

# **GENERAL CONTRACT STANDING ORDERS**

**STANDING ORDERS FOR  
SUPPLIES, THE PROVISION OF  
SERVICES AND THE EXECUTION  
OF WORKS**

**THESE STANDING ORDERS APPLY TO ALL SERVICE AREAS**

**15TH EDITION – EFFECTIVE FROM 1 JANUARY 2020**

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# 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;

**‘Candidate’** means a person that has sought an invitation to or has been invited to take part in a procurement procedure;

**‘Chief Executive’** means the Chief Executive of the Council for the time being and shall be taken to include any corresponding office known by any other description or any authorised substitute(s) except in cases where it is stated that substitutes cannot act;

**‘Chief Officer’** means the Chief Executive, an Executive Director or Head of Service, regardless of specific title. This includes a Chief Officer’s authorised substitute(s) except in cases where it is stated that substitutes may not act. A Chief Officer may have different authorised substitutes, depending on the topic;

**‘Committee’** means a standing committee of the Council and the expressions ‘Convener’ and ‘Vice Convener’ shall be construed accordingly and shall be taken to include any corresponding office known by any other description;

**‘Competitive Dialogue Procedure’** 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;

**‘Council’** means North Lanarkshire Council, constituted by Section 2 of the Local Government etc. (Scotland) Act 1994 and having its principal office at the Civic Centre, Windmillhill Street, Motherwell ML1 1AB;

**‘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, mutual recognition, non-discrimination, equal treatment and proportionality;

**‘E-Procurement’** means the carrying out of the procurement of a contract for the supplies, the provision of services or the execution of works, by electronic means;

**‘Electronic Auction’** means a repetitive process, involving an electronic device for the presentation of new prices, revised downwards or upwards 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;

**‘ESPDS’** means the European Single Procurement Document (Scotland) 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;

**‘EU 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;

**‘Executive Director’** means an Executive Director of the Council for the time being and shall be taken to include any corresponding office known by any other description or any authorised substitute(s) except in cases where it is stated that substitutes cannot act;

**‘Framework Agreement’** means any agreement which sets out terms and conditions under which specific purchases (call-offs) can be made throughout the term of the agreement;

**‘Head of Asset and Procurement Solutions’** means the Head of Asset and Procurement Solutions of the Council for the time being and shall be taken to include any corresponding office known by any other description or any authorised substitute(s) except in cases where it is stated that substitutes cannot act;

**‘Head of Business Solutions’** means the Head of Business Solutions of the Council for the time being and shall be taken to include any corresponding office known by any other description or any authorised substitute(s) except in cases where it is stated that substitutes cannot act.

**‘Head of Financial Solutions’** means the Head of Business for Financial Solutions of the Council for the time being and shall be taken to include any corresponding office known by any other description or any authorised substitute(s) except in cases where it is stated that substitutes cannot act;

**‘Head of Legal and Democratic Solutions’** means the Head of Business for Legal and Democratic Solutions of the Council for the time being and shall be taken to include any corresponding office known by any other description or any authorised substitute(s) 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;

**‘OJEU’** means the supplement to the Official Journal of the European Union;

**‘PCS System’** means the Public Contracts Scotland system;

**‘PECOS’** means Professional Electronic Commerce Online System, the internet-based electronic procurement platform approved by the Scottish Government for use by Scottish Public Authorities;

**‘PIN’** means a prior information notice;

**‘Practice Notes’** means all practice notes, toolkits, briefing notes and/or documents issued pursuant to Standing Order 2.8;

**‘Procurement Documentation’** means the documents to be used in any procurement exercise and where different, those intended to form part of any contract following on from a tendering procedure. It includes, but is not restricted to, the Selection Documents, the invitation to tender for or to negotiate a contract, the proposed conditions of contract, the specifications or the descriptions of the supplies, services or works required by the Council and any Bills of Quantities and includes any such documents or their equivalents issued by electronic means;

**‘Procurement Process’** means a procurement process approved by the Council in relation to the conduct of a procurement exercise;

**‘Procurement Strategy’** means the strategy which the Council must prepare in accordance with Standing Order 40;

**‘Proper Officer’** means an officer authorised to execute deeds on behalf of the Council and/or authorise contracts 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’** 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;

**‘Report on Tenders’** means the written report which must be prepared in terms of Standing Order 20.5;

**‘Scottish Public Authority’** means any body which is listed in Schedule 1 of the European Procurement Regulations or designated by order under Section 5(1) of the Freedom of Information (Scotland) Act 2002 or is a publicly owned company as defined in Section 6 of that Act;

**‘Selection Documents’** means a pre-qualification questionnaire or for EU Regulated Procurements and Regulated Procurements the European Single Procurement Document (Scotland) (ESPDS);

**‘SME’** means a small or medium sized business or company as defined by the European Commission;

**‘Social and other Specific Services’** means those services specified in Schedule 3 of the European Procurement Regulations;

**‘Social Care Services’** means those services specified in Schedule 5 of the Reform Act Regulations 2016;

**‘Standstill Period’** means the period which the Council must allow between the date suppliers are notified about the outcome of a tender process and the date on which the Council proposes to enter into a contract. For contracts subject to the European Procurement Regulations the observance of a Standstill Period is mandatory. In all other procurements a Standstill Period may, in certain circumstances be observed on a voluntary basis;

**‘Supported Business’** means such businesses as defined in the European Procurement Regulations;

**‘Supported Employment Programme’** means such programmes as defined in the European Procurement Regulations;

**‘Sustainable Procurement Duty’** means such duty as specified in the Reform Act and any guidance published by the Scottish Government under the Reform Act;

**‘Tenderer’** means a person that has submitted a tender;

**‘Variant Bid’** means a bid which offers an alternative to the requirements specified in the Procurement Documentation and may only be accepted if the contracting authority has stated in the OJEU notice that it will accept variant bids;

**‘Quick Quote’** means the online quotation facility on the Public Contracts Scotland Portal which allows contracting authorities to obtain competitive quotes electronically for lower value requirements.

## 2 GENERAL

### 2.1 Extent and Application

- 2.1.1 The Council made these Standing Orders under Section 81 of the Local Government (Scotland) Act 1973. These Standing Orders shall apply to arrangements made by or on behalf of the Council relating to supplies, the provision of services including consultancy services and the execution of works.
- 2.1.2 These Standing Orders shall apply to all Council contracts unless any legislation requires otherwise, in which case that legislation shall apply together with those parts of the Standing Orders which are unaffected by such legislation.
- 2.1.3 All Council personnel shall comply with the terms of these Standing Orders. Failure by any employee to comply with these Standing Orders may result in disciplinary action.
- 2.1.4 Any query regarding the application of these Standing Orders should be made in the first instance to the Head of Asset and Procurement Solutions.

### 2.2 Internal Arrangements

- 2.2.1 Any action taken on the Council's behalf must also comply with the requirements of the Council's Scheme of Delegation to Officers and the Council's Financial Regulations as approved by the Council from time to time.

### 2.3 Form of Contract and Scots Law

- 2.3.1 Unless otherwise authorised by the appropriate Chief Officer in consultation with the Head of Legal and Democratic Solutions in special circumstances, all contracts entered into in terms of and in accordance with these Standing Orders, shall be:
  - (i) in writing;
  - (ii) in the name of the Council; and
  - (iii) subject to the law of Scotland and the exclusive jurisdiction of the Scottish Courts.
- 2.3.2 The Chief Officer must consult the Head of Legal and Democratic Solutions as soon as is reasonably possible on conditions of contract for particularly significant or complex projects or contracts.

### 2.4A Calculation of Contract Value

- 2.4A.1 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, supplies 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 of that contract by the number of years of the duration of the contract. All prizes and/or payments to be made to Tenderers, as have been approved in terms of **Standing Order 11A.3 (Prizes and payments)**, must be taken into account in calculating the estimated value.
- 2.4A.2 Contracts which are each of a value below the relevant EU Threshold may nevertheless be subject to the European Procurement Regulations where they constitute a series of related or repeat purchases. Where this is the case, advice must be sought from the Head of Asset and Procurement Solutions in order that the relevant procurement route can be adopted.
- 2.4A.3 In determining the value of any contract for supplies, the provision of services or the execution of works, if the term/period of the contract is indefinite or uncertain at the time the contract is entered into then the value of the contract shall be taken as equating to the value of the monthly consideration multiplied by 48.

## **2.4B Prohibition on Division of Contract Value**

2.4B.1 It is not permitted to deliberately divide any contract award procedure 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, the Reform Act or the Reform Act Regulations 2016 or any other Regulations made by the Scottish Government under the Reform Act.

## **2.4C Calculation of Contract Value – Match Funding**

2.4C.1 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**

2.4D.1 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**

2.4E.1 The following rules will apply when determining how to treat a mixed procurement of any contract for supplies, provision of services and the execution 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;  
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 Concessions**

2.4F.1 Where a contract relates to the provision of services to the public under which the Council gives to the Provider 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 Provider to the Council shall be disregarded in connection with the calculation of the value of the contract.

## **2.5 Signing**

2.5.1 All contracts entered into in terms of and in accordance with these Standing Orders shall be signed by a Proper Officer.

## 2.6 Best Value

- 2.6.1 All contracts must secure Best Value and maintain an appropriate balance among:
- (i) the quality of the performance of the Council's functions;
  - (ii) the cost to the Council of that performance; and
  - (iii) the cost to persons of any Council service provided for them on a wholly or partly rechargeable basis.
- 2.6.2 In maintaining that balance the Council shall have 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

- 2.7.1 When entering into a contract, due regard must be given to the principles and guidance set out in the 'Procurement Journey' as issued and maintained by the Scottish Government, available at;  
[Procurement Journey](#)
- 2.7.2 In particular, Scottish Government statutory guidance relating to Regulated Contracts this is available at;  
[Statutory Guidance](#)

## 2.8 Practice Notes

- 2.8.1 Practice Notes on contract award procedures for any contract or type of contract entered into by or on behalf of the Council may be issued by the Head of Asset and Procurement Solutions and/or the Head of Legal and Democratic Solutions. Any Practice Notes issued shall form part of these Standing Orders.

## 2.9 Prohibition on Anti-Competitive Contract Terms

- 2.9.1 In preparation of any contract terms and in 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

- 2.10.1 All contracts, regardless of value and/or whether subject to the procedural requirements of the European Procurement Regulations, the Reform Act or the Reform Act Regulations, must be awarded in compliance with the EC Treaty Principles.

## 2.11 Conflict of Interest

- 2.11.1 In carrying out all contract award procedures 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 and in accordance with **Standing Order 42.3 (Conflicts of Interest)**.

## **2.12 Provision of Information**

- 2.12.1 Chief Officers must ensure that the Head of Asset and Procurement Solutions is provided with all the information that is required to allow him to comply with his duties in terms of these Standing Orders including but not limited to; issuing letters, publishing information, the content of Registers of Quotations, notices and the preparation of the annual procurement report as set out in **Standing Order 41 (Annual Procurement Report)**.

## **2.13 Prohibition on Charges for Participation**

- 2.13.1 The Chief Officer shall not charge a person a fee for participating in any part of a contract award procedure or any form of competition, including a fee to provide any document required to participate in that contract award procedure or competition.

## 3 EXEMPT AND PARTIALLY EXEMPT CONTRACTS

### 3.1 Estimated Total Value below £5,000

- 3.1.1 These Standing Orders shall not apply to any contract for supplies, the provision of services or the execution of works, where the total estimated aggregated value does not exceed £5,000 including items of a recurring nature, the total value of which is no more than that amount, subject always:
- (i) to the need to secure and demonstrate Best Value as set out in **Standing Order 2.6 (Best Value)** and probity when entering into any such contracts;
  - (ii) the requirements of **Standing Order 3.2.1** are met; and
  - (iii) that all such supplies, works and services, the value of which are below the threshold of £5,000, must be ordered using the Council's official purchase order form or the PECOS or other Council approved e-Procurement system (unless otherwise exempted by the Council's certified payment process).

### 3.2 Estimated Total Value Between £5,000 and £50,000 for Supplies or for the Provision of Services and between £5,000 and £500,000 for the execution of Works

- 3.2.1 Contracts for supplies or the provision of services where the total estimated aggregated value is greater than £5,000 but does not exceed £50,000, and contracts for the execution of works where the total estimated aggregated value is greater than £5,000 but does not exceed £500,000 shall be exempted from these Standing Orders with the exception of:
- (i) **Standing Order 2 (General);**
  - (ii) **Standing Order 4.1 (Existing Arrangements);**
  - (iii) **Standing Order 4.6 (Selection and Award Criteria);**
  - (iv) **Standing Order 16 (Assurances - Tendering);**
  - (v) **Standing Order 17 (Confidentiality and Requests for Information);**
  - (vi) **Standing Order 4.4 (Sourcing Methodology)** (if, in the opinion of the appropriate Chief Officer the contract is of high risk and/or there are special circumstances);
  - (vii) **Standing Order 18 (eProcurement);**
  - (viii) **Standing Order 21.8 (General Conditions);**
  - (ix) **Standing Order 27 (Contract Performance Security);**
  - (x) **Standing Order 32 (Contract Terms - Equalities Legislation);**
  - (xi) **Standing Order 36 (Contract Terms – General Data Protection Regulation (GDPR));**
  - (xii) **Standing Order 42 (Ethics and Standards);** and
  - (xiii) All **Standing Orders** relating to contract conditions
- 3.2.2 Immediately prior to entering into a contract referred to in **Standing Order 3.2.1** at least five (5) competitive quotations (including two (2) quotes from SME's having their place of business or being significant employers within the local government area of North Lanarkshire if such persons are available) must be sought by the appropriate Chief Officer using Quick Quote, unless the Chief Officer 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 and is aligned with Council objectives as set out in **Standing Order 2.6 (Best Value)**.



- 3.2.3 The Chief Officer shall ensure that the persons invited to submit quotations are selected on a fair, transparent and non-discriminatory basis, and in a manner at all times compliant with the EU Treaty Principles.
- 3.2.4 The contracts referred to in **Standing Order 3.2.1** shall be recorded in the 'Register of Quotations' kept and maintained by the appropriate Chief Officer, which shall include:
- (i) details of each contract;
  - (ii) the number of quotations received in respect of each contract;
  - (iii) the name and address of each person submitting a quotation;
  - (iv) the value or amount of each quotation (where appropriate); and
  - (v) a statement as to whether and why the quotation was or was not accepted.
- 3.2.5 Where the appropriate Chief Officer has decided that it is justified not to seek competitive quotations, then the reason(s) for reaching that decision must be noted in the 'Register of Quotations' and a contract awarded to the preferred Provider. However, arrangements for contracts must be reviewed at least annually to ensure Best Value as set out in **Standing Order 2.6 (Best Value)** is secured. A condition to allow for this must be inserted into any such contracts.
- 3.2.6 Quotations may be accepted by the appropriate Chief Officer. If the appropriate Chief Officer decides that none of the quotations submitted should be accepted, then they shall notify all persons who submitted a quotation in writing, at the same time, accordingly and shall record the reason for not accepting any of the quotations submitted in the 'Register of Quotations'.
- 3.2.7 The appropriate Chief Officer shall ensure that all persons who submitted a quotation shall be informed in writing of the outcome of the quotation process in a timely manner. Letters to the unsuccessful person(s) will be issued at the same time as the letter(s) to the successful person(s). Letters may be issued by email or by post.
- 3.2.8 Once a quotation has been accepted, the Chief Officer will update the 'Register of Quotations' with:
- (a) the name of the person(s) awarded the contract;
  - (b) the date of the award of the contract; and
  - (c) will publish a contract award notice on Quick Quote.
- 3.2.9 The appropriate Chief Officer must ensure that copies of all contracts awarded and associated supporting documentation are kept in accordance with the Councils retention policy. The documentation retained must justify decisions taken in all stages of the quotation procedure.
- 3.2.10 Chief Officers may decide not to adopt the quotation procedure detailed in this **Standing Order 3.2** and instead adopt one of the contract award procedures set out in **Standing Orders 6 (Restricted 'Style' Contract Award Procedure), 7 (Open 'Style' Contract Award Procedure), 11A (Competitive Dialogue Procedure), 11B (Innovation Partnerships) or 11C (Competitive Procedure with Negotiation)**.

### **3.3 Conditions of Funding**

- 3.3.1 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:
- (a) particular Providers or a particular class of Providers with whom/which the Council are required to or restricted to contract with in the provision of services or carrying out of the works as part of the project, or
  - (b) specific supplies 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 4.3 (Contract Reference Number);**
- (iii) **Standing Order 4.4 (Sourcing Methodology);**
- (iv) **Standing Order 16 (Assurances - Tendering);**
- (v) **Standing Order 17 (Confidentiality and Requests for Information);**
- (vi) **Standing Order 18 (e-Procurement);**
- (vii) **Standing Order 42 (Ethics and Standards);** and
- (viii) All **Standing Orders** relating to contract conditions

3.3.2 in so far as the said funding condition makes, in the view of the appropriate Chief Officer after consultation with the Head of Asset and Procurement Solutions and the Head of Legal and Democratic Solutions the contract award 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.

3.3.3 All contracts referred to in Standing Order 3.3.1 shall be recorded in the 'Register of Quotations' referred to in Standing Order 3.2.4 and shall include details as to why and to what extent the contract was exempted from these Standing Orders.

### **3.4 Employment**

3.4.1 These Standing Orders do not apply to any contract of employment.

### **3.5 Land and Buildings**

3.5.1 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 requirement set out in law or from the Council's Scheme of Delegation, Financial Regulations or procedures in relation to the acquisition, rental or disposal of land or buildings.

### **3.6 Special Circumstances**

3.6.1 The Council or one of its Committees/sub-Committees may exempt from 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, The Reform Act and the Reform Act Regulations and following consultation with the Head of Legal and Democratic Solutions they are satisfied that the exemption is justified by special circumstances.

### **3.7 Contracts between Public Sector Entities**

3.7.1 These Standing Orders do not apply to the procurement for the award of contracts between public sector bodies or a contract exclusively between two or more Contracting Authorities. Where any such arrangement is being considered, the Chief Officer must seek advice from the Head of Asset and Procurement Solutions and/or the Head of Legal and Democratic Solutions.

3.7.2 The approval of the appropriate Committee will be required to award contracts in the circumstances referred to in **Standing Order 3.7.1**.

3.7.3 Between Committee cycles, where there is no appropriate Committee available, then the Chief Executive or the appropriate Executive Director (substitutes may not act), may approve a contract award.

## 4 PRE-TENDER REQUIREMENTS

### 4.1 Existing Arrangements

- 4.1.1 Before commencing a contract award procedure, the Chief Officer will consider whether any existing contracts or framework agreements accessible to the Council may fulfil their requirements, and where any such arrangement is available and has been or could be approved for use by the Council, provides Best Value as set out in **Standing Order 2.6 (Best Value)** and after taking advice from the Head of Asset and Procurement Solutions, it must be used.

### 4.2 Approval of Estimates of Contract Values

- 4.2.1 No tender shall be invited or offer made or contract awarded for supplies, the provision of services or the execution of works, 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.

### 4.3 Contract Reference Number

- 4.3.1 No tender shall be invited or offer made or contract awarded for supplies or the provision of services where the estimated aggregated value exceeds £50,000 or for the execution of works where the estimated aggregated value exceeds £500,000, including a call off from a Framework Agreement in terms of **Standing Order 12 (Framework Agreements Established by the Council)** and **Standing Order 13 (Framework Agreements/Contracts Established by Third Parties)** without a contract reference number having been obtained from the Head of Asset and Procurement Solutions.

### 4.4 Sourcing Methodology

- 4.4.1 A Sourcing Methodology must be created for all contract opportunities (including the setting up of a Framework Agreement in accordance with **Standing Order 12 (Framework Agreements Established by the Council)** and all Call-Off Contracts from a Framework Agreement in terms of **Standing Order 12 (Framework Agreements Established by the Council)** and **Standing Order 13 (Framework Agreements/Contracts Established by Third Parties)** where the estimated aggregated value exceeds £50,000 for supplies or for the provision of services or £500,000 for the execution of works using the template approved by the Head of Asset and Procurement Solutions.
- 4.4.2 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 Agreements Established by the Council)** unless, in the opinion of the appropriate Chief Officer, the Call-Off Contract is of high value and/or high risk.
- 4.4.3 Where the total estimated value of a contract exceeds £50,000 for supplies or for the provision of services or £2 million for the execution of works then a Sourcing Methodology must be developed jointly by the appropriate Chief Officer and the Head of Asset and Procurement Solutions.
- 4.4.4 A contract award procedure shall not be started until and unless the Sourcing Methodology referred to in this **Standing Order 4.4.1** is completed and approved by the appropriate Chief Officer or in terms of **Standing Order 4.4.3** approved jointly by the Chief Officer and the Head of Asset and Procurement Solutions.

## **4.5 Committee Authority**

4.5.1 Where, in the opinion of the appropriate Chief Officer, a contract for supplies, the provision of services or the execution of works is of high value and/or high risk no tender shall be invited for such a contract without approval from the relevant Committee. Chief Officers shall consider risk in the context of the Councils agreed approach to risk management;

<https://mars.northlanarkshire.gov.uk/egenda/images/att25541.pdf>

4.5.2 Between Committee cycles, where there is no appropriate Committee available, then the Chief Executive or the appropriate Executive Director (substitutes may not act), may approve that tenders are invited.

## **4.6 Selection and Award Criteria**

### **4.6.1 Selection Criteria**

4.6.1A The appropriate Chief Officer will set the selection criteria for a procurement exercise taking account of the applicable requirements of;

- (i) the Reform Act Regulations;
- (ii) any other Regulations made or guidance issued by the Scottish Government under the Reform Act;
- (iii) the European Procurement Regulations;
- (iv) the Utilities Contracts (Scotland) Regulations 2016;
- (v) the Concessions Contracts (Scotland) Regulations 2016; and
- (vi) any instructions issued by the Head of Asset and Procurement Solutions and/or Head of Legal and Democratic Solutions.

4.6.1B The selection criteria must be:-

- (i) proportionate taking account of the nature, scope and size of the contract; and
- (ii) related to the subject matter of the contract.

4.6.1C The selection criteria must be stated in the contact notice and the Procurement Documentation to enable the Candidate to complete and submit a Selection Document.

### **4.6.2 Award Criteria**

4.6.2A The Procurement Documentation must 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 £500,000 shall be made, at the discretion of the relevant Chief Officer, on the basis of lowest price or most economically advantageous tender;
- (iii) the award of a works contract where the estimated value exceeds £500,000 shall be on the basis of the most economically advantageous tender.

- 4.6.2B 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 Chief Officer include Life-Cycle Costing.
- 4.6.2C In determining the award criteria the appropriate Chief Officer must take account of the requirements of the European Procurement Regulations and any such guidance that the Head of Asset and Procurement Solutions and/or the Head of Legal and Democratic Solutions consider appropriate.

#### **4.7 Reserved Contracts**

- 4.7.1 The appropriate Chief Officer may in respect of a Regulated Procurement or an EU Regulated Procurement, and after confirming with the Head of Asset and Procurement Solutions that the person proposed to perform a contract is a Supported Employment Programme:-
- (i) reserve the right to participate in a contract award procedure to a Supported Business; or
  - (ii) provide for a contract to be performed in a Supported Employment Programme
- 4.7.2 and the justification for progressing this course of action must be recorded in the Sourcing Methodology (where required) in terms of **Standing Order 4.4 (Sourcing Methodology)**.

#### **4.8 Pre-Tender Market Research**

- 4.8.1 Preliminary market consultation may be carried out at the discretion of the appropriate Chief Officer before carrying out any contract award procedure.
- 4.8.2 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.
- 4.8.3 Employees involved in a contract award where preliminary market consultation has been conducted must comply with the provisions of the relevant Procurement Process.

#### **4.9 Time limits**

- 4.9.1 For all contract award procedures 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
  - (iv)
- 4.9.2 The time limit for receipt of tenders must be extended in a proportionate manner where:-
- (i) the Council provides additional information to a bidder (whether or not it was requested in good time) less than six (6) days before the expiry of the tender return date; and
  - (ii) significant changes have been made to the Procurement Documentation
- 4.9.3 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
- 4.9.4 For any contract award procedure where the estimated value is below the EU Thresholds the appropriate Chief Officer can decide as good practice to follow the time limits provided in the European Procurement Regulations.

#### **4.10 Variant Bids**

4.10.1 The Head of Asset and Procurement Solutions must be consulted at commencement of a contract award procedure and may authorise the allowing or seeking of variant bids in any contract award procedure.

#### **4.11 Division of Contracts into Lots**

4.11.1 Where the appropriate Chief Officer decides not to divide a contract into lots the main reasons for that decision must be recorded in the Sourcing Methodology (where required) in terms of **Standing Order 4.4 (Sourcing Methodology)**, and the Report on Tenders Selection Documents/Tenders in terms of **Standing Order 20.5 (Report on Selection Documents/Tenders)**.

4.11.2 Where the appropriate Chief Officer 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 Chief Officer, 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 by combining several or all lots and if so the lots or groups of lots that may be combined.

#### **4.12 Use of Prior Information Notices (PINs) as a Call for Competition**

4.12.1 The appropriate Chief Officer may, subject to the prior approval of the Head of Asset and Procurement Solutions, use a PIN as a call for competition in a restricted contract award procedure or competitive procedure with negotiation.

4.12.2 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 Asset and Procurement Solutions and/or Head of Legal and Democratic Solutions considers appropriate.

#### **4.13 Examining Tenders before Checking Compliance with Selection Criteria**

4.13.1 In an open 'style' procedure the appropriate Chief Officer may, decide to evaluate tenders before checking the absence of the exclusion grounds and checking a Tenderer's compliance with the selection criteria.

4.13.2 If the Chief Officer decides to take up the option provided for in **Standing Order 4.13.1** the contract award procedure must comply with the European Procurement Regulations (where applicable) and such guidance as the Head of Asset and Procurement Solutions considers appropriate.

#### **4.14 Sustainable Procurement Duty**

4.14.1 In regard to all Regulated Procurements and EU Regulated Procurement (other than Call Offs and contracts for Social Care Services which are awarded without advertising) and any Call Off Contract the appropriate Chief Officer will comply with the Sustainable Procurement Duty and shall as far as possible within the Law encourage fair working practices and payment of the Living Wage, and discourage the use of exploitative 'zero hours' contracts.

4.14.2 In complying with the Sustainable Procurement Duty the appropriate Chief Officer must comply with the requirements of the Reform Act, any statutory guidance issued by the Scottish Government under the

Reform Act, any guidance and requirements as the Head of Asset and Procurement Solutions and/or Head of Legal and Democratic Solutions considers appropriate.

#### **4.15 Community Benefit Requirement**

- 4.15.1 When 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 £4 million the appropriate Chief Officer will comply with the Community Benefit Requirement.
- 4.15.2 In complying with the Community Benefit Requirement the appropriate Chief Officer must comply with the Reform Act, any statutory guidance issued by the Scottish Government under the Reform Act, any guidance and requirements as the Head of Asset and Procurement Solutions and/or Head of Legal and Democratic Solutions considers appropriate and any relevant Procurement Process.
- 4.15.3 In addition to complying with the Community Benefit Requirement the appropriate Chief Officer must, in carrying out all relevant procurement exercises where the estimated value is in excess of £500,000 comply with the Council's policy of promoting community benefits.

#### **4.16 Compliance with Procurement Strategy**

- 4.16.1 The appropriate Chief Officer shall carry out all Regulated Procurements and EU Regulated Procurements, so far as reasonably practicable, in accordance with the Procurement Strategy in terms of **Standing Order 40 (Procurement Strategy)** applicable to the financial year during which the contract award procedure commenced.

#### **4.17 Procurement of Recycled and Recyclable products**

- 4.17.1 The appropriate Chief Officer 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 Asset and Procurement Solutions and/or Head of Legal and Democratic Solutions consider appropriate and any relevant governance requirements.

## 5 COMPETITION REQUIREMENT

### 5.1 Contracts for Supplies or the Provision of Services in excess of £50,000 and Contracts for the Execution of Works in excess of £500,000 - Subject to Competition

5.1.1 All contracts for supplies or the provision of services in excess of £50,000 and contracts for the execution of works in excess of £500,000 but in both cases below the EU Thresholds may only be awarded after steps have been taken for the purpose of ensuring genuine competition by seeking tenders by public advertisement as set out in **Standing Order 5.3 (Publication of Notices)** and in accordance with the terms of **Standing Orders 6 (Restricted 'Style' Contract Award Procedure), 7 (Open 'Style' Contract Award Procedure), 11A (Competitive Dialogue Procedure), 11B (Innovation Partnerships) or 11C (Competitive Procedure with Negotiation)**.

### 5.2 Exceptions to the Competition Requirement

5.2.1 The requirement in Standing Order 5.1 does not apply where 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.

### 5.3 Publication of Notices

5.3.1 All PINs, contract notices and contract award notices must be published via the Public Contracts Scotland website and OJEU (if applicable) in accordance with applicable provisions of the European Procurement Regulations, the Reform Act, the Reform Act Regulations, any other Regulations made by the Scottish Government under the Reform Act and any statutory guidance issued by the Scottish Government under the Reform Act.



## 6 RESTRICTED 'STYLE' CONTRACT AWARD PROCEDURE

### 6.1 Use of the Restricted 'Style' Contract Award Procedure

- 6.1.1 This Standing Order shall apply to all contracts for supplies or the provision of services in excess of £50,000 and contracts for the execution of works in excess of £500,000 but in both cases below the EU Thresholds where a restricted 'style' contract award procedure is being used.

### 6.2 Period for seeking expressions of interest

- 6.2.1 The requirements of **Standing Order 4.9** shall be complied with in determining the period allowed in the PIN (when used as a call for competition) or the contract notice to express an interest in participating in a contract award procedure for a proposed contract.

### 6.3 Obtaining Assurances

- 6.3.1 Prior to issuing any invitations to tender, the Chief Officer shall seek the assurances as required by **Standing Order 16 (Assurances - Tendering)** but only insofar as they relate to the subject matter of the contract.

### 6.4 Invitation to Tender

- 6.4.1 Invitations to tender shall be sent to at least five (5) persons selected from those who have expressed an interest in tendering for the proposed contract or, if fewer than five (5) 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 6.3**;
  - (b) the technical capability and financial standing of such persons has been satisfactorily investigated;
  - (c) the requirements of **Standing Order 19 (Selection of Candidates/Tenderers)** have been complied with; and
  - (d) the Council has complied with the requirements of the Data Protection Act 1998 where applicable.

## 7 OPEN 'STYLE' CONTRACT AWARD PROCEDURE

### 7.1 Use of the Open 'Style' Contract Award Procedure

7.1.1 This Standing Order shall apply to all contracts for supplies or the provision of services in excess of £50,000 and contracts for the execution of works in excess of £500,000 but in both cases is below the EU Thresholds where the open 'style' contract award procedure is being used.

### 7.2 Time Limits

7.2.1 The requirements of **Standing Order 4.9** shall be complied with in determining the period allowed in the contract notice for submission of tenders.

### 7.3 Obtaining Assurances

7.3.1 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 (Assurances – Tendering)** and comply with the requirements of the Data Protection Act 1998 where applicable.

## 8 ACCREDITATION SERVICE (THIRD PARTY)

### 8.1 Third Party Accreditation Service

8.1.1 In the procurement of a works contract where the estimated aggregated value of any contract is less than £2 million, the appropriate Chief Officer may elect to use an accreditation service (maintained by a third party) (e.g. Constructionline) in relation to assessment of Candidates 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.

8.1.2 The selection procedure used to assess Candidates from a third party accreditation service as permitted in **Standing Order 8.1.1** shall be approved by the Chief Officer and a copy of the methodology used for each contract award procedure retained in the contract file.

8.1.3 However a contract award procedure relying on the provisions of this **Standing Order 8.1** must allow for the consideration of Candidates who are not members of the third party accreditation service referred to in **Standing Order 8.1.1** provided the Candidate would have met the selection criteria set out by such third party.

8.1.4 For the avoidance of doubt, where the Chief Officer elects to make use of an accreditation service maintained by a third party in accordance with this **Standing Order 8.1**, the provisions of **Standing Order 5 (Competition Requirement)** also apply.

## 9 NEGOTIATED TENDERING PROCEDURE – GENERAL

### 9.1 Use of the Negotiated Tendering Procedure

- 9.1.1 This Standing Order shall apply to all contract awards which are conducted without public advertisement and competition (other than the procurement of Social Care Services).

### 9.2 Conditions for using the Negotiated Contract Award Procedure – non EU Regulated Procurement and non-Regulated Procurement

- 9.2.1 The negotiated contract award procedure may only be used where the Chief Officer decides, after taking advice from Head of Asset and Procurement Solutions and the Head of Legal and Democratic Solutions that;
- (i) the procedures in **Standing Orders 6 (Restricted ‘Style’ Contract Award Procedure), 7 (Open ‘Style’ Contract Award Procedure), 11A (Competitive Dialogue Procedure), 11B (Innovation Partnerships) or 11C (Competitive Procedure with Negotiation)** would be inappropriate for a particular contract;
  - (ii) the contract will secure Best Value as set out in **Standing Order 2.6 (Best Value)**; and
  - (iii) the person(s) to be awarded the contract meets the Councils selection criteria requirements.

### 9.3 Conditions for using the Negotiated Contract Award Procedure – EU Regulated Procurement and Regulated Procurement

- 9.3.1 The negotiated contract award procedure may only be used where the Chief Officer decides, after taking advice from the Head of Asset and Procurement Solutions and the Head of Legal and Democratic Solutions that;
- (i) the use of the negotiated tendering procedure can be justified in terms of Regulation 33 of the EU Procurement Regulations or Regulation 6 of the Reform Act Regulations, (as is applicable); and
  - (ii) the contract will secure Best Value as set out in **Standing Order 2.6 (Best Value)**; and the person(s) to be awarded the contract meets the Councils selection criteria requirements.

### 9.4 Use of the Negotiated Contract Award Procedure – Extreme Urgency

- 9.4.1 The use of the negotiated contract award procedure may be used (but only where it is strictly necessary) where in the view of the Chief Executive or the appropriate Executive Director (substitutes may not act) 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.

### 9.5 Reporting to Committee

- 9.5.1 In all cases, where the negotiated contract award procedure has been used, the Chief Officer shall report to the next meeting of the appropriate Committee explaining the circumstances justifying the use of **Standing Order 9**.

### 9.6 Keeping Records

- 9.6.1 In all cases where the negotiated contract award procedure has been used in terms of this Standing Order 9, a full written record of all contacts, discussions and communications with the prospective Provider shall be kept by the Chief Officer together with a full explanation as to why the Chief Officer considered it appropriate to use the negotiated procedure and confirming that the contract secures Best Value as set out in **Standing Order 2.6 (Best Value)**.

## 10 NEGOTIATED TENDERING PROCEDURE - SOCIAL CARE SERVICES CONTRACTS

### 10.1 Application

10.1.1 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 (the Light Touch Regime').

### 10.2 Negotiated Procedure and Social Care Contracts

10.2.1 If the Chief Officer for Health and Social Care Integration has decided that the procedures in **Standing Orders 6 (Restricted 'Style' Contract Award Procedure), 7 (Open 'Style' Contract Award Procedure), 11A (Competitive Dialogue Procedure), 11B (Innovation Partnerships) or 11C (Competitive Procedure with Negotiation)** would be inappropriate for a particular contract the Chief Officer for Health and Social Care Integration may after taking advice from the Head of Asset and Procurement Solutions and the Head of Legal and Democratic Solutions decide to make use of the negotiated procedure for the purpose of seeking offers to enter into contracts.

### 10.3 Social Care Services

10.3.1 The Chief Officer for Health and Social Care Integration after taking advice from the Head of Asset and Procurement Solutions and the Head of Legal and Democratic Solutions, 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 absence) Depute Chair of the appropriate Committee/ Governance Board may also enter into negotiations with one or more providers holding the appropriate registration with Social Care and Social Work Improvement Scotland in one or more of the following circumstances, namely if:

- (i) in the opinion of the Chief Officer for Health and Social Care Integration the needs of the individual(s) concerned would be best met by a particular provider; or
- (ii) in the opinion of the Chief Officer for Health and Social Care Integration 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 Chief Officer for Health and Social Care Integration is of the view that it is in the best interests of the service user to use a particular provider.

10.3.2 In all of these circumstances the Chief Officer for Health and Social Care Integration must be satisfied that the negotiations and the contract secures Best Value as set out in **Standing Order 2.6 (Best Value)** and the provider will meet the service users' outcomes.

#### **10.4 Reporting To Committee**

10.4.1 On completion of such negotiations, the Chief Officer for Health and Social Care Integration must report the outcome to the appropriate Committee/Governance Board 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 (Best Value)**.

#### **10.5 Keeping Records**

10.5.1 In all cases where the negotiated procedure has been used in terms of this **Standing Order 10**, a full written record of all contacts, discussions and communications with the prospective social care services provider shall be kept by the Chief Officer for Health and Social Care Integration together with a full explanation as to why they considered it appropriate to use the Negotiated Procedure and confirming that the contract secures Best Value as set out in **Standing Order 2.6 (Best Value)**.

#### **10.6 Complying with the Reform Act**

10.6.1 When procuring Social Care Services the appropriate Chief Officer for Health and Social Care Integration shall ensure that the requirements of;

- (i) **Standing Order 4.6.2 (Award Criteria);**
  - (ii) **Standing Order 4.14 (Sustainable Procurement Duty);**
  - (iii) **Standing Order 19.1 – 19.5 (Selection of Candidates/Tenderers);**
  - (iv) **Standing Orders 21.1, 21.2, 21.3, 21.4, 21.6, 21.7, 21.10 and 22.13 (Award of Contracts);**  
and
  - (v) **Standing Order 42 (Ethics and Standards)**
- are complied with.

## 11A COMPETITIVE DIALOGUE PROCEDURE

### 11A.1 Approval for use

11A.1.1 The Competitive Dialogue Procedure provided for in the European Procurement Regulations may only be used with the prior joint agreement of the Head of Asset and Procurement Solutions and the Head of Legal and Democratic Solutions.

### 11A.2 Use of the Competitive Dialogue Procedure

11A.2.1 The use of the Competitive Dialogue Procedure for any proposed contract shall be subject to the EU Procurement Regulations and such guidance and requirements as the Head of Asset and Procurement Solutions and/or the Head of Legal and Democratic Solutions consider appropriate.

### 11A.3 Prizes/Payments

11A.3.1 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 appropriate Committee.

## 11B INNOVATION PARTNERSHIPS

### 11B.1 Approval for use

11B.1.1 An Innovation Partnership provided for in the European Procurement Regulations may only be used with the prior joint agreement of the Head of Asset and Procurement Solutions and the Head of Legal and Democratic Solutions.

### 11B.2 Use of Innovation Partnership

11B.2.1 The use of an Innovation Partnership shall be subject to the European Procurement Regulations and such guidance and requirements as the Head of Asset and Procurement Solutions and/or Head of Legal and Democratic Solutions considers appropriate.

## 11C COMPETITIVE PROCEDURE WITH NEGOTIATION

### 11C.1 Approval for use

11C.1.1 The Competitive Procedure with Negotiation provided for in the European Procurement Regulations may only be used with the prior joint approval of the Head of Asset and Procurement Solutions and the Head of Legal and Democratic Solutions.

### 11C.2 Use of the Competitive Procedure with Negotiation

11C.2.1 The use of the Competitive Procedure with Negotiation for any proposed contract shall be subject to the European Procurement Regulations and such guidance and requirements as the Head of Asset and Procurement Solutions and/or Head of Legal and Democratic Solutions considers appropriate.

## 12 FRAMEWORK AGREEMENTS ESTABLISHED BY THE COUNCIL

### 12.1 Framework Agreements – General

- 12.1.1 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, any other Regulations made or statutory guidance issued by the Scottish Government under the Reform Act and/or the European Procurement Regulations (if appropriate).
- 12.1.2 Framework Agreements should not be used improperly or in such a way as to prevent, restrict or distort competition.

### 12.2 Framework Agreements – Conditions

- 12.2.1 All Framework Agreements established by the Council in terms of this **Standing Order 12** must set out:-
- (i) the terms and conditions that will apply to any Call Off Contract awarded from the Framework Agreement;
  - (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;
  - (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
  - (iv) the maximum period for any Call Off Contract awarded under the Framework Agreement.

### 12.3 Framework Agreements – Procedure for Calling Off

- 12.3.1 Any Call Off Contract to be made under a Framework Agreement established under this **Standing Order 12** (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 for supplies or services exceeds £50,000 or for works exceeds £500,000, the following requirements must be complied with:-
    - (i) **Standing Order 4.3 (Contract Reference Number)**;
    - (ii) **Standing Order 4.4 (Sourcing Methodology)** if in the opinion of the Chief Officer, the Call Off contract is high value and/or high risk;
    - (iii) **Standing Order 4.15 (Community Benefit Requirement)**;
    - (iv) **Standing Order 18 (e-Procurement)** (where carrying out a mini-competition);
    - (v) **Standing Order 20 (Checking and Evaluation of Selection Documents/Tenders and Reporting)**;
    - (vi) **Standing Order 21 (Award of Contracts)**;
    - (vii) **Standing Order 21.13 (Contract Award Notices)** (for Regulated Procurements); and
    - (viii) **Standing Order 42 (Ethics and Standards)**

### 12.4 Framework Agreements – Access by Other Contracting Authorities

- 12.4.1 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/CONTRACTS ESTABLISHED BY THIRD PARTIES

### 13.1 Framework Agreements - General

- (a) The Standing Orders do not apply to contracts to be awarded by the Council using Framework Agreements made by other organisations, including but not restricted to Scotland Excel, the Scottish Government Procurement and Commercial Directorate, the UK Government Crown Commercial Service or any other public sector organisation which has 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 (Best Value)** 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 securing Best Value as set out in **Standing Order 2.6 (Best Value)** to do so.
- (c) Where, in order to participate in an external Framework Agreement, the Council is required to enter into a written participation agreement or other similar agreement regulating the use of the Framework Agreement by the Council the prior joint approval of the Head of Asset and Procurement Solutions and the Head of Legal and Democratic Solutions is required.

### 13.2 Framework Agreements - Conditions

- 13.2.1 **Standing Order 13.1** only applies to Framework Agreements where the appropriate Chief Officer is satisfied that such Framework Agreements have been formed on the basis of competitive tender 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 contract awarded under **Standing Order 13.1** to contain the matters set out in **Standing Order 13.3**.

### 13.3 Framework Agreements - Conditions of Contract

- 13.3.1 All contracts entered into in terms of **Standing Order 13.1** must substantially meet the Councils requirements in the following areas;
  - (i) **Standing Order 2.3 (Form of Contract and Scots Law);**
  - (ii) **Standing Order 2.5 (Signing);**
  - (iii) **Standing Order 2.6 (Best Value);**
  - (iv) **Standing Order 2.7 (Guidance);**
  - (v) **Standing Order 17 (Confidentiality and Requests for Information);**
  - (vi) **Standing Order 18 (e-Procurement);**
  - (vii) **Standing Order 28 (Contract Terms – Sub Contractors);**
  - (viii) **Standing Order 29 (Contract Terms – Insurance);**
  - (ix) **Standing Order 30 (Contract Terms – Illegal Practices);**
  - (x) **Standing Order 31 (Contract Terms – Assignment/Sub-let);**
  - (xi) **Standing Order 32 (Contract Terms – Equalities Legislation);**



- (xii) **Standing Order 42 (Ethics and Standards)**; and, where appropriate,
- (xiii) all **Standing Orders** relating to contract conditions.

### **13.4 Framework Agreements – Procedure for Calling-Off**

13.4.1 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 the procedures specified in the Framework Agreement for the making of such a Call Off Contract, be awarded using the criteria used to establish the Framework Agreement or as laid down in the Framework Agreement and where the estimated aggregated value of a Call Off Contract for supplies or services exceeds £50,000 or for works exceeds £500,000, the following requirements must be complied with:-

- (i) **Standing Order 4.3 (Contract Reference Number)**;
- (ii) **Standing Order 4.4 (Sourcing Methodology)**;
- (iii) **Standing Order 4.15 (Community Benefit Requirement)**;
- (iv) **Standing Orders 20 (Checking and Evaluation of Selection Documents/Tenders and Reporting)**;
- (v) **Standing Order 21 (Award of Contracts)**;
- (vi) **Standing Order 21.13 (Contract Award Notices)** (for Regulated Procurements); and
- (vii) **Standing Order 42 (Ethics and Standards)**

## 14 COLLABORATIONS

### 14.1 Application

14.1.1 This **Standing Order 14** applies where the Council is entering into collaborative arrangements. The prior approval of the Head of Asset and Procurement Solutions will be required to enter into any collaborative arrangement.

### 14.2 Non-Partnership Clause

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

### 14.3A Tendering

14.3A.1 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 'Style' Contract Award Procedure)**, **7 (Open 'Style' Contract Award Procedure)** or the negotiated procedure if permitted in terms of **Standing Orders 9 (Negotiated Tendering Procedure – General)** or **10 (Negotiated Tendering Procedure – Social Care Services Contracts)** or **15 (European Procurement Regulations)**.

### 14.3B In-house/Direct Labour Packages

14.3B.1 Despite the terms of **Standing Order 14.3A (Tendering)**, 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 **Standing Order 37 (Trading Operations)**.

### 14.3C European Procurement Regulations

14.3C.1 However **Standing Order 14.3B (In-house/Direct Labour Packages)** will not apply if the estimated aggregated value of the works/supplies or services would exceed the EU Thresholds. In that case any contract to be awarded shall need to be awarded in terms of **Standing Order 15 (European Procurement Regulations)** regardless of whether it is the Council or another lead organisation seeking to award the contract in terms of the collaborative arrangements.

### 14.4 Joint Responsibility

14.4.1 Contracting authorities will be jointly responsible for ensuring compliance with the European Procurement Regulations where:-

- (a) the contract award procedure is carried out in its entirety in the name of and on behalf of all the Contracting Authorities involved; or
- (b) one of the contracting authorities manages the contract award procedure as lead and on behalf of all the Contracting Authorities involved.

# 15 EUROPEAN PROCUREMENT REGULATIONS

## 15.1 Application

15.1.1 The European Procurement Regulations apply (unless covered by legislative exemption) to all contracts over the relevant EU Thresholds. The current EU Threshold values are, for the period 1st January 2020 to 31st December 2021:

(i)	contracts for supplies and services	£189,330;
(ii)	contracts for the execution of works	£4,733,252;
(iii)	social and other specified services (contracts subject to the 'Light Touch Regime')	£663,540;
(iv)	small lots (supplies and services)	£70,778
(v)	small lots (works)	£884,720
(vi)	concession contracts	£4,773,252

15.1.2 Where the European Procurement Regulations apply the Chief Officer will follow one of the contract award procedures provided for under the European Procurement Regulations and the advice of the Head of Asset and Procurement Solutions and, where appropriate, the Head of Legal and Democratic Solutions, must be sought at the outset and at all subsequent stages of the contract award process.

## 15.2 Contract Award Procedures

15.2.1 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) **Standing Order 2 (General);**
- (ii) **Standing Order 4 (Pre-Tender Requirements);**
- (iii) **Standing Order 5.3 (Publication of Notices);**
- (iv) approvals in terms of **Standing Order 9 (Negotiated Tendering Procedure – General), 11A (Competitive Dialogue Procedure), 11B (Innovation Partnerships), 11C (Competitive Procedure with Negotiation) or 14 (Collaborations);**
- (v) **Standing Order 16 (Assurances – Tendering);**
- (vi) **Standing Order 17 (Confidentiality and Requests for Information);**
- (vii) **Standing Order 18 (e-Procurement);**
- (viii) **Standing Order 19 (Selection of Candidates/Tenderers);**
- (ix) **Standing Order 20 (Checking and Evaluation of Selection Documents/Tenders and Reporting);**
- (x) **Standing Order 21 (Award of Contracts);**
- (xi) **Standing Order 22 (Extension of Contracts);**
- (xii) **Standing Order 26 (Responsible Third Parties);**
- (xiii) **Standing Order 27 (Contract Performance Security);**
- (xiv) **Standing Order 39 (Retention of Procurement/Contract Documents);**
- (xv) **Standing Order 42 (Ethics and Standards);** and
- (xvi) all **Standing Orders** relating to contract conditions.

### 15.3 Light Touch Regime

15.3.1 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 Candidates/Tenderers)**;
  - (iii) complying with the EC Treaty Principles; and
  - (iv) determining a contract award 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**
- (c) following requirements of the Reform Act, the Reform Act Regulations and any other Regulations made by the Scottish Government under the Reform Act:-
  - (i) complying with the Sustainable Procurement Duty (refer to **Standing Order 4.14 (Sustainable Procurement Duty)**); and
- (d) complying with any such guidance as the Head of Asset and Procurement Solutions and/or Head of Legal and Democratic Solutions consider appropriate.

## 16 ASSURANCES – TENDERING

### 16.1 As part of the Assessment Process

- 16.1.1 As part of any contract award procedure, the Council shall obtain from Tenderers satisfactory assurances in writing in a form determined by the Head of Asset and Procurement Solutions 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;
  - (f) the tender commits to prompt payment of subcontractors; and
  - (g) the Tenderer has complied with the requirements of the Modern Slavery Act 2015.

### 16.2 Supporting Evidence and Signing

- 16.2.1 Such assurances as may be required for a particular contract in terms of **Standing Order 16.1 (As part of the Assessment Process)** must be supported by satisfactory evidence (if required).
- 16.2.2 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.

### 16.3 Selection Criteria – Obtaining Assurances

- 16.3.1 All documents detailing selection criteria will specify that selection will include the obtaining by the Council of satisfactory assurances in terms of **Standing Order 16.1 (As part of the Assessment Process)**.

## 17 CONFIDENTIALITY AND REQUESTS FOR INFORMATION

### 17.1 Giving Out of Information not to be Unreasonably Excluded

- 17.1.1 All Procurement 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 Procurement Documentation, agreement or contract may contain a condition that restricts unjustifiably the disclosure of information held by the Council as a Scottish Public Authority in relation to the Procurement Documentation, agreement or contract.

## 18 e-PROCUREMENT

### 18.1 Use of e-Procurement

- 18.1.1 All contract award procedures in respect of which the estimated value of the contract for supplies or services exceeds £50,000 or for works exceeds £500,000 must be conducted using e-procurement using one of the e-procurement tools available from the Public Contracts Scotland Tender Portal.

### 18.2 Verification and Authentication

- 18.2.1 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 Candidate/Tenderer; and
  - (ii) a physical signature of the successful Tenderer(s) will be required prior to the award of the contract.
- 18.2.2 Any Procurement Documentation 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

- 18.3.1 No Selection Document/tender submitted using e-procurement will be considered unless:-
- (i) it is received in the format specified in the Procurement Documentation;
  - (ii) at the electronic address specified by the Council; and
  - (iii) the electronic submission has been received in its entirety by the time and date specified as the selection document/tender response deadline (in all cases being 12 noon).

### 18.4 Late Submissions

- 18.4.1 Where there are exceptional circumstances strictly out with the reasonable control of the Candidate/Tenderer, and otherwise only in accordance with the Law as it relates to such circumstances, the Head of Asset and Procurement Solutions with the agreement of the Head of Legal and Democratic Solutions may decide, despite the requirements of **Standing Order 18.3 (Receipt and Custody)**, late submissions may be considered.

18.4.2 Where a late submission is considered, this will be recorded along with the circumstances as to why the submission was considered will be recorded in the register of Selection Documents/tenders maintained in relation to **Standing Order 18.6 (Registers of Selection Documents/Tenders)**.

## **18.5 Opening of Selection Documents/Tenders**

18.5.1 All Selection Documents/tenders submitted using e-procurement shall be opened and be made available for download from the secure electronic deposit box via the Public Contracts Scotland Portal at the same time, sequential opening must be adopted for all contract award procedures.

18.5.2 The secure electronic deposit box shall be unlocked promptly after the deadline for receipt of Selection Documents/tenders by two officers not being officers involved in the contract award procedure, and for the opening of tenders only, who are authorised for that purpose by the Head of Asset and Procurement Solutions.

18.5.3 For the opening of tenders only, the Head of Asset and Procurement Solutions shall invite the Convener and the Vice Convener (the 'Members') of the appropriate Committee to attend at the opening of tenders. The absence of one or both of these Members shall not be taken as any indication that the opening of tenders should not proceed or should be delayed.

## **18.6 Registers of Selection Documents/Tenders**

18.6.1 The officers responsible for unlocking the electronic deposit box after its release in accordance with **Standing Order 18.5 (Opening of Selection Documents/Tenders)** shall ensure, in respect of each contract award procedure, that the following records are kept;

(a) In relation to Selection Documents, details of all Selection Documents received and in which shall be entered:

- (i) the number of Selection Documents received in respect of each contract;
- (ii) the date and time of release of the secure electronic deposit box;
- (iii) the date and time of opening of such Selection Documents;
- (iv) the names of the officers present at the opening of such Selection Documents;
- (v) the name of each person submitting a Selection Document;
- (vi) a list of the names of persons who downloaded Selection Documents; and
- (vii) details of any late submissions considered in relation to **Contract Standing Order 18.4 (Late Submissions)**.

(b) In relation to tenders details of all tenders for all contracts to be procured (including Call-Off Contracts) and Framework Agreements established by the Council and in which shall be entered:

- (i) the number of tenders received in respect of each contract;
- (ii) the date and time of release of the secure electronic deposit box;
- (iii) the date and time of opening of such tenders;
- (iv) the names of the officers and the Members present at the opening of tenders;
- (v) the name of each Tenderer;
- (vi) a list of the names of persons to whom tender documents were issued; and
- (vii) details of any late submissions considered in relation to **Contract Standing Order 18.4 (Late Submissions)**.

18.6.2 The officers responsible for ensuring that the register of Selection Documents/Tenders are kept in accordance with **Standing Order 18.6 (Registers of Selection Documents/Tenders)** shall ensure that the registers are initialled.

## 18.7 Electronic Auctions

- 18.7.1 The Head of Asset and Procurement Solutions and the Head of Legal and Democratic Solutions may jointly 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.
- 18.7.2 An Electronic Auction may only be carried out where the possibility of the use of an Electronic Auction has been stated in the contract notice, (published in OJEU (if applicable), any contract advertisement and the Procurement Documentation issued to Tenderers.
- 18.7.3 Before proceeding with an Electronic Auction the Chief Officer along with a representative 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.
- 18.7.4 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 two (2) working days from the date on which the invitations are sent out.
- 18.7.5 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 circumstances may the Council disclose the identities of the Tenderers during any phase of an Electronic Auction.
- 18.7.6 Any Electronic Auction will be subject to the EU Procurement Regulations and such additional procedural requirements as the Head of Asset and Procurement Solutions and/or the Head of Legal and Democratic Solutions considers necessary.

## 18.8 Dynamic Purchasing System

- 18.8.1 The appropriate Chief Officer shall seek approval to use a Dynamic Purchasing System from the Head of Asset and Procurement Solutions.
- 18.8.2 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; and
  - (ii) the Reform Act and the Reform Act Regulations for any Regulated Procurement; and in all cases such additional procedural requirements as the Head of Asset and Procurement Solutions considers necessary.

## 18.9 Electronic Catalogues

- 18.9.1 The appropriate Chief Officer may require tenders to be presented as an electronic catalogue or to include an electronic catalogue.
- 18.9.2 The requirement to provide electronic catalogues shall be subject to the EU Procurement Regulations and such alternative/additional procedural requirements as the Head of Asset and Procurement Solutions considers necessary.



## **18.10 Submission of Selection Documents/Tenders (other than e-procurement)**

18.10.1 In exceptional circumstances the Chief Officer with the prior agreement of the Head of Asset and Procurement Solutions may elect not use e-procurement.

18.10.2 Where e-procurement is not used the appropriate Chief Officer shall follow any alternative/additional procedural requirements as the Head of Asset and Procurement Solutions considers necessary.

# **19 SELECTION OF CANDIDATES/TENDERERS**

## **19.1 Application**

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

## **19.2 Mandatory Exclusion**

19.2.1 The appropriate Chief Officer 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, Reform Act Regulations and any guidance issued by the Scottish Government under the Reform Act to exclude a Candidate/Tenderer from a contract award procedure.

19.2.2 The appropriate Chief Officer with the joint agreement of the Head of Asset and Procurement Solutions and the Head of Legal and Democratic Solutions 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 Candidates/Tenderers.

## **19.3 Discretionary Exclusion**

19.3.1 The appropriate Chief Officer 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 and any guidance issued by the Scottish Government under the Reform Act to exclude a Candidate/Tenderer from a contract award procedure.

## **19.4 Limits on Exclusion**

19.4.1 A Candidate/Tenderer must not be indefinitely excluded from participating in a contract award procedure. The appropriate Chief Officer must apply the maximum periods for exclusion 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**

19.5.1 Where a Candidate/Tenderer is in a situation which may result in its exclusion from a contract award procedure, the appropriate Chief Officer must give the Candidate/Tenderer the opportunity to provide evidence that it has taken sufficient and appropriate remedial action to demonstrate its reliability i.e. self-cleansed.

19.5.2 When considering any self-cleansing measures provided by a Candidate/Tenderer the appropriate Chief Officer must consider all relevant factors including the gravity and particular circumstances of the criminal offence or misconduct.

19.5.3 If the appropriate Chief Officer after taking advice from the Head of Asset and Procurement Solutions

and the Head of Legal and Democratic Solutions is not satisfied that the self-cleansing measures are sufficient for a Candidate/Tenderer to demonstrate its reliability, they must provide a written statement of reasons to the Candidate/Tenderer as soon as is reasonably practicable. The statement of reasons must allow the Candidate to understand why the self-cleansing measures taken were insufficient and the basis for the decision.

19.5.4 All decisions taken by the Chief Officer will be recorded in the report required under **Standing Order 20.5 (Report on Selection Documents/Tenders)**.

## **19.6 European Single Procurement Document (Scotland) ('ESPDS')**

19.6.1 The Council must accept an ESPDS in relation to all EU Regulated Procurements and all Regulated procurements apart from Call Off Contracts, as preliminary evidence in the form of a self-declaration that:-

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

19.6.2 The appropriate Chief Officer must set out the specific requirements and any applicable minimum standards in the contract notice and Candidates will respond using the ESPDS.

19.6.3 The documents in support of the information provided in the ESPDS can be requested by the appropriate Chief Officer at any time during a contract award procedure but in any event:-

- (i) in an open or 'open style' contract award procedure must be requested and checked prior to award;
- (ii) in a restricted or 'restricted style' contract award procedure, competitive procedure with negotiation, competitive dialogue procedure or innovation partnership must be requested and checked prior to issuing invitations to submit tenders; and
- (iii) in any contract award procedure where the appropriate Chief Officer has a genuine concern that there is a risk to effective conduct of the contract award procedure or ensure the integrity and proper conduct of the contract award procedure.

19.6.4 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 Chief Officer may request a separate ESPDS from those parties.

## 20 CHECKING AND EVALUATION OF SELECTION DOCUMENTS/TENDERS AND REPORTING

### 20.1 Chief Officer to Check/Evaluate Selection Documents/Tenders

20.1.1 All Selection Documents/tenders received shall, after opening in accordance with **Standing Order 18.5 (Opening of Selection Documents/Tenders)** be provided to the appropriate Chief Officer for checking and evaluation.

### 20.2 Checking/Evaluation

20.2.1 The Chief Officer will ensure that the Selection Documents/tenders are checked and evaluated strictly in accordance with the evaluation criteria set out in the contract notice and the Procurement Documentation. The Chief Officer will ensure a written record is kept showing the assessment of each Selection Document/tender against those criteria.

20.2.2 If during the evaluation process any communication is necessary prior to selecting Candidates to be invited to tender/participate or contract award in order to clarify any aspect of their Selection Document/tender, such communication shall be conducted in accordance with **Standing Order 20.3 (Clarification of Selection Documents/Tenders)**.

### 20.3 Clarification of Selection Documents/Tenders

20.3.1 Between the last date and time for the receipt of Selection Documents/tenders and the date on which a decision is taken as to which, if any, Candidate/Tenderer will be invited to submit a tender or which tender is to be accepted, the appropriate Chief Officer may contact a person who has submitted a Selection Document response/tender in respect of any contract in cases where it may be necessary to validate or clarify the terms of the Selection Document response/tender or to make any necessary arithmetical adjustments to a tender, but not for any other reason. Where possible clarifications should be undertaken in writing, where it is absolutely necessary to undertake clarifications on a 'face to face' basis, the appropriate Chief Officer may instruct not less than two (2) officers for this purpose.

20.3.2 All discussions should be conducted in accordance with the following additional rules:

- (i) all Candidates/Tenderers must be treated equally and in a fair and transparent manner;
- (ii) Candidates/Tenderers must not be allowed to change their Selection Document response/tenders in a way that allows them to improve their submission/offer;
- (iii) all matters of clarification (other than arithmetic adjustments which should be dealt with in accordance with **Standing Order 20.3.3** or clarification of a matter specific to an individual Candidate/tender) must be notified to all persons making a Selection Document 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 tenders changes to which are likely to distort competition including but not limited to prices;
- (vi) there must be no material change to the specification and/or the criteria on which the Selection Documents/tenders are to be assessed; and
- (vii) a full written record shall be kept by the appropriate Chief Officer of all contacts, discussions, communications and meetings with the Candidate/Tenderer and the outcome of these discussions including any adjustments made as a consequence.

20.3.3 Where the examination of tenders has revealed obvious errors 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 Chief Officer 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; and
- (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 an opportunity to submit an amended tender.

## **20.4 No Fundamental Changes to Tender Conditions Permitted**

20.4.1 **Standing Order 20.3 (Clarification of Selection Documents/Tenders)** 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 significant changes to the specification and/or the award criteria are required and/or would be advantageous to the Council, the contract award procedure must be cancelled by the Chief Officer. If the contract award procedure is cancelled, it shall be re-started from the appropriate point in the contract award procedure in relation to the seeking of tenders.

## **20.5 Report on Selection Documents/Tenders**

20.5.1 Following the evaluation of all Selection Document responses/tenders received in relation to a particular contract opportunity (including a Call-Off Contract) a Report on Tenders, in a format approved by the Head of Asset and Procurement Solutions, shall be prepared and approved by the appropriate Chief Officer.

## **20.6 Exclusion of Candidates before Submission of Tenders**

20.6.1 As soon as reasonably practicable after deciding to exclude a Candidate from participating in a procurement exercise in terms of **Standing Order 19 (Selection of Candidates/Tenderers)** at any stage before submitting a tender the appropriate Chief Officer must notify the Candidate of that decision in accordance with the requirements of the Reform Act Regulations and any guidance and requirements as the Head of Asset and Procurement Solutions and/or the Head of Legal and Democratic Solutions consider appropriate.

20.6.2 The letter must be in a format approved by the Head of Asset and Procurement Solutions.

## 21 AWARD OF CONTRACTS

### 21.1 Interpretation

21.1.1 In this Standing Order references to any award letter(s) shall be taken to include;

- (a) any notice of intent to award a contract;
- (b) any final letter of contract award, including where appropriate following expiry of the relevant Standstill Period;
- (c) any letter extending a contract in terms of **Standing Order 22 (Extension of Contracts)**; and
- (d) any letter advising the non-award of a contract in terms of **Standing Order 21.6 (No Contract to be Awarded)**.

### 21.2 Contracts over £50,000 but below £500,000 for Supplies and Services or over £500,000 but below £2 million for Works.

21.2.1 Where the estimated aggregated value of any contract;

- for supplies or the provision of services is in excess of £50,000 but does not exceed £500,000 ;or
- for works is in excess of £500,000 but does not exceed £2 million

contracts may only be awarded by the Head of Asset and Procurement Solutions (or in his absence by the Head of Business for Legal and Democratic Solutions) and an award letter issued to the successful Tenderer on the authority of the appropriate Chief Officer and receipt of a Report on Tenders in terms of **Standing Order 20.5 (Report on Selection Documents/Tenders)**. The Head of Asset and Procurement Solutions will provide a copy of the award letter to the appropriate Chief Officer.

### 21.3 Contracts over £500,000 for Supplies and Services or over £2 million for Works.

21.3.1 Where the estimated aggregated value of any contract;

- for supplies or the provision of services exceeds £500,000;or
- for works is in excess of £2 million

a contract may only be awarded by the Head of Asset and Procurement Solutions (or in his absence by the Head of Legal and Democratic Solutions) and an award letter issued to the successful Tenderer only on the authority of the appropriate Committee after considering a Report on Tenders in terms of **Standing Order 20.5 (Report on Selection Documents/Tenders)** from the appropriate Chief Officer. The Head of Asset and Procurement Solutions will provide a copy of the award letter to the appropriate Chief Officer.

21.3.2 Between Committee cycles, where there is no appropriate Committee available, then the Chief Executive or the appropriate Executive Director (substitutes may not act) may instruct the Head of Asset and Procurement Solutions (or in his absence the Head of Legal and Democratic Solutions) to accept tenders in order to expedite the contract award process. In all cases, where this occurs the appropriate Chief Officer shall report the contract award to the next appropriate Committee for noting.

### 21.4 Award of Contract where the cost of the tender exceeds the financial provision

21.4.1 Where it is proposed to award a contract where;

- (i) 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) funding is provided by a third party which has been approved by the Council

then such contract shall only be awarded by the Head of Asset and Procurement Solutions (or in his absence by the Head of Legal and Democratic Solutions) and an award letter issued to the successful

Tenderer on receipt of a Report on Tenders in terms of **Standing Order 20.5 (Report on Selection Documents/Tenders)** from the appropriate Chief Officer with the agreement of the Head of Financial Solutions advising of that fact, the likely additional costs and the reasons therefore.

21.4.2 The Head of Asset and Procurement Solutions will provide a copy of the award letter to the appropriate Chief Officer and the Head of Financial Solutions.

## **21.5 Abnormally Low Tenders**

21.5.1 Where a tender appears, in the opinion of the appropriate Chief Officer, to be abnormally low having considered all factors which may affect price or costs and the effective delivery of the contract the Chief Officer must require a Tenderer to explain his understanding of the requirement and the factors enabling him to submit a viable tender at an abnormally low cost.

21.5.2 A tender must be rejected as being abnormally low if:-

- (i) the appropriate Chief Officer is not satisfied that the evidence provided by the Tenderer explains the low cost of the tender; or
- (ii) it has been established that the tender is abnormally low because it does not comply with environmental, social or labour law.

21.5.3 In deciding whether to exclude an abnormally low tender the appropriate Chief Officer must comply with any guidance issued by the Scottish Government under the Reform Act and after seeking advice from The Head of Asset and Procurement Solutions and/or the Head of Legal and Democratic Solutions.

## **21.6 No Contract to be Awarded**

21.6.1 If the appropriate Chief Officer decides that none of the tenders submitted are suitable for the award of contract, then that Chief Officer will provide the reasons for that decision in the report required in terms of **Standing Order 20.5 (Report on Selection Documents/Tenders)**. The Head of Asset and Procurement Solutions shall notify all Tenderers in writing, at the same time, accordingly, along with the reasons for the decision.

## **21.7 Issue of Unsuccessful/Successful Letters**

21.7.1 Letters to the unsuccessful Tenderer(s) will be issued at the same time as the letter(s) to the successful Tenderer(s).

21.7.2 All letters to be issued under this Standing Order shall be issued by the Head of Asset and Procurement Solutions (or in his absence by the Head of Legal & Democratic Solutions).

21.7.3 Letters to be issued under this Standing Order shall be issued by email or, at the discretion of the Head of Asset and Procurement Solutions, only by the posting of a hard copy of the letter.

## **21.8 General Conditions**

21.8.1 No contract shall be awarded unless:-

- (a) (i) the appropriate Chief Officer is satisfied as to the current technical and professional ability of the Tenderer; and  
(ii) the appropriate Chief Officer (where appropriate in consultation with the Head of Financial Solutions) is satisfied with the economic and financial standing of the Tenderer in question;
- (b) 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 in accordance with **Standing Order 21.4 (Award of Contract where the cost of the tender exceeds the financial provision)**.

- (c) 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 27 (Contract Performance Security)**
- (d) The Tenderer has provided the appropriate assurances as required in terms of **Standing Order 16.1 (Assurances – Tendering)**;
- (e) Where the contractor will be a Data Processor (as defined in the Data Protection Act 1998 and any legislation amending same) has complied with the requirements of the Data Protection Act 1998; and
- (f) The appropriate Chief Officer is satisfied with the documentary evidence or certificates produced by the Tenderer in support of the information provided in the ESPDS.

## **21.9 Compliance with the Standstill Period**

- 21.9.1 Where the European Procurement Regulations apply to any contract (other than a contract for Social and other Specific Services), no award of contract shall be made by the Council unless and until the Standstill Period required by the European Procurement Regulations has been followed and the Head of Asset and Procurement Solutions (or in his absence the Head of Legal and Democratic Solutions) is satisfied that no valid challenge has been received to the contract award decision.
- 21.9.2 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 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 from the date on which the last standstill letter for the particular tender is sent. 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.
- 21.9.3 Letters to the unsuccessful Tenderer(s) will be issued at the same time as the letter(s) to the successful Tenderer(s).
- 21.9.4 The standstill letters must be in a format approved by the Head of Asset and Procurement Solutions.
- 21.9.5 Letters to be issued under this Standing Order shall be issued by the Head of Asset and Procurement Solutions by email or, at his discretion, only by the posting of a hard copy of the letter.

## **21.10 Notification of Award to Committee**

- 21.10.1 Any contract awarded in accordance with **Standing Order 21.2 (Contracts over £50,000 but below £500,000 for Supplies and Services or over £500,000 but below £2 million for Works)** shall be included in a summary report provided by the Head of Asset and Procurement Solutions to the next meeting of the appropriate Committee for noting.
- 21.10.2 The summary report shall contain, as a minimum, the following information:-
  - (i) the name of the successful Tenderer(s);
  - (ii) the value of the contract awarded;
  - (iii) the date of award;
  - (iv) the period of the contract and any extension options;
  - (v) a brief description of the contract;

- (vi) the number of tenders received;
- (vii) the contract award procedure that was followed; and such other information as may be specified from time to time by the Head of Asset and Procurement Solutions.

### **21.11 Giving of Reasons – Regulated Procurements**

21.11.1 In relation to all Regulated Procurements the Head of Asset and Procurement Solutions on behalf of the appropriate Chief Officer as soon as is reasonably practicable after deciding to award a contract, must notify this decision in writing to all unsuccessful Tenderers in accordance with the requirements of the Reform Act and the Reform Act Regulations.

### **21.12 Provision of Further Information – Regulated Procurements**

21.12.1 Where a written request for further information is received from a person having received a notification in terms of **Standing Order 21.11 (Giving of Reasons – Regulated Procurements)** in relation to a Regulated Procurement the appropriate Chief Officer after consulting with the Head of Asset and Procurement Solutions will respond to this request in accordance with the requirements of the Reform Act.

### **21.13 Contract Award Notices**

21.13.1 The Head of Asset and Procurement Solutions, on behalf of the appropriate Chief Officer, shall publish a Contract Award Notice for all contract awards (including Call Off Contracts) made under **Standing Order 21 (Award of 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 (Publication of Notices)**.

21.13.2 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.

### **21.14 Written or Formal Challenge**

21.14.1 If any party brings a written or formal challenge against the Council in relation to a contract award procedure or questions the integrity of the contract award procedure, the recipient of the notice of challenge or query must promptly inform the appropriate Chief Officer who must seek advice from the Head of Asset and Procurement Solutions. The Head of Asset and Procurement Solutions must inform and take advice from the Head of Legal and Democratic Solutions as to potential legal challenges.



## 22 EXTENSION OF CONTRACTS

### 22.1 Extension of Contracts subject to the European Procurement Regulations

- 22.1.1 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.
- 22.1.2 Where a contract was not originally procured under the European Procurement Regulations and the estimated value of the proposed extension will result in the total contract value exceeding the relevant 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

- 22.2.1 Where a Chief Officer considers that an existing contract should be extended and the option to extend was disclosed in the original contract notice and Procurement Documentation for that contract, that Chief Officer may decide to exercise that option provided the Chief Officer concerned is satisfied:-
- (i) that the extension secures Best Value as set out in **Standing Order 2.6 (Best Value)**;
  - (ii) that the period of the extension is in accordance with the option to extend given to the Council in terms of the contract; that the scope of the requirement is not fundamentally different to the scope of the contract as originally advertised;
  - (iii) that the value stated in the Committee report under which approval to award the contract was granted was the estimated total value of the contract including any option(s) to extend the contract;
  - (v) that the contractor continues to meet the Councils selection requirements; and
  - (vi) that the performance of the contractor during the original contract period has been satisfactory.
- 22.2.2 A contractual extension can be exercised in instalments provided that the period of those instalments were stated in the contract notice and the Procurement Documentation.

### 22.3 Unanticipated Contract Extensions

- 22.3.1 Where the contract does not make provision for the extension of any contract, the Chief Officer shall not extend the contract unless the use of the negotiated procedure can be justified in accordance with **Standing Order 9 (Negotiated Tendering Procedure - General)** or **Standing Order 10 (Negotiated Tendering Procedure - Social Care Services Contacts)**.
- 22.3.2 Where the extension of any contract can be justified in terms of **Standing Order 22.3.1** then the requirements of **Standing Order 9 (Negotiated Tendering Procedure - General)** or **Standing Order 10 (Negotiated Tendering Procedure - Social Care Services Contacts)** should be complied with.
- 22.3.3 Where the use of the negotiated procedure cannot be justified then the requirement must be procured in accordance with **Standing Orders 6 (Restricted 'Style' Contract Award Procedure), 7 (Open 'Style' Contract Award Procedure)** or **Standing Order 15 (EU Procurement Regulations)** as appropriate and awarded in accordance with **Standing Order 21 (Award of Contracts)**.

### 22.4 Issue of Letters Extending Contracts

- 22.4.1 Letters to be issued under this **Standing Order 22 (Extension of Contracts)** shall be issued by the Head of Asset and Procurement Solutions or in his absence the Head of Legal and Democratic Solutions and in accordance with **Standing Order 21 (Award of Contracts)**.

## 23 CONTRACT MANAGEMENT AND EVALUATION

### 23.1 Contract Management

23.1.1 During the life of a contract the appropriate Chief Officer must put in place appropriate arrangements for the management of any contract. The Chief Officer shall monitor and manage as a minimum;

- a) the contractor's performance;
- b) compliance with specification and contract terms;
- c) cost;
- d) any Best Value requirements;
- e) risk; and

shall comply with any guidance issued by the Head of Asset and Procurement Solutions.

### 23.2 Evaluation of Contract Objectives

23.2.1 Where the total value of the contract exceeds £50,000 for supplies, the provision of services or £500,000 in respect of the execution of works, the appropriate Chief Officer must make a written report evaluating the extent to which the purchasing requirement and the contract objectives were met by the contract. This should normally be done when the contract is completed. Where the contract is to be re-let, a provisional written report should also be available early enough to inform the procurement approach to the re-letting of the subsequent contract.

## 24 REQUIREMENT TO MAINTAIN A CONTRACT REGISTER

### 24.1 Requirement to keep a Contract Register

24.1.1 The Head of Head of Asset and Procurement Solutions shall keep and maintain a register of all contracts that are not exempt or partially exempt from these Standing Orders for the registration and monitoring of contracts and frameworks across the Council. The register shall contain;

- (a) the date of contract award;
- (b) the name of the contractor;
- (c) the subject matter;
- (d) the estimated value;
- (e) the start date;
- (f) the end date (disregarding any option to extend), or where no end date is specified a description of the circumstances in which the contract will end; and
- (g) the duration of any period for which the contract can be extended

As soon as reasonably practicable after the issue of a letter under **Standing Order 21 (Award of Contracts)**, the Head of Head of Asset and Procurement Solutions shall update the register.

### 24.2 Requirement to make the Contract Register Publicly Available

24.2.1 The Head of Head of Asset and Procurement Solutions shall, in accordance with the requirements of the Reform Act, make the contract register publicly available on the internet and by any other means he considers appropriate.

## 25 NOMINATION OF SUBCONTRACTORS

### 25.1 Tendering for Subcontractors

25.1.1 Where a contract provides for the nomination by the Chief Officer of a subcontractor for Supplies, the provision of Services or the execution of Works, as the case may be, subcontractors may only be nominated following the completion of a contract award procedure conducted in accordance with these Standing Orders.

## 26 RESPONSIBLE THIRD PARTIES

### 26.1 Obligations of Third Parties

- 26.1.1 Any third party or person (not being an official of the Council) who is responsible to the Council for a contract on the Council's behalf shall, in relation to that contract:
- (i) comply with these Standing Orders as though they were an officer of the Council;
  - (ii) at any time during the execution of the contract, produce on request, to the appropriate Chief Officer, all records maintained by them in relation to the contract; and
  - (iii) on completion of the contract, provide to the appropriate Chief Officer all such records relating to the contract, including information relevant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 or amending legislation, where appropriate or applicable.
- 26.1.2 A condition to this effect shall be included in any contract/Procurement Documentation appointing the third party.

## 27 CONTRACT PERFORMANCE SECURITY

### 27.1 General Right to Require Security

27.1.1 The Council may ask for security on any contract for supplies, the provision of services or the execution of works, where, in the opinion of the Chief Officer it is 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 jointly approved by the Head of Legal and Democratic Solutions and the Head of Financial Solutions (as appropriate).

## 28 CONTRACT TERMS – SUB CONTRACTORS

### 28.1 Obligations on Sub-Contractors

28.1.1 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 subcontractors, and all contractors shall be responsible for the observance of such conditions by such subcontractors.

## 29 CONTRACT TERMS – INSURANCE

### 29.1 Contractor Must Have Insurance to Specified Levels

29.1.1 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 Head of Business Solutions 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 Head of Business Solutions or by law.

### 29.2 Contract Term - Proof of Insurance

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 29.1** 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.

### 29.3 Contract Term - Dealing with Claims

It shall be a condition of every contract entered into with the Council for supplies, the provision of services or the execution of works, that the contractor shall require to deal with any claim, potential claim or complaint arising from the supply of said supplies, the provision of said services or the execution of said works, made by the Council, any of its tenants or any other person deriving right or benefit there from:

- (i) by providing in writing within fourteen (14) calendar days of such claim, potential claim or complaint first having been intimated to the contractor, details of the name and address of the contractor's insurance company, together with the relevant policy number, to enable such claim, potential claim or complaint to be intimated to the contractor's insurance company by the Council, any such tenant or any such other person;
- (ii) declaring that the contractor shall be obliged thereafter to provide timeously to the contractor's insurance company all relevant details to enable such claim, potential claim or complaint to be processed with the minimum delay; and
- (iii) binding the contractor to update the Council on the progress and outcome of any claim submitted by any of the Council's tenants or any other person deriving right or benefit from the Council.

## 30 CONTRACT TERMS – ILLEGAL PRACTICES

### 30.1 Cancellation of Contract

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 the contractor's 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 or activity in relation to the obtaining or the execution of the contract or any other contract with the Council or any other public body. Before any contract is cancelled in terms of this **Standing Order 30**, the appropriate Chief Officer shall seek the written approval of the Head of Legal and Democratic Solutions

### 30.2 Remedies

Where a contract is cancelled in terms of **Standing Order 30.1 (Cancellation of Contract)**

- (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 Chief Officer shall immediately remove or require the removal of the contractor from that list and/or
- (c) in all other circumstances the appropriate Chief Officer can disallow that contractor from tendering from any further relevant contracts for a fixed period of no more than twelve calendar months.

## 31 CONTRACT TERMS – ASSIGNATION/SUB-LET

### 31.1 No Assignment/Sub-contracting Permitted

Unless specifically permitted in a contract, a contractor shall not assign sub-contract or novate a contract or any part thereof, except with the prior written consent of the Council. The appropriate Chief Officer in consultation with the Head of Legal and Democratic Solutions and/or the Head of Asset and Procurement Solutions shall have the power to consent on behalf of the Council to the assignation, novation, or sub-contracting of a contract.

## 32 CONTRACT TERMS – EQUALITIES LEGISLATION

### 32.1 To be in Compliance with Equalities Legislation

- 32.1.1 Before entering into any contract, the Council shall obtain an assurance in writing from the contractor that, to the best of the contractor's knowledge and belief, the contractor is not unlawfully discriminating within the meaning and scope of the provisions of the Equalities Legislation.

### 32.2 Undertaking in Relation to Equalities

- 32.2.1 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:-

- (i) eliminate unlawful discrimination;
- (ii) eliminate harassment;
- (iii) promote equality of opportunity;
- (iv) take steps to take account of persons disabilities etc. , even where that involves treating disabled persons etc. more favourably than other persons;
- (v) promote positive attitudes ; and
- (vi) 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.

## 33 CONTRACT TERMS - THE HUMAN RIGHTS ACT 1998

### 33.1 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 Legal and Democratic Solutions, 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.

## 34 CONTRACT TERMS – COMPLIANCE WITH ENVIRONMENTAL, SOCIAL AND EMPLOYMENT LAW

### 34.1 Conditions for Performing the Contract

The appropriate Chief Officer must include in a contract or Framework Agreement conditions relating to the performance of that contract/Framework that:-

- (i) are linked to the subject matter of the contract or Framework Agreement;
- (ii) are indicated in the call for competition or Procurement Documentation; and
- (iii) are reasonably necessary to ensure that the successful Tenderer complies with environmental, social and employment law.

## 35 CONTRACT TERMS TERMINATION OF CONTRACT

### 35.1 Express Term of Contract

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:-

- (i) the contract or Framework Agreement has been subject to substantial modification which would have required a new procurement exercise in accordance with **Standing Order 38 (Contract Modifications)**;
- (iii) 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;

- (iv) 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.

### **35.2 Implied Term of Contract**

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 set out in **Standing Order 35.1 (Express Term of Contract)** a term will be implied giving the Council the right to terminate on giving notice.

## **36 CONTRACT TERMS – GENERAL DATA PROTECTION REGULATION (GDPR)**

### **36.1 To be in Compliance with the General Data Protection Regulation (GDPR)**

Where as part of a contract, the contractor will be processing personal data (as defined in the GDPR and any legislation amending the same), that contract must contain an undertaking by the contractor, in a form determined by the Head of Legal and Democratic Solutions, that the contractor will comply with the requirements of the GDPR, which shall include, but not be limited to, the provision and maintenance of technical and security arrangements for processing personal data and the provision of assistance to the Council when they are dealing with subject access requests (all terms as defined in the GDPR and any legislation amending the same).

## **37 TRADING OPERATIONS**

### **37.1 Exemption of Trading Operations**

Where the Council can provide a trading operation or commercial service which provides the works, services or supplies sought, then the Council can carry out work or arrange for the provision of the works, services or supplies without the requirement to seek competitive tenders, if in the opinion of the appropriate Executive Director in consultation with the appropriate Convener, or (in his/her absence) Vice Convener, 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 'Style' Tendering), 7 (Open 'Style' Tendering)**, or the negotiated procedure if permitted in terms of **Standing Orders 9 (Negotiated Tendering Procedure – General) 10 (Negotiated Tendering Procedure – Social Care Contracts) or 15 (European Procurement Regulations)**. Nothing in this Standing Order will affect the right of any trading operation or commercial service from being included in the tendering process in terms of **Standing Order 37.2 (Inclusion of Trading Operations in Competitions)**

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

Where tenders are being sought in relation to any contracts for supplies, the provision of services or the carrying out of any works are invited by public advertisement, the appropriate section of the Council providing a similar trading operation or commercial service, may tender for all such contracts advertised by public advertisement.

### 37.3 Statutory Requirements

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.

## 38 CONTRACT MODIFICATIONS

### 38.1 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 for supplies and services and for works exceeds £500,000 and includes all EU Regulated Procurements.

No contract shall be modified in terms of **Standing Order 38 (Contract Modifications)** without the appropriate Chief Officer first taking advice from the Head of Asset and Procurement Solutions and the Head of Legal and Democratic Solutions.

## 39 RETENTION OF PROCUREMENT/CONTRACT DOCUMENTS

### 39.1 Retention of Contracts Awarded

The appropriate Chief Officer must ensure that copies of all contracts awarded and associated supporting documentation are kept in accordance with the Council's retention policy. This Standing Order applies to all contracts for supplies and the provision of services where the estimated value exceeds £50,000 and for works contracts where the estimated value exceeds £500,000. Including all contracts where the value exceeds the EU Thresholds.

### 39.2 Retention of documents relevant to awarded contracts

The documentation to be retained in terms of **Standing Order 39.1 (Retention of Contracts Awarded)** must justify decisions taken in all stages of the contract award procedure and comply with the requirements of any relevant Procurement Process.

## 40 PROCUREMENT STRATEGY

### 40.1 Preparation of the Procurement Strategy

- 40.1.1 As a minimum the Council must prepare a Procurement Strategy in accordance with the requirements specified in the Reform Act and any guidance published by the Scottish Government under the Reform Act and any guidance published by the Scottish Government under the Reform Act.
- 40.1.2 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
- 40.1.3 The Head of Asset and Procurement Solutions shall lead the preparation and/or review of the Council's Procurement Strategy.



## **40.2 Publication of the Procurement Strategy**

The Head of Asset and Procurement Solutions will publish the Procurement Strategy and any revised Procurement Strategy on the Council's website and in any other manner as required by the Reform Act.

# **41 ANNUAL PROCUREMENT REPORT**

## **41.1 Preparation of the Annual Procurement Report**

41.1.1 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 any guidance published by the Scottish Government under the Reform Act.

41.1.2 The Head of Asset and Procurement Solutions shall lead the preparation of the Annual Procurement Report.

## **41.2 Publication of the Annual Procurement Report**

The Head of Asset and Procurement Solutions will publish the annual procurement report on the Council's website and in any other manner as required by the Reform Act.

# **42 ETHICS AND STANDARDS**

## **42.1 Ethical Behaviour and Standards**

The following ethical behaviour and standards must be observed in relation to all procurement activity;

- (a) Ethical behaviour must be promoted at all times;
- (b) The conduct of employees should not foster the suspicion of any conflict between their official duty and their personal interest;
- (c) The action of employees should not be, nor give the impression that they have or may have been, influenced by a gift or consideration to show favour or disfavour to any person or organisation;
- (d) Dealings with Candidates, Tenderers and contractors must at all times be transparent, honest and fair; and
- (e) Employees must keep sufficient records to demonstrate that appropriate standards have been observed throughout any Procurement Process and subsequent contract period.

## **42.2 The Bribery Act 2010**

42.2.1 The Bribery Act 2010 has introduced a new regime in this area. The most relevant offences to Council employees are set out below, these offences relate to receiving bribes and being bribed.

- (a) These offences relate to any person:-
  - (i) carrying on functions of a public nature; or
  - (ii) activities connected with a business; or
  - (iii) activities being performed in a person's employment; or
  - (iv) by or on behalf of a body of persons;

and

where that person was expected to perform the function or activity:-

- (v) in good faith; or
- (vi) impartially; or
- (vii) is in a position of trust by virtue of performing it.
- (b) The grounds for three of the offences are established when any person requests, agrees to receive or accepts a financial or other advantage; and
- (viii) intends that a relevant function or activity should be performed improperly by them or another person; or
- (ix) the request, agreement or acceptance itself constitutes the improper performance by them of a relevant function or activity; or
- (x) it is a reward for the improper performance by them or another person of a relevant function or activity.

The grounds for the fourth offence are:-

- (xi) where in anticipation of or in consequence of someone requesting, agreeing to receive or accepting a financial or other advantage, a relevant function or activity is performed improperly by them or by another person at their request or with their assent or acquiescence.

42.2.2 The Bribery Act 2010 contains other offences and employees must contact Legal Services or Internal Audit for further advice where required.

42.2.3 It is essential that all Councillors and employees in line with the Council's Code of Conduct are, and are seen to be, above reproach in their actions. They must ensure that their personal judgement and integrity cannot reasonably be seen to be compromised by the acceptance of benefits of any kind from a third party.

### **42.3 Conflicts of Interest**

42.3.1 There may, on occasion, be conflicts of interest between a Candidate, Tenderer or a contractor and employees who are involved in undertaking a contract award procedure and or contract and supplier management activity. If this is the case, the situation must be assessed by the appropriate Chief Officer to determine how it can be resolved. Usually, this involves the Chief Officer removing any conflicted individual from the contract award procedure or contract and supplier management activity so that they are not in a position to influence decisions made.

42.3.2 Examples of conflict of interest are when someone involved in undertaking a contract award procedure and or contract and supplier management activity or an immediate family member:

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

42.3.3 If an employee is uncertain whether or not they have a conflict of interest, further advice must be sought from the appropriate Chief Officer.

## 43 GENERAL

### 43.1 Responsibilities

Chief Officers are responsible for ensuring that all appropriate employees, and where appropriate, external consultants, contractors and partner organisations, have access to and comply with the Council's 'Financial Regulations', the Councils Corporate Procurement Strategy and these Standing Orders.

### 43.2 Review

43.2.1 The Head of Asset and Procurement Solutions will keep these Standing Orders under regular review and having consulted Chief Officers, will present any required proposals for revision of the Standing Orders, to the Policy and Resources Committee for agreement and approval by Council.

43.2.2 The Head of Asset and Procurement Solutions having consulted where appropriate with the Head of Legal and Democratic Solutions shall have power to vary these Standing Orders but only in the following circumstances:-

to reflect changes in job titles, reorganisations of service areas and vacancies in posts; or

- (i) to change references to any piece of legislation where the legislation is repealed and to insert references to new pieces of legislation where the new pieces of legislation largely re-enact the provisions of the repealed legislation; or
- (ii) to change the financial values of the EU Thresholds or the Reform Act where referred to in these Standing Orders, to implement any changes in these thresholds.

### 43.3 Circulation

Electronic copies of these Standing Orders are issued to all Chief Officers. In addition, the document can be accessed on the Council's Intranet.

## SCHEDULE 1

### RELEVANT VALUES AND ASSOCIATED PROCUREMENT PROCEDURE

Total value for duration of contract or purchase	Procedure	Approval of contractual obligation	Committee Approvals
Up to £5,000 Supplies, Services and Works	Use existing local, national, Council framework or call of contracts  or  appropriate choice of provider	Chief Officer or such other officer to whom the relevant Chief Officer has appropriately delegated their powers to.  Contract Award letters issued by Chief Officer or such other officer to whom the relevant Chief Officer has appropriately delegated their powers to.	None required
£5,000 to £50,000 for Supplies and Services and £5,000 to £500,000 Works	Use existing local, national, Council framework or call of contracts  or  5 written quotations – written description of requirements followed by issue and receipt of electronic quotes using Public Contracts Quick Quote system	Chief Officer or such other officer to whom the relevant Chief Officer has appropriately delegated their powers to.  Contract Award letters issued by Chief Officer or such other officer to whom the relevant Chief Officer has appropriately delegated their powers to.	None required
£50,000 to EU Thresholds for Services and Supplies	Use existing local, national, Council framework or call- off contracts,  or  Invitation to tender following advertisement on Public Contracts Scotland portal	Chief Officer or such other officer to whom the relevant Chief Officer has appropriately delegated their powers to.  Contract Award letters issued by Head of Asset and Procurement Solutions.	None required  Contract awards retrospectively notified to appropriate Committee where value is greater than £50,000 but less than £500,000

Total value for duration of contract or purchase	Procedure	Approval of contractual obligation	Committee Approvals
£500,000 to EU Thresholds for Works	<p>Use existing local, national, Council framework or call-off contracts,</p> <p>or</p> <p>Invitation to tender following advertisement on Public Contracts Scotland portal</p>	<p>Chief Officer up to £2 million.</p> <p>Contract Award letters issued by Head of Asset and Procurement Solutions</p>	<p>Approval to commence procurement sought from appropriate Committee where in the opinion of the Chief Officer the requirement is high value and/or high risk.</p> <p>Approval to award contract sought from appropriate Committee where value exceeds £2 million.</p> <p>Contract awards retrospectively notified to appropriate Committee where value is greater than £500,000 but less than £2 million.</p>
Above EU Threshold for services, Social and other Specific Services and supplies	<p>Use existing local, national, Council framework or call-off contracts,</p> <p>or</p> <p>Invitation to tender following advertisement in OJEU - Public Contracts Scotland portal</p> <p>or</p> <p>negotiated procedure without prior publication, competitive procedure with negotiation, competitive dialogue or innovative partnerships where permitted by the European Procurement Regulations</p>	<p>Chief Officer in consultation with the Head of Asset and Procurement Solutions (Head of Legal and Democratic Solutions to be consulted as appropriate.) up to £500,000.</p> <p>Contract Award letters issued by Head of Asset and Procurement Solutions.</p>	<p>Approval to commence procurement sought from appropriate Committee where in the opinion of the Chief Officer the requirement is high value and/or high risk.</p> <p>Approval to award sought from appropriate Committee where value exceeds £500,000.</p> <p>Contract awards retrospectively notified to appropriate Committee where value is greater than £50,000 but less than £500,000.</p>
Above EU Threshold for works	<p>Use existing local, national, Council framework or call-off contracts,</p> <p>or</p> <p>Invitation to tender following advertisement in OJEU - Public Contracts Scotland portal</p> <p>or</p> <p>negotiated procedure without prior publication, competitive procedure with negotiation, competitive dialogue or innovative partnerships where permitted by the European Procurement Regulations</p>	<p>Chief Officer in consultation with the Head of Asset and Procurement Solutions (Head of Legal and Democratic Solutions to be consulted as appropriate.)</p> <p>Contract Award letters issued by Head of Asset and Procurement Solutions.</p>	<p>Approval to commence procurement sought from appropriate Committee where in the opinion of the Chief Officer the requirement is high value and/or high risk.</p> <p>Approval to award contract sought from appropriate Committee</p>

## SCHEDULE 2

### LINKS TO ASSOCIATED RELEVANT DOCUMENTATION

[Procurement Reform \(Scotland\) Act 2014](#)

[The Procurement \(Scotland\) Regulations 2016](#)

[Public Contracts \(Scotland\) Regulations 2015](#)

[Utilities Contracts \(Scotland\) Regulations 2016](#)

[Concessions Contracts \(Scotland\) Regulations 2016](#)

**Procurement Reform (Scotland) Act 2014** [statutory guidance](#)

[Procurement Journey](#)

[North Lanarkshire Council Procurement Strategy](#)



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پ ے ت پ س ای ای ے می ر ک ہ ط بار ے س زن ش می کن وی م ک ٹی روپ راک رپ 01698 302527 ے می اب رہ ے می اب ے می ل ے ک ے کن ر ک ت س او خ رد  
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