations; and
    - (ii) that the likely benefit of an Electronic Auction will outweigh the costs of undertaking the Electronic Auction
  - (b) An Electronic Auction may only be carried out where the possibility of the use of an Electronic Auction has been stated in the OJEU Notice (if applicable), the contract advertisement and the tender documents issued to tenderers
  - (c) Before proceeding with an Electronic Auction the Head of Finance (Transactions) along with a representative of the Resource which requested the electronic auction shall make a full initial evaluation of the tenders in accordance with the award criteria set and with the weighting fixed for them. All tenderers who have submitted admissible tenders shall be invited simultaneously by electronic means to submit new prices (downwards) and/or new values

- (d) Prior to the commencement of any Electronic Auction, the Council shall intimate to all tenderers involved the date and time fixed for the carrying out of the electronic auction and the proposed duration of the Electronic Auction together with any proposals for the extension of the duration of the Electronic Auction. An Electronic Auction must not start sooner than 2 working days from the date on which the invitations are sent out
- (e) Throughout each phase of an Electronic Auction the Council shall instantaneously communicate to all tenderers involved at least sufficient information to enable them to ascertain their relative rankings at any moment. During the Electronic Auction information relating to all tenderer's new prices and their ranking on price will be instantaneously available to all tenderers electronically (where this has been previously indicated). The Council may also, at any time, announce the number of participants in that Electronic Auction. In no case may the Council disclose the identities of the tenderers during any phase of an Electronic Auction
- (f) Any Electronic Auction will be subject to the EU Procurement Regulations and such additional procedural requirements as the Head of Finance (Transactions) and/or the Head of Administration and Legal Services considers necessary

**18.7 Dynamic Purchasing System**

- (a) The intention to use a Dynamic Purchasing System for any procurement shall be notified in advance to the Head of Finance (Transactions) and Head of Administration and Legal Services.
- (b) The establishment and use of a dynamic purchasing system will be subject to:-
  - (i) the EU Procurement Regulations for all contracts where the value exceeds the EU Thresholds;
  - (ii) the Reform Act and the Reform Act Regulations 2016 for any Regulated Procurement
 and in all cases such additional procedural requirements as the Head of Finance (Transactions) and/or Head of Administration and Legal Services considers necessary

**18.8 Electronic Catalogues**

- (a) The appropriate Executive Director may require tenders to be presented as an electronic catalogue or to include an electronic catalogue
- (b) The requirement to provide electronic catalogues shall be subject to the EU Procurement Regulations and such additional procedural requirements as the Head of Finance (Transactions) and/or Head of Administration and Legal Services considers necessary

**19 Selection of Tenderers**

**19.1 Application**

This Standing Order shall apply to all Regulated and EU Regulated Procurements apart from Call Off Contracts. The appropriate Executive Director must have regard to any guidance issued by the Scottish Government under the Reform Act in relation to the selection of tenderers

- 19.2 **Mandatory Exclusion**
- (a) The appropriate Executive Director must apply the mandatory exclusions as are applicable to a Regulated Procurement or EU Regulated Procurement as are set out in the EU Procurement Regulations, Reform Act, the Reform Act Regulations and guidance issued by the Scottish Government under the Reform Act to exclude a bidder from a procurement exercise
  - (b) The appropriate Executive Director may in exceptional circumstances for overriding reasons relating to the public interest disregard any of the mandatory exclusion grounds when making a decision on the selection of a bidder.
- 19.3 **Discretionary Exclusion**
- (a) The appropriate Executive Director may apply any of the discretionary exclusions as are applicable to a Regulated Procurement or EU Regulated Procurement as are set out in the EU Procurement Regulations, Reform Act, the Reform Act Regulations 2016 and any guidance issued by the Scottish Government under the Reform Act to exclude a bidder from a procurement exercise
- 19.4 **Limits on Exclusion**
- (a) A bidder must not be indefinitely excluded from participating in a procurement exercise. The appropriate Executive Director must apply the maximum periods for excluding as set out in the EU Procurement Regulations, Reform Act, the Reform Regulations and guidance issued by the Scottish Government under the Reform Act
- 19.5 **Self Cleansing**
- (a) Where a bidder is in a situation which may result in its exclusion from a procurement process, the appropriate Executive Director must give the bidder the opportunity to provide evidence that it has taken sufficient and appropriate remedial action to demonstrate its reliability i.e. self cleansed.
  - (b) When considering any self-cleansing measures provided by a bidder the appropriate Executive Director must consider all relevant factors including the gravity and particular circumstances of the criminal offence or misconduct
  - (c) If the appropriate Executive Director is not satisfied that the self-cleansing measures are sufficient for a bidder to demonstrate its reliability, it must provide a written statement of reasons as soon as is reasonably practicable. The statement of reasons must allow the bidder to understand why the self-cleansing measures taken were insufficient and the basis for the decision
  - (d) All decisions taken by the Executive Director will be recorded in the Report on Tenders
- 19.6 **ESPD**
- (a) The Council must accept an ESPD as preliminary evidence in the form of a self declaration that:-
    - ◆ none of the mandatory or discretionary exclusion grounds apply to a tenderer;
    - ◆ if any of the mandatory or discretionary grounds apply the self-cleansing measures that have been taken; and
    - ◆ the tenderer meets the relevant selection criteria

- (b) The appropriate Executive Director must set out the specific requirements and minimum standards in the contract notice and tenderers will respond using the ESPD
- (c) The documents in support of the information provided in the ESPD can be requested by the appropriate Executive Director at any time during a procurement exercise but in any event:-
  - ◆ in an open tendering procedure must be requested and checked prior to award.
  - ◆ in a restricted tendering procedure, competitive procedure with negotiation, competitive dialogue or innovation partnership must be requested and checked prior to issuing invitations to submit tenders
  - ◆ in any procurement exercise where the appropriate Executive Director has a genuine concern that there is a risk to effective conduct of the procurement procedure or ensure the integrity and proper conduct of the procurement process
- (d) Where the capability or capacity of a sub-contractor or members of a consortia will be relied on to meet the selection criteria in respect of economic and financial standing or technical and professional ability in any procurement process the appropriate Executive Director must request a separate ESPD from those parties

20      **Checking of Pre Qualification Responses/Tenders and Reporting**

20.1      **Executive Director to Check pre-qualification responses/Tenders**      All pre-qualification documents/tenders received shall, after opening in accordance with **Standing Order 18.5** be returned to the appropriate Executive Director for checking

20.2      **Evaluation**

- (a) The procurement documents shall state the selection and contract award criteria applicable to the procurement exercise. All pre-qualification responses and tenders shall be evaluated strictly in accordance with the evaluation criteria set out in the procurement documents
- (b) If during the evaluation process any communication is necessary prior to selecting bidders to be invited to tender/participate or contract award in order to clarify or supplement any aspect of their pre-qualification response/tender such communication shall be conducted in accordance with **Standing Order 20.3**

20.3      **Clarification of Pre-qualification responses/Tenders**

- (a) Between the last date and time for the receipt of pre-qualification responses/tenders and the date on which a decision is taken as to which, if any, tenderer will be invited to submit a bid/tender is to be accepted, the appropriate Executive Director may contact a person who has submitted a pre-qualification response/tender in respect of any contract in cases where it may be necessary to

validate or clarify the terms of the pre-qualification response/tender or to make any necessary arithmetical adjustments to a tender, but not for any other reason.

- (b) All discussions should be conducted in accordance with the following additional rules:-
  - (i) all tenderers must be treated equally and in a fair and transparent manner;
  - (ii) tenderers must not be allowed to change their tenders in a way that allows them to improve their offer;
  - (iii) all matters of clarification (other than arithmetic adjustments which should be dealt with in accordance with **Standing Order 20.3 (c)** or clarification of a matter specific to an individual tender must be notified to all persons submitting a pre-qualification response/tender;
  - (iv) where there is a need for clarification with more than one person those discussions should not be confined to the tenderer most likely to win the contract;
  - (v) there must be no discussions on fundamental aspects of tender changes to which are likely to distort competition including but not limited to prices;
  - (vi) no material change to the specification and/or the criteria on which the tenders are to be assessed; and
  - (vii) a full written record shall be kept by the appropriate Executive Director of all contacts, discussions, communications and meetings with the tenderer and the outcome of these discussions including any adjustments made as a consequence.
- (c) Where the examination of the tenders reveals obvious errors or discrepancies which would affect the tender rates/price, these errors will be dealt with in the following manner:-
  - (i) any obvious arithmetic errors will be rectified by the appropriate Executive Director and the amount of the tender shall be held to be the amount of the documents so rectified and the tenderer informed in writing of the corrected amount;
  - (ii) where there is an obvious and genuine error in the rates quoted, the tenderer will be given the opportunity of either confirming that they agree to their tender being considered with the error remaining or withdrawing their tender. This procedure must be undertaken in writing. If the tenderer decides to withdraw their tender, it will not be considered for acceptance. The tenderer must not be given the opportunity to submit an amended tender
- (d) Under no circumstances should a procuring officer re-open a ESPD/ITT on PCS-T following the return date to allow for clarification by a bidder. All clarifications should be dealt with via the messaging area on PCS-T.

20.4 **No fundamental Changes to Tender Conditions Permitted**

**Standing Order 20.3** does **not** permit the making of fundamental changes to the tender specifications and/or the award criteria as a result of any post tender discussions with a person(s) making a tender. Where changes to the specification and/or the award criteria are required and/or would be advantageous to the Council, the tendering

process must be cancelled by the appropriate Executive Director. If the tendering process is cancelled, it shall be re-started from the beginning in relation to the seeking of tenders.

- 20.5 **Report on Pre-Qualification responses/Tenders** Following the checking and assessment of all pre qualifications/tenders received in relation to a particular contract (including a Call Off Contract unless a direct award is being placed via the i-procurement system or from an electronic catalogue on an i-procurement system) a Report on Tenders in a format approved by the Head of Administration and Legal Services shall be prepared and approved by the appropriate Executive Director.
- 20.6 **Exclusion of Tenderers before submission of tenders**
- (a) As soon as reasonably practicable after deciding to exclude a tenderer from participating in a procurement exercise in terms of **Standing Order 19** at any stage before submitting a tender the appropriate Executive Director must notify the tenderer of that decision in accordance with the requirements of the Reform Act Regulations 2016 and any guidance and requirements as the Head of Administration and Legal Services consider appropriate
- (b) The letter must be in a format approved by the Head of Administration and Legal Services and should be issued in accordance with **Standing Order 21.5**
- 21 **Acceptance of Tenders**
- 21.1 **£200,000 and Below – Executive Director** Where the estimated aggregated value of any contract for the supply of any goods, the carrying out of any works or the provision of any services does **not exceed** £200,000,
- ◆ the lowest priced tender (in a price only tender for a works contract where the estimated value is less than £2million) or
  - ◆ the most economically advantageous tender
- may be accepted by the appropriate Executive Director and a letter of acceptance issued to the successful contractor.
- A copy of the contract acceptance must be sent to the Head of Finance (Transactions)
- 21.2 **Over £200,000 – Executive Director in Consultation with Members**
- (a) Where the estimated aggregated value of any contract for the supply of any goods, carrying out of any works or the provision of any services **exceeds £200,000**,
- ◆ the lowest tender (in a price only tender for a works contract where the estimated value is less than £2million) or
  - ◆ the most economically advantageous tender
- may be accepted by the appropriate Executive Director, following consultation and agreement with the Chair or (in his/her absence) Depute Chair of the appropriate Committee, together with one ex officio Member and a letter of acceptance issued to the successful tenderer
- (b) Where no such agreement can be reached then the tender can only be accepted on the authority of the appropriate Committee following consideration of a written report specifying reasons for

the failure to agree and the details of the relevant tenders

- 21.3 **Not accepting the Lowest Tender (in a price only tender for works where the estimated value is less than £2million) or where the Cost of the tender exceeds the Financial provision**
- (c) A copy of the contract acceptance must be sent to the Head of Finance (Transactions)
- Where it is proposed to accept a tender
- (i) which is either:-
- (a) not the lowest priced tender submitted (in a price only tender for a works contract where the estimated value is less than £2million) or
- (b) the cost of the tender is in excess of the financial provisions which have been made and approved by the Council in terms of the Council's Financial Regulations; or
- (ii) where funding is provided by a third party which has been approved by the Council,

then such tender shall only be accepted by the appropriate Executive Director and a letter of acceptance issued to the successful tenderer on the authority of the appropriate Committee following consideration by that Committee of a written report advising of that fact, the likely additional costs and where applicable, the reason(s) for not accepting the lowest tender submitted.

- 21.3A **Abnormally Low Tenders**
- (a) Where a tender appears, in the opinion of the appropriate Executive Director, to be abnormally low having considered all factors which may affect price or costs and the effective delivery of the contract he must require a tenderer to explain
- (b) A tender must be rejected as being abnormally low if:-
- ◆ the appropriate Executive Director is not satisfied that the evidence supplied explains the low level of the tender or
  - ◆ it has been established that the tender is abnormally low because it does not comply with environmental, social or labour law
- (c) A tender must not be rejected solely on the basis of low price or cost
- (d) In deciding whether to exclude an abnormally low tender the appropriate Executive Director must comply with any guidance issued by the Scottish Government under the Reform Act and any guidance and requirements as the Head of Administration and Legal Services and/or Head of Finance (Transactions) considers appropriate

- 21.4 **No Tender Being Accepted**
- If the appropriate Executive Director decides that none of the tenders submitted should be accepted, then that Executive Director shall notify all persons making tenders accordingly.

- 21.5 **Issue of Letters**
- (a) Letters to the unsuccessful tenderer will be issued at the same time as the letter to the successful tenderer.
- (b) Letters to be issued under the Standing Orders shall be in a format approved by the Head of Administration and Legal Services

- (c) Letters to be issued under this Standing Order shall be issued electronically via the Council's approved e-procurement system and may be followed up by the posting of a hard copy at the discretion of the appropriate Executive Director.

## 21.6 General Conditions

No tender shall be accepted unless:-

- (a) (i) the appropriate Executive Director is satisfied as to the current technical and professional ability of the tenderer and
  - (ii) the appropriate Executive Director in consultation with the Executive Director (Finance and Corporate Resources) is satisfied with the economic and financial standing of the tenderer in question
- (c) where the tender is not within the financial provisions which have been made and approved by the Council in terms of the Council's Financial Regulations or funding is provided by a third party which has been approved by the Council, the additional cost has received prior approval from the appropriate Committee
- (d) the tenderer and any sub-contractor/consultant who will be used to deliver the contract agrees to comply with the terms of:-
  - (i) **Standing Order 17 (Confidentiality and Requests for Information),**
  - (ii) all **Standing Orders relevant to contract terms;** and
  - (iii) **Standing Order 25 (Contract Performance Security)**
- (e) the tenderer has provided the appropriate assurances as required in terms of **Standing Order 16.1 (Assurances – Tendering);**
- (f) where the contractor will be a Data Processor (as defined in the Data Protection Act 1998 and any legislation amending same) the requirements of **Standing Order 16A (Data Protection Act 1998)** have been complied with;
- (g) where a contract is of a type referred to in the Local Government Contracts Act 1997 (a contract of services lasting or intended to last for a period of 5 years or longer or a financial arrangement relating to such a contract) the contract shall not be entered into by the Council until a certificate in compliance with the Act is issued by the Council where it is requested by the tenderer; and
- (h) the appropriate Executive Director is satisfied with the documentary evidence or certificates produced by the tenderer in support of the information provided in the ESPD

## 21.7 Compliance with the Standstill Period

- (a) Where the European Procurement Regulations apply to any contract (other than a contract for Social and other Specific Services) no acceptance of a successful tender shall be made by the Council unless and until the standstill procedure set out in the European Procurement Regulations has been followed.
- (b) The standstill period referred to in the standstill procedure depends on the method by which the standstill letter is sent. If the standstill letter is sent by fax or email the standstill period is a minimum of 10 calendar days from the date on which the last standstill letter for the particular tender is sent and if sent by any other means the standstill period is a minimum of 15 calendar days. In calculating the standstill period the date the standstill letter is sent must be disregarded and if the last day is not a working day the standstill period must be extended to the next working day.



- (c) The standstill letters must be in a format approved by the Head of Administration and Legal Services and signed by the appropriate Executive Director
- 21.8 **Notification of Award Committee**
- (a) Any contract awarded with an estimated aggregated value in excess of £50,000 shall be reported by the appropriate Executive Director to the relevant Committee on a six monthly basis.
- (b) The report shall contain the following information:-
- (i) the name of the successful tenderer(s)
  - (ii) the value of the contract awarded;
  - (iii) the date of award and
  - (iv) the brief description of the contract
- and such other information as may be specified from time to time by the Head of Finance (Transactions)
- 21.9 **Debrief**
- The Council will offer all unsuccessful tenderers an opportunity for a debrief.
- 21.10 **Giving of Reasons – Regulated Procurements**
- (a) In relation to all Regulated Procurements the appropriate Executive Director must notify its decision to award to all unsuccessful bidders
- (b) The notification must be in a format approved by the Head of Administration and Legal Services and signed by the appropriate Executive Director
- 21.11 **Provision of Further Information – Regulated Procurements**
- Where a written request for further information is received from a person in relation to a Regulated Procurement the Council must comply with the requirements of the Reform Act and seek advice and assistance as required from Legal Services
- 21.12 **Contract Award Notices**
- (a) The Executive Director (Finance and Corporate Resources) shall ensure that Contract Award Notices are published for all Regulated Procurements (including Call Off Contracts) and EU Regulated Procurements (other than Call Off Contracts) as soon as possible after acceptance of the successful tender/appointment to a Framework and no later than 30 days after the issue of the letter of award of the contract/conclusion of the Framework in accordance with **Standing Order 5.3**
- (b) Where a contract has been awarded based upon a Dynamic Purchasing System the contract award notices can be aggregated on a quarterly basis and published within 30 days after the end of each quarter
- 22 **Extension to Contracts**
- 22.1 **Extension of Contracts subject to the European Procurement Regulations**
- (a) The extension of a contract which was originally procured under the European Procurement Regulations and includes an option to extend, may be extended under **Standing Order 22.2** even if the estimated aggregated value of the extension is above the relevant EU Thresholds

(b) Where a contract was not originally procured under the European Procurement Regulations and the estimated aggregated value of the proposed extension is above the EU Thresholds, then the proposed extension (whether or not the extension was provided for in the original contract) cannot be made under this Standing Order and **Standing Order 15 (European Procurement Regulations)** will apply.

22.2 **Authorisation of a Contractual Extension**

- (a) Where an Executive Director considers that an existing contract should be extended and the option to extend was disclosed in the original contract notice and procurement documents for that contract, that Executive Director may authorise the exercise of that option provided the Executive Director concerned is satisfied:-
- (i) the extension secures Best Value (as set out in **Standing Order 2.6**);
  - (ii) the period of the extension does not exceed the original period of the original contract or 3 years whatever is the shorter;
  - (iii) the original contract has not been extended previously in terms of this **Standing Order 22.2**;
  - (iv) with the financial standing of the contractor and
  - (v) that the performance of the contractor in the original contract period has been satisfactory in that an average performance rating of 70% or above has been achieved in the performance appraisal(s) carried out during the original contract period
- (b) A contractual extension can be exercised in instalments provided that the period of those instalments are stated in the contract notice, procurement documents and any subsequent separate contract document.

22.3a **Non-contractual extension**

- (a) Where the contract does not make provision for the extension of the contract or the contract has already been extended in terms of **Standing Order 22.2**, an Executive Director shall not extend the contract unless:-
- (i) the use of the negotiated procedure can be justified in terms of **Standing Order 9 (Negotiated Tendering Procedure – General)** or **10 Negotiated Tendering Procedure – Social Care Services Contracts)** and
  - (ii) the conditions set out in **Standing Order 22.3(b)** are satisfied.

22.3b **Conditions to be Applied to a Non-contractual Extension**

- (b) A contract for the supply of goods, the carrying out of works or the provision of services may be extended without fresh competition for further goods, works or services of a similar description provided that:-
- (i) the original contract was won in competition, and
  - (ii) the unit costs in respect of the supply of further goods, or the costs in carrying out the particular works or providing those particular services have not increased by more than 10% (after making allowance for the rate of inflation by use of the Consumer Price Index) over those contained in the original contract; and

- (iii) the extension proposed is reasonable in all the circumstances; and
- (iv) the period of extension does not exceed the original period of the original contract or 3 years whatever is the shorter; and
- (v) the original contract has not been extended previously in terms of **this Standing Order 22.3**
- (vi) the appropriate Executive Director is satisfied with the financial standing of the contractor; and
- (vii) the performance of the contractor in the original contract period has been satisfactory in that an average performance rating of 70% or above has been achieved in the performance appraisal(s) carried out during the original contract period.

- 22.4 **Authorisation of a Non-Contractual Extension** No contract shall be extended in accordance with **Standing Order 22.3** except with the prior written authorisation of the appropriate Executive Director either in consultation with the Executive Director (Finance and Corporate Resources) or with his/her agreement (if agreement is required in compliance with Section 20.2 of the Council's Financial Regulations) and the Chair (or in his/her absence) the Depute Chair of the appropriate Committee
- 22.5 **Notification to Committee** Any contract extended under **Standing Order 22** shall be reported by the relevant Executive Director to the appropriate Committee on a six monthly basis in a format approved by the Head of Administration and Legal Services
- 22.6 **Keeping records** In all cases where a contract is extended in accordance with this **Standing Order 22**, a full written record of all contacts, discussions and communications with the contractor shall be kept by the appropriate Executive Director together with a full explanation as to why the Executive Director considered it appropriate to extend the contract and confirming that the extension secures Best Value (as set out in **Standing Order 2.6**).
- 22.7 **Social Care Services** Contracts in relation to the provision of Social Care Services may be exempted from the requirements of **Standing Order 22.3(b) (v)**, where the Executive Director considers, in consultation with the Chair, (or in his/her absence) the Depute of the appropriate Committee, that it is appropriate under all of the circumstances that the contract should be extended despite having been previously extended. However no contract shall be so extended unless it complies with the requirements of **Standing Orders 22.3(b), 22.4, 22.5 and 22.6**.
- 23 **Nomination of Sub-Contractors**
- 23.1 **Tendering for Sub-Contractors** Where a contract provides for the nomination by an Executive Director of a sub-contractor for the supply of goods, carrying out of works or provision of services as the case may be, the following provisions shall apply:-
- (a) tenders shall be invited by the Executive Director from not less than five persons whom he/she considers competent (having regard to the technical capability and financial standing of such

persons) for the purpose unless, in consultation with the Chair (or in his/her absence) Depute of the appropriate Committee, he/she considers that less than five persons are competent in which case he/she may invite tenders from such lesser number of persons; and

- (b) all tenders shall then be submitted, opened, checked and accepted in accordance with **Standing Orders 18 (E-procurement), 20 (Checking of Tenders and Reporting) and 21 (Acceptance of Tenders)**.

**24 Responsible Third Parties**

**24.1 Obligations of third parties**

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

- (i) comply with these Standing Orders as though he were an official of the Council;
- (ii) at any time during the carrying out of the contract produce on request to the appropriate Executive Director all records maintained by him in relation to that contract; and
- (iii) on completion of the contract, transmit to the appropriate Executive Director all such records relating to that contract including information relevant to the Transfer of Undertaking Regulations or amending legislation, where appropriate or applicable

**24.2 To be a contract Condition**

A condition to this effect shall be included in any contract /documentation appointing the third party.

**25 Contract Performance Security**

**25.1 Performance Bond – works contract**

If the estimated cost of carrying out works under any single contract is more than £500,000 the appropriate Executive Director may require security for completing the contract by means of a performance bond. The performance bond will be in a form approved by the Head of Administration and Legal Services

**25.2 General right to require security**

The Council may ask for security on any contract for the carrying out of works, supply of goods or the provision of services where it is in the opinion of the appropriate Executive Director considered to be appropriate. Such security could include, but not be limited to, a parent company guarantee, performance bond or retention bond. The terms of any security will be in a form approved by the Head of Administration and Legal Services.

**26 Contract Term - Sub-Contractors**

**26.1 Obligations on Sub-Contractors**

It shall be a condition of every contract entered into by the Council that all conditions to be observed by contractors in terms of these Standing Orders and in the contract itself shall equally apply to sub-contractors, and all contractors shall be responsible for the observance of such conditions by such sub-contractors

- 27      **Contract Terms – Insurance**
- 27.1    **Contractor must have Insurance to specified level**      All specifications issued by and contracts entered into with the Council in connection with the carrying out of works or the provision of services or supplies shall provide that the contractor shall be insured with an Insurance Company approved by the Council or shall demonstrate self insurance to the satisfaction of the Executive Director (Finance and Corporate Resources) against:-
- (i) liability at common law and/or under any legislation including but not restricted to liability under Employer’s Liability Compulsory Insurance;
  - (ii) liability to third parties;
  - (iii) any relevant professional indemnity cover; and
  - (iv) any other matters relevant to the contract being entered into to such levels as may be specified from time to time by the Executive Director (Finance and Corporate Resources) or by law
- 27.2    **Proof of Insurance – Contract Term**      It shall be a condition of every contract entered into with the Council for the carrying out of works for, or the provision of services or supplies to, the Council, that
- (a) current certificates of insurance shall be exhibited to the Council prior to the commencement of every contract;
  - (b) any new policy of insurance (under which circumstances **Standing Order 27.1** shall apply to that new insurance policy) shall be exhibited to the Council prior to or at its commencement; and
  - (c) on demand any renewal receipts shall be exhibited during the period of the contract.
- 27.3    **Dealing with Claims – Contract Term**      It shall be a condition of every contract entered into with the Council for the carrying out of works for, or the provision of services or supplies to the Council, that the contractor shall require to deal with any claim, potential claim or complaint arising from the carrying out of said works or the provision of said services or supplies, made by the Council, any of its tenants or any other person deriving right or benefit there from,
- (a) by providing in writing within fourteen calendar days of such claim, potential claim or complaint first having been intimated to the contractor, details of the name and address of their Insurance Company, together with the relevant policy number, to enable such claim, potential claim or complaint to be intimated to their Insurance Company by the Council, any such tenant or any such other person;
  - (b) declaring that the contractor shall be obliged thereafter to provide timeously to their Insurance Company all relevant details to enable such claim, potential claim or complaint to be processed with the minimum of delay and
  - (c) binding the contractor to update the Council on the progress and outcome of any claim submitted by any of its tenants or any other person deriving right or benefit from the Council

28	<b>Contract Terms - Illegal Practices</b>	
28.1	<b>Cancellation of Contract</b>	Every contract entered into by the Council shall contain a clause entitling the Council to cancel the contract and to receive from the contractor the amount of any loss resulting from such cancellation if the contractor or any of their representatives (whether with or without the knowledge of the contractor) shall have practised collusion in tendering for the contract or any other contract with the Council or shall have offered, promised or given to the Council or any other public body or any person employed by or on behalf of the Council or any other public body any financial or other advantage to induce a person to perform improperly or to reward a person for the improper performance of a relevant function of activity in relation to the obtaining or carrying out the contract or any other contract with the Council or any other public body
28.2	<b>Remedies</b>	Where a contract is cancelled in terms of <b>Standing Order 28.1:-</b> (a) the contractor shall be liable for any loss or damage which the Council may thereby sustain and/or  (b) where the contractor is included in any list of persons who will be considered for tenders the Executive Director shall immediately remove or require the removal of the contractor from that list
29	<b>Contract Terms – Assignment</b>	
29.1	<b>No Assignment Permitted</b>	Unless specifically permitted in a contract, a contractor shall not assign or sub-let the contract or any part thereof except with the prior written consent of the Council
29.2	<b>Approval</b>	The appropriate Executive Director shall approve any request to sub-contract or assign the contract or any part thereof which meets the requirements of the contract conditions in relation to sub-contractors and assignment.
30	<b>Contract Terms - Equalities Legislation</b>	
30.1	<b>To be in compliance with Equalities Legislation</b>	Where the contract relates to the discharge of a Council function, the contractor shall be bound to discharge that function in a manner which encourages the observance of the Equalities Legislation
30.2	<b>Undertaking in relation to Equalities</b>	Where a contractor is undertaking a function of the Council on its behalf the contract must contain an undertaking by the contractor, when carrying out that function, not to do any act which constitutes discrimination on the grounds of sex, marital status, race, disability, age, gender, sexual orientation, language or social origin, or other personal attributes (including religion or lack thereof) such as religious beliefs or political opinions (or lack of such beliefs or opinions). Further the contract must contain such provision(s) as is/are necessary, having due regard to the need to:- <ul style="list-style-type: none"> <li>◆ eliminate unlawful discrimination;</li> <li>◆ eliminate harassment;</li> <li>◆ promote equality of opportunity;</li> <li>◆ take steps to take account of persons disabilities etc , even where</li> </ul>

that involves treating disabled persons etc more favourably than other persons;

- ◆ promote positive attitudes ; and
- ◆ encourage participation in public life,

to ensure that the Council can comply with its statutory duties, and where appropriate to ensure that the contractor will comply with its statutory duties, under the Equalities Legislation

## 31 **Contract Terms - Human Rights Act 1998**

### 31.1 **To be in compliance with the Human Rights Act 1998**

Where appropriate, any contract must contain an assurance in writing, in the form determined by the Head of Administration and Legal Services, that the contractor will comply with the requirements of the Human Rights Act 1998 in so far as they are carrying out a function for the Council and that the contractor will indemnify the Council against any and all claims that may be made against the Council due to a breach of the Act which is caused by, or arises out of, the contract or any actions or omissions of the contractor under the contract.

## 32 **Trading Operations**

### 32.1 **Exemption of trading Operations**

Where the Council can provide a trading operation which provides the works, services or supplies sought, then the Council can carry out work or arrange for the provision of the services or supplies without the requirement to seek competitive tenders, if in the opinion of the appropriate Executive Director in consultation with the appropriate Chair, or (in his/her absence) Depute, Best Value (as set out in **Standing Order 2.6**) can be demonstrated. To ensure that Best Value is achieved in relation to cost and quality all awards will require to be negotiated and agreed. In instances where, considering the requirement to secure Best Value, no agreement can be reached, then the contract is to be awarded subject to competitive tendering procedures as specified in **Standing Orders 6 (Restricted Tendering), 7 (Open Tendering), 8A (Approved List of Contractors for Self-Directed Support)** or the negotiated procedure if permitted in terms of **Standing Orders 9 (Negotiated Tendering Procedure – General) or 10 (Negotiated Tendering Procedure – Social Care Contracts)**. Nothing in **this Standing Order** will affect the right of any trading operation from being included in the tendering process in terms of **Standing Order 32.2**.

### 32.2 **Inclusion of Trading Operations in Tendering Process**

Where tenders are being sought in relation to any contracts for the supply of any goods, the carrying out of any works or the provision of any services are sought from approved list(s) of contractors or are invited by public advertisement, the appropriate section of the Council providing a similar trading operation or commercial service, may in all instances be included in the approved list(s) of contractors from whom tenders may be sought for any such contract and may tender for all such contracts advertised by public advertisement, provided that tenders are also sought from at least three other persons who are not local authorities or development bodies and that the number of persons invited to tender shall in any event be sufficient to ensure genuine competition.

32.3	<b>Statutory Requirements</b>	All trading operations and commercial services must be carried out in accordance with the requirements of the Local Authorities (Goods and Services) Act 1970 and/or the Local Government in Scotland Act 2003 (as applicable) or any statutory modification or re-enactment thereof and any Regulations made and Guidance given by the Scottish Ministers.
33	<b>Contract Terms – compliance with Environmental, Social and Employment Law</b>	
33.1	<b>Conditions for performing contract</b>	<p>From 18 April 2016 the appropriate Executive Director must include in a contract or Framework Agreement conditions relating to the performance of that contract, Framework Agreement and Call Off Contract that:-</p> <ul style="list-style-type: none"> <li>(i) are linked to the subject matter of the contract, Framework Agreement or Call Off Contract</li> <li>(ii) are indicated in the call for competition or procurement documents; and</li> <li>(iii) are reasonably necessary to ensure that the successful bidder complies with environmental, social and employment law</li> </ul>
34	<b>Contract Terms – Termination of Contracts</b>	
34.1	<b>Express Term of contract</b>	<p>From 18 April 2016 it shall be a condition of every contract entered into by the Council and all Framework Agreements established by the Council that the Council has the right to terminate the contract or Framework Agreement where:-</p> <ul style="list-style-type: none"> <li>(i) the contract or Framework Agreement has been subject to substantial modification which would have required a new procurement exercise</li> <li>(ii) the contractor at the time of the award was subject to one of the mandatory grounds of exclusion in the European Procurement Regulations or the Reform Act Regulations and should have been excluded from the procurement exercise</li> <li>(iii) the contract or Framework Agreement should not have been awarded to the contractor in view of a serious infringements of obligations under the EU Treaties and Directives that has been declared by the European Court of Justice in a procedure under Article 258 of the Treaty on the Functioning of the EU</li> </ul>
34.2	<b>Implied Term of Contract</b>	<p>Even if there is no express term in a contract allowing the Council to terminate the contract or Framework Agreement on any of the grounds mentioned in <b>Standing Order 34.1</b> a term will be implied giving the Council the right to terminate on giving notice.</p>
34.3	<b>Approval</b>	<p>The decision to terminate any contract or a contractor’s appointment to a Framework Agreement shall be authorised by the appropriate Executive Director in consultation with the Head of Administration and Legal Services</p>



- 35 **Contract Modifications**
- 35.1 **Application** (a) A contract or Framework Agreement may be modified during its term without a new procurement exercise being carried out provided the requirements of Regulation 72 of the European Procurement Regulations are met  
(b) This Standing Order will apply to all contracts or Framework Agreements where the estimated value exceeds £50,000 and includes all EU Regulated Procurements
- 35.2 **Approval** The decision to modify any contract or Framework Agreement shall be authorised by the appropriate Executive Director in consultation with the Head of Administration and Legal Services
- 36 **Retention of Contract Documents**
- 36.1 **Retention of contracts awarded** (a) The appropriate Executive Director must ensure that copies of all contracts awarded are kept in accordance with the Council's retention policy for contract documents  
(b) This Standing Order applies to all contracts where the estimated value exceeds £50,000 and includes all EU Regulated Procurements
- 36.2 **Retention of documents relevant to awarded contracts** (a) The appropriate Executive Director must ensure that the progress of all procurement exercises where the contract value exceeds £50,000 (including all contracts where the value exceeds the EU Thresholds) is documented and that those documents are kept for a period in line with the Council's retention policy for contract documents.  
(b) The documentation retained must justify decisions taken in all stages of the procurement exercise and comply with the requirements of any relevant Procurement Process
- 37 **Procurement Strategy**
- 37.1 **Preparation of the Procurement Strategy** (a) As a minimum the Council must prepare a Procurement Strategy in accordance with the requirements specified in the Reform Act and guidance published by the Scottish Government under the Reform Act.  
(b) The first Procurement Strategy prepared will cover the period from 31 December 2016 to 31 March 2018. Before 1 April 2019 and on the anniversary of each year thereafter the Council will review its Procurement Strategy and publish a revised Procurement Strategy
- 37.2 **Publication of the Procurement Strategy** The Council must publish the Procurement Strategy and any revised Procurement Strategy on its website and in any other manner as indicated by the Head of Finance (Transactions)
- 38 **Annual Procurement Report**
- 38.1 **Preparation of the Annual Procurement Report** (a) As soon as reasonably practicable after the end of the financial year for which a Procurement Strategy or revised Procurement Strategy was prepared the Council must prepare an annual procurement report in accordance with the requirements specified in the Reform Act and guidance published by the Scottish Government under the Reform Act.

(b) The first annual report must be produced as soon as reasonably practicable after 31 March 2018

38.2 **Publication of the  
Annual Procurement  
Report**

The Council must publish the annual procurement report on its website and in any other manner as indicated by the Head of Finance (Transactions)