

SHETLAND ISLANDS COUNCIL

CONTRACT STANDING ORDERS

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CONTRACT STANDING ORDERS

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INTRODUCTION

1. EXECUTIVE SUMMARY

All public procurement within the United Kingdom is governed by the Treaties of the European Union and European Union Procurement Directives. Implementation of the Directives in Scotland is achieved through the Public Contracts (Scotland) Regulations 2015, the Utilities Contracts (Scotland) Regulations 2016 and the Concession Contracts (Scotland) Regulations 2016. As a Scottish local authority, Shetland Islands Council is bound by the EU law together also with Scottish domestic law including the Local Government (Scotland) Act 1973 which places a duty on local authorities to make orders regulating contracts for goods, works and services. The Procurement Reform (Scotland) Act 2014 and the Procurement (Scotland) Regulations 2016 introduce further regulations for some contracts below EU thresholds.

Anyone interested in providing goods, works or services to or on behalf of the Council are to be treated in accordance with the EU principles of equal treatment, non-discrimination, mutual recognition, proportionality and transparency at all levels of expenditure.

These Contract Standing Orders are necessary to comply with the law.

They also aim to achieve best value for the Council by establishing common compliance and application of standards throughout the Council's operations so that the Council's reputation as a responsible, competent, and fair contracting authority is upheld and enhanced. They must be considered with reference to and application of related sections of the Council's Financial Regulations.

Finally they draw attention to the fact that all parts of the Council constitute only one contracting authority, and that no establishment or operation within the Council is separate from it. As such they are applicable in all Services and in all establishments and operations to which responsibility for awarding contracts is delegated or outsourced. Where a commodity is being procured by Corporate Services on behalf of the Council as a whole, the Sponsor will be the Chief Executive.

Responsibility and accountability for all procurement within the Council lies with the Director of Corporate Services, who has authority to determine all matters relating to procurement subject to compliance with legal requirements. The Director of Corporate Services may delegate areas of procurement to other officers of the Council.

The following procedures shall apply:

Under £1,000

1) Where the estimated value of goods, works and services is less than £1,000.

- No competitive tendering required although value for money must be demonstrated.

Between £1,000 and £10,000

- 2) Where the estimated value of goods, works and services is between £1,000 and £10,000.
- Quotations required from at least two economic operators unless the Sponsor has satisfied the appropriate Executive Manager that the requirement is not readily obtainable from more than one supplier, service provider, or contractor, and it can be demonstrated that no equivalent is available, or otherwise for technical reasons or due to time restraints.

NOTE: although procurements below £10,000 are exempt from these Contract Standing Orders (see Section 1, Part 1 – Applicable Standards), the above procedures are expected to be considered and applied. Procuring officers must in all cases be able to justify the action taken and to demonstrate value for money.

Between £10,000 and £50,000

- 3) Where the estimated value of goods, works and services is between £10,000 and £50,000.
- Quotations or Competitive tendering required from at least three economic operators, unless the Sponsor has satisfied the Director of Corporate Services that the requirement is not readily obtainable from more than one supplier, service provider, or contractor, and it can be demonstrated that no equivalent is available, or otherwise for technical reasons or due to time restraints.

NOTE: Procuring officers must in all cases be able to justify the action taken and to demonstrate value for money. Taking into account the market for the goods, works or services required. The closer to £50,000, the more likely it is to require competitive tendering.

Works contracts between £50,000 and £2,000,000

- 4) Competitive tendering required in accordance with Part 2 Operational Procedures.

NOTE: Where competitive tendering applies advertising of the contract is mandatory.

Regulated/ “Slice” Contracts

- 5) a) Where the Procurement Reform (Scotland) Act 2014 and the Procurement (Scotland) Regulations 2016 apply:
- Requirements with an estimated value in excess of £50,000 but less than £164,176 (Supplies and Services) or in excess £2,000,000 but less than £4,104,394 (Works) are subject to competitive tendering and advertised in the Public Contracts Scotland Portal (PCS): www.publiccontractsscotland.gov.uk and together with Council's website, and other media as appropriate.

European Union Regulations

6) Where the Public Contracts (Scotland) Regulations 2015 apply:

Requirements with an estimated value in excess of £164,176 (Supplies and Services) or £4,104,394 (Works) are to be advertised in the Official Journal of the European Union (first), together with an appropriate level of advertising in the media and on the Council's website and/or via the Public Contracts Scotland Portal (PCS): www.publiccontractsscotland.gov.uk as appropriate.

Utilities

7) Where the Utilities Contracts (Scotland) Regulations 2016 apply:

Requirements with an estimated value in excess of £328,352 (Supplies and Services) or £4,104,394 (Works) are to be advertised in the Official Journal of the European Union (first), together with an appropriate level of advertising in the media and on the Council's website and/or via the Public Contracts Scotland Portal (PCS): www.publiccontractsscotland.gov.uk as appropriate.

Health or Social Care Services/ Social and Other Specific Services

8) These services require careful consideration by the Council. The quality and availability of these services can have a significant impact on the quality of life, wellbeing and health of the people accessing the services and their carers. Consequently, the legislation and regulatory regime applying to the procurement of such services is covered differently. See Part 3 of these Contract Standing Orders.

General Points

All contracts subject to the European Union regulations must be progressed with the advice of Procurement and Legal services.

These Prescribed Sums are set out at Annex 1 to these Contract Standing Orders.

Where the estimated value of the goods, works and services is less than £50,000 the procurement is dealt with entirely by authorised staff within the sponsoring Services and will not ordinarily involve the Council's Procurement Section. However, specific advice and assistance is available upon request. Formal tenders for goods and services are managed by the Council's Procurement Section who will help the Sponsor in each case. Arrangements for competitive tendering for all requirements with an estimated value in excess of the prescribed sum shall be made by the Director of Corporate Services.

The single point of publication for contract notices will be the Executive Manager – Capital Programme. This means that all Contracts subject to formal tendering procedures must be advertised via the Executive Manager – Capital Programme. Where competitive tenders are advertised on a voluntary basis, the same requirement applies.

No proposed procurement may be split to avoid the necessity of appropriate calls for competition or to avoid the application of European Union procurement regulations or these Contract Standing Orders.

In all commitments made in the commissioning of consultancy services, regardless of value, Statements of Requirement and Terms of Engagement shall be documented.

Tendering for goods, services, and works on behalf of the Council shall be carried out by electronic means wherever possible.

Procurement via collaborative contracts such as those awarded by Scottish Procurement & Commercial Directorate, Scotland Excel or the Crown Commercial Service (CCS) (see links below) may in certain circumstances be undertaken without further competition.

The Council is a member of the national procurement organisation Scotland Excel and as such will undertake to participate in Scotland Excel contracts unless: current arrangements preclude doing so; better value for money is achievable elsewhere; alignment with strategic or operational requirements preclude doing so; additional supply chain or sustainability costs negate or exceed any gross savings; or the rules of Best Value require otherwise.

<http://www.gov.scot/Topics/Government/Procurement/directory> (Scottish Procurement & Commercial Directorate – Category A contracts)

<http://www.scotland-excel.org.uk/home/Contractregister/Contract-register.aspx> (Scotland Excel - Category B contracts)

<http://ccs-agreements.cabinetoffice.gov.uk/> (Crown Commercial Service – Category A and B contracts)

Officers who encounter difficulties with procurement or have any queries should contact the Executive Manager – Capital Programme in the first instance.

Key Points:

With every procurement it is essential to know:

What is it that the Council requires – goods, works or services or a combination?

When is the contract or framework agreement due to commence and what period is it to subsist for?

What is the total estimated value of the requirement? Under £50,000 – can be dealt with by authorised staff. Over £50,000 - seek advice from Procurement and Legal services.

The answer to these will determine the procedure to be followed.

CONTEXT

1.0 Commencement

- 1.1 These Contract Standing Orders (“the Contract Standing Orders”) shall apply and have effect from 1 April 2017 and shall be subject to periodic review. The Director of Corporate Services may authorise changes to these Contract Standing Orders where changes are brought about by statute, regulation or case law.

2.0 Definitions

- 2.1 In these Contract Standing Orders, the following words and expressions shall have the meanings hereinafter assigned to them, that is to say:-

“The 1973 Act” means the Local Government (Scotland) Act 1973.

“Authorised” and “Authorised Staff” refers to staff within the Procurement Section, members of the Council’s procurement network or whose job role involves the administration of contracts and where the relevant training has been provided.

“Call-Off” means a contract between the Council and a supplier, service provider or contractor under a Framework Agreement.

“Community Benefits Requirement” is a contractual requirement imposed by a Contracting Authority relating to training and recruitment or availability of sub-contracting opportunities or which is otherwise intended to improve the economic, social or environmental wellbeing of the Contracting Authority’s area in a way additional to the main purpose of the contract in which the Community Benefits Requirement is included. The Contracting Authority must consider whether to impose Community Benefit Requirements for all procurements estimated at or above £4 million GBP.

“Competitive Tendering” means seeking competition from suppliers, service providers or works contractors. Depending on the estimated cost, this may range from a simple written invitation procedure/quote or a full tendering exercise such as those governed by EU procurement procedures.

“Contract” means an agreement between the Council and another legal entity having the following characteristics: offer and acceptance/agreement, intention to form legal relationships, capacity (of the parties to enter such an agreement) and legality. Assignments of work to any of the Council’s internal Services cannot therefore be contractual in nature, but must be subject to the principles of Best Value and value for money.

“Contracting Authority” means Shetland Islands Council, irrespective of which part of the Council sponsors the requirement.

“Consultancy” and “Consultant” means respectively the practice of giving expert advice, support, or opinion within a given field and any person or organisation providing any such service to, for, or on behalf of the Council.

“Director of Corporate Services”: for the purposes of these Contract Standing Orders includes the Executive Manager – Capital Programme acting on his/ her behalf.

“Economic Operator” – means any person or public entity or group of such persons and/or entities, including any temporary association of undertakings, which offers the execution of works and/or a work, the supply of products or the provision of services on the market.

“ESPD” – means European Single Procurement Document.

“Executive Manager – Capital Programme” in the context of the advertising, arrangement and management of competitive tendering and quotation exercises and award of contracts includes the Procurement Manager or Procurement Officer within the Capital Programme Service.

“Framework Agreement” means an agreement between one or more Contracting Authorities (i.e. public bodies) and one or more Economic Operators.

“Health or Social Care Services” means those services referred to in the Schedule to the Procurement (Scotland) Regulations 2016. See link - <http://www.legislation.gov.uk/sdsi/2016/9780111030868>

“Most economically advantageous tender” (MEAT) means that tender giving optimum value for money over the lifetime of the contract for the goods, services or works delivered thereby, taking into account all material matters on the basis of the best price-quality ratio. It is the only acceptable contract award criteria in terms of the Public Procurement Regulations and, in accordance with Scottish Government guidance, should also apply to Regulated Contracts.
<http://www.gov.scot/Resource/0049/00496919.pdf> (section 5.7.1)

“Partners” are defined as any organisations with which the Council works to deliver its objectives, with a formal agreement of roles (contract, funding agreement etc.). Partnerships are defined by the agreements between the partners.¹

“Partnering” means a form of collaborative working between partners and in contrast with traditional ‘arm’s length’ procurement and contract-management approaches, partnering is characterised by a greater degree of openness, communication, mutual trust and sharing information. There may often be a long-term relationship, which requires clear roles and responsibilities for decision making and effective performance reporting. Entering into such agreements is subject to the same rules of competition as other forms of agreement and may be an adjunct to a competitively tendered procurement.

“Prescribed Sum” means the value of the Sum set out at Annex 1 to these Contract Standing Orders.

“Procurement Documents” means any document produced or referred to by the Contracting Authority to describe or determine elements of the procurement including the contract notice, the prior information notice where used as a means of calling for competition, the technical specifications, the descriptive document,

¹ HM Treasury, “Managing Risks With Delivery Partners” 2004

proposed conditions of contract, format for the presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional documents.

“Procurement Officer” means a member of the Capital Programme Service or other Officer empowered to award contracts on behalf of the Council by the Director of Corporate Services.

“Procurement Lead Officer” means the member of staff who shall be responsible for the management and integrity of each procurement project or the parts of wider projects involving procurement work. No action may be taken in respect of any procurement project or the procurement aspect of any wider project and no external communication bearing upon the conduct or operation of the project may be issued except with the express authority of the Procurement Lead Officer.

“Project Manager” means the member of staff appointed by the Sponsor or Board governing the project to deliver the project.

“Public Procurement Regulations” means the Public Contracts (Scotland) Regulations 2015, the Utilities Contracts (Scotland) Regulations 2016, the Concession Contracts (Scotland) Regulations 2016, the Procurement (Scotland) Regulations 2016 and any addition, amendment or variation thereof.

“Quality” in this context means fitness for purpose as defined in the Specification or Statement of Requirements.

“Quote” means a stated price for goods, works or services. This would generally be used for low value, straightforward procurement requirements.

“Regulated Procurement” is, for goods and services, procurement with an estimated value equal or greater than £50,000 and, for works, procurement with an estimated value equal to or greater than £2 million. Utilities are excluded from the Regulated Procurement regime.

“Services” means any requirement other than Works and/or Supply of Goods.

“Social and other Specific Services” means those services listed in Schedule 3 of the Public Contracts (Scotland) Regulations 2015. See link attached http://www.legislation.gov.uk/ssi/2015/446/pdfs/ssi_20150446_en.pdf

“Supplies” means purchase, lease, rental or hire purchase, with or without option to buy, of products. A public contract having as its object the supply of products and which also covers, as an incidental matter, siting and installation operations shall be considered to be a public supply contract.

“Service Director” includes the Chief Executive, and is taken to include any senior officer delegated by the Director of Corporate Services to undertake specific tasks relating to contracts. “Sustainable Procurement Duty” is the duty of the Contracting Authority before carrying out a Regulated Procurement to consider how it can improve the economic, social or environmental wellbeing of the authority’s area, facilitate involvement of small and medium enterprises, third sector bodies and supported businesses and promote innovation. If any improvements are identified, the authority must act with a view to securing them.

“Sponsor” or “Sponsoring Director” means the owner of and budget holder for the requirement as distinct from the Procurement Lead Officer carrying out commercial action on their behalf. The Sponsor/Sponsoring Director is the client side representative who acts as a single focal point of contact with the Project Manager for the day-to-day management of the interests of the client organisation. Where a commodity is being progressed by Corporate Services on behalf of the Council as a whole, the Sponsor will be the Chief Executive.

“Tender” means a formal offer to supply goods, works or services. This will normally follow from an invitation to tender that includes a specification of requirements with appropriate terms and conditions.

“Works” means the outcome of building or civil engineering works taken as a whole, which is sufficient of itself to fulfil an economic or technical function. A list of these is set out in Schedule 2 of the Public Contracts (Scotland) Regulations 2015 http://www.legislation.gov.uk/ssi/2015/446/pdfs/ssi_20150446_en.pdf and in Schedule 1 of the Utilities Contracts (Scotland) Regulations 2016. http://www.legislation.gov.uk/ssi/2016/49/pdfs/ssi_20160049_en.pdf

3.0 Extent and Introduction

These Contract Standing Orders are made under section 81 of the Local Government (Scotland) Act 1973. They shall apply to the entering into by the Council, or on its behalf, of contracts for Supplies, Services, or Works unless classified as being exemptions or exceptions from these Contract Standing Orders. For the avoidance of doubt, these Contract Standing Orders apply to partnerships, joint venture and similar contracts.

They are written in accordance with the Scottish Government’s Procurement and Commercial Directorate, including Scottish Procurement Policy Notes and the Council’s Procurement Strategy as published at the time of the requirement arising.

Subject to the requirements of Shetland Islands Council’s Scheme of Administration and Delegations, Contract Standing Orders, European Community law and legislation, the under-noted powers to enter into commercial arrangements on behalf of the Council shall be held by the Executive Manager – Governance and Law who shall be the Proper Officer for the purpose of awarding and signing procurement contracts, variations, extensions, novation orders and terminations on behalf of the Council.

4.0 EU, UK and Scottish Legislation

These Contract Standing Orders will be operated in such manner as will comply in all respects with the requirements of European Community Law, United Kingdom and Scottish legislation. There should be no conflict between these Contract Standing Orders and the legislation, but for the avoidance of doubt, in all cases EU law takes precedence, followed by UK and Scots law. For the avoidance of doubt, this shall include but not be limited to The Procurement Scotland Act 2014, The Procurement (Scotland) Regulations 2016 The Public Contracts (Scotland) Regulations 2015, the Utilities Contracts (Scotland) Regulations 2016, the Climate Change (Scotland) Act 2009, the Equality Act 2010, the Freedom of Information (Scotland) Act 2002, the Environmental Information (Scotland) Regulations 2014, the Data Protection Act 1998, and the Bribery Act 2010.

5.0 Breach of Contract Standing Orders

Officers who encounter difficulties with procurement or have any queries should contact the Executive Manager – Capital Programme in the first instance. Monitoring against any breach or non-compliance with these Contract Standing Orders is the responsibility of the relevant service Executive Manager. The Executive Manager – Internal Audit will undertake any necessary investigation and report the findings to the relevant Service Director and Chief Executive, as appropriate. Disciplinary proceedings may result from such reports. Where there is evidence of illegality the Council's Chief Legal Officer, as Monitoring Officer, may be required to prepare a report to Council.

6.0 Reporting to Committees

In circumstances where reports have to be provided to a Committee this should be to the relevant Service Committee as specified. This will only be required where an exception to these Contract Standing Orders is required.

7.0 Conflicts of Interest

Staff involved in procurement activities are responsible for making themselves aware of the Council's Code of Conduct for Staff:

<http://intranet2.shetland.gov.uk/Policy/Shared%20Documents/Code%20of%20Conduct.pdf>

For the avoidance of doubt however, no member of Council staff with a social or family connection with any member of the staff of any organisation expressing an interest in bidding for a particular requirement, where there is a likelihood that said member of the potential bidders staff is likely to have access to the development of a bid may be involved in any way in the procurement exercise related thereto. Similarly, no member of Council staff with a pecuniary interest in any organisation expressing an interest in bidding for a particular requirement may be involved in any way in the procurement exercise related thereto.

CONTRACT STANDING ORDERS

PART 1 - APPLICABLE STANDARDS

1 EXEMPTIONS FROM CONTRACT STANDING ORDERS

There will be exempted from the provisions of these Contract Standing Orders:

- (i) All contracts with a total estimated cost not exceeding £10,000;
- (ii) Any contract of employment;
- (iii) Any contract excluded under the terms of the Procurement (Scotland) Regulations 2016, Public Contract (Scotland) Regulations 2015, the Utilities Contracts (Scotland) Regulations 2016 or The Concession Contracts (Scotland) Regulations 2016;
- (iv) Any contract relating to the disposal or lease of land or other capital asset;
or
- (v) Any arrangement in which the Council shall fund an external operator to provide services on a non-contractual basis (for example grant funded activities). In such circumstances the principles of the Following the Public Pound Code shall apply.

2 BUDGETARY PROVISION AND PRECAUTIONARY TENDERING

- (i) The Council's Financial Regulations make reference to the requirement to control capital and revenue expenditure. The Council's Financial Regulations must be applied to these Contract Standing Orders.
- (ii) The Sponsor of any procurement project must certify that sufficient funds exist prior to the commencement of any contracting action. If the estimated cost of the requirement is not known when it arises, similar requirements elsewhere may be used as a baseline. Informal consultation with potential providers, without making any commitment, may also be used.
- (iii) Prior to the commencement of any commercial action, the Sponsor must advise the Procuring Officer conducting the competitive exercise of the associated budget.
- (iv) Precautionary formal tendering aimed solely at establishing costs must not take place. The only allowable exception to this is when external funding is anticipated which must be used within the current financial year. In those circumstances tendering in advance of final agreement is acceptable, but the situation must be made clear to all potential bidders.

3 BUSINESS CASES

- (i) Before committing Capital funds to or commencing a tendering process for any commercial arrangement the Sponsor must ensure that the appropriate business case has been approved through the Council's Gateway Process for the Management of Capital Projects. This must sufficiently research and

identify the requirement and examine all possibilities for meeting it, including any existing contract.

4 DISPENSING WITH COMPETITION AND AGGREGATION

- (i) It is a fundamental principle of Public Sector procurement that purchases should be made as a result of competition.
- (ii) Dispensing with competition at any level of purchase, which may amount to unfair discrimination, is contrary to the provisions of the Treaties of the European Union. Decisions to proceed with a non-competitive purchase and the justifications for taking them must be recorded. Where the estimated value of the procurement exceeds £50,000 the pro-forma attached at Annex 7 must be completed. They must only be made within the Contract Standing Orders as detailed at Part 1, Section 18.
- (iii) Procurement *via* collaborative contracts such as those awarded by Scottish Procurement & Commercial Directorate, Scotland Excel or the Crown Commercial Service may be undertaken without further competition depending on the particular procedure and conditions applied by the organisation concerned. In all cases periodic 'value for money' checks involving other alternatives should be carried out, as such organisations may not necessarily offer the best terms. The Council is currently committed to membership of Scotland Excel and as such will undertake to participate in Scotland Excel contracts unless current arrangements, alignment with strategic or operational requirements, additional supply chain or sustainability costs, or the rules of Best Value require otherwise. In such cases the Executive Manager – Capital Programme shall provide justification for non-participation to the Director of Corporate Services.
- (iv) Breaking down or disaggregating requirements in order to avoid the necessity of exposing them to competition is contrary to Public Procurement Regulations and must not be entered into under any circumstances.
- (v) For the avoidance of doubt all separate elements or sub-projects within any specific programme relating to a linked set of outcomes or requirements shall be aggregated for the purposes of valuation and exposure to competition. Within such aggregated requirements the overall contract notice may invite bids by element, specialism, geographical area or any other logical and objectively justifiable lot which conforms to the Council's EU Treaty obligations. For EU procurements (other than Utilities) reasons must be stated where the requirement is not broken down into lots. In any case of doubt the matter will be referred to the Executive Manager – Capital Programme who will determine the correct application of the principle of aggregation to be applied to the requirements in question.

5 PERIODIC SUPPLIES AND FRAMEWORK AGREEMENTS

- (i) A framework agreement may be entered into with a single economic operator or with a number of economic operators. The period of such arrangements shall not exceed four years (eight years for a utility) without specific justification which must be published when the requirement is advertised. Call-off contracts under a framework agreement shall not

exceed the period specified in the framework agreement for such call-off contracts or, if not specified, the period of the framework agreement.

- (ii) Where a contract is for the supply of goods or materials or the provision of services or works by means of a call off contract under a framework agreement which allows for direct award of call-off contracts without further competition, only the establishment of the framework agreement shall require formal tendering. Mini-competitions between suppliers appointed to the framework agreement may be carried out where time permits and benefits may be accrued, subject always to the terms and conditions of the framework agreement.
- (ii) Where a framework agreement specifies the establishment of contracts via competition between operators in the framework agreement, this shall be carried out prior to the commencement of each individual call-off.

6 AGGREGATION OF DEMAND, PARTNERSHIP WORKING AND SHARED SERVICE CONTRACTS

- (i) Where similar requirements arise in more than one establishment, unit, Service, or other part of the Council, or where requirements are shared between such parts of the Council, then those requirements shall be aggregated for the purposes of procurement unless such establishments, units, Services or other parts of the Council are separate operating units and the separate requirements of those units are not conducive to an aggregated procurement.
- (ii) Once a contract or set of contracts or framework agreements for any category of supply or services, or works has been let corporately on behalf of the Council, it shall be a requirement for all Services to use the contract or set of contracts or framework agreements for the provision of the supplies, services, or works concerned where such requirements arise in those Services. Where a procurement is not carried out under an existing corporate arrangement, the procuring officer must record the decision together with his or her reasons for that decision.
- (iii) Partnership arrangements may offer a valid means of achieving best value through procurement. However, the establishment of any such partnership arrangements must protect the interests of the Council by the use of formally agreed and written terms and conditions clearly setting out, amongst other things, the roles and responsibilities of the partners to the arrangement, budgetary provision and delegated authority.
- (iv) Consideration should be given to the possibility of collaborating with other public organisations to procure similar requirements where research undertaken prior to commencement as to the suitability of this approach indicates this is the best value option.
- (v) The award of a contract by one contracting authority to another for the provision of services from one to another in return for payments is subject to the same requirements for competition as any contract award procedure resulting in a contract award to a private sector organisation.

7 FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION

- (i) The Council shall treat its commercial and contractual relationships as confidential to the extent allowed by the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004.

8 SPECIFICATIONS

- (i) Formal Specifications or statements of requirement shall be developed either by the Project Sponsor or by the Project Sponsor in conjunction with the Executive Manager – Capital Programme as appropriate for all tendered or quoted requirements for supplies, services (including each and every consultancy requiring competitive action), or works, which will fully define what the Contractor, Supplier, or Service Provider is to provide.
- (ii) The specifications or statements of requirement must include conditions in procurements subject to the Public Procurement Regulations that are reasonably necessary to ensure that economic operators comply with environmental, social and employment law. It is a requirement that such conditions are linked to the subject matter of the contract or framework agreement and is in either the call for competition or the Procurement Documents.

9 SUSTAINABILITY AND EQUAL OPPORTUNITIES

- (i) To the full extent permitted under legislation at the time of undertaking the Contract, and where the statutory duty of Best Value is not compromised by doing so, the Council shall take full account of the issues of socio-economic and environmental sustainability wherever they are material to the purposes of the Contract in accordance with the Council's duties under Regulations and the Climate Change Act 2008.
- (ii) The Council shall comply in its contracting activities with the requirements of the Equality Act 2010.

The general duty of compliance applies to public functions which are carried out through procurement as well as those carried out directly by a public authority.

10 COMMUNITY BENEFITS

- (i) Community Benefits must always be considered and applied where appropriate or required. For procurements estimated at or above £4million there is a "Community Benefits Requirement": see 2.1, definitions.

They are a range of social and environmental considerations which can be included in public contracts and frameworks in accordance with the Procurement Regulations. Further guidance can be found at: <http://www.gov.scot/Resource/0049/00496919.pdf> (Chapter 4)

11 PROCUREMENT, PROJECT, CONTRACT RISK AND PROJECT MANAGEMENT

These Contract Standing Orders are written in order to ensure that officers operate in a way that conforms to the requirements of relevant legislation and to ensure Best Value is obtained in procurement. In this way, the Council and employees can be protected from legal and other risks as far as can be reasonably foreseen.

As such, procurements may only be initiated by authorised officers who have the appropriate qualification, skills, experience and training. In addition, it must be ensured that procurements have relevant professional procurement, technical, financial, and legal input/ advice. Officers responsible for procurement at any level in the Council must ensure that relevant professional advice is sought timeously.

In each formal procurement exercise, the Sponsor will assess the level of risk they wish to undertake and that which they wish to transfer to a Contractor, all in keeping with the Council's risk policy. When setting the appropriate detail of the specification, the particular terms and conditions which will form the basis of the Contract, levels of insurance, and forms of security must be considered.

The following risk management procedures shall apply:

- (i) Insurance.
 - (a) Employers' Compulsory Liability Insurance (ECLI). The Contractor shall hold employer's liability insurance in respect of staff in accordance with any legal requirement for the time being in force
 - (b) Public Liability and All Risks/Professional Indemnity. The levels of insurance cover required in respect of each project should be set by the Council in the context of the contract and reflecting the level of risk involved to members of the public, the Council's staff, its operational effectiveness, and its financial liabilities. Public Liability insurance shall be not less than the Prescribed Sum
 - (c) Other forms of insurance. It is not possible in these Contract Standing Orders to determine exactly what levels of specialist insurance should be required for every area of specialist service provision, however where specialist services are being provided, the Insurance Officer must be consulted when establishing a list of required insurances.
 - (d) Evidence of applicable insurance is only required at the point where a contract is to be awarded.

Guidance relating to contracts and insurance can be found at the following intranet link:

<http://intranet2/Policy/Shared%20Documents/AGUIDETOINSURANCEREQUIREMENTS.pdf>

- (ii) Financial vetting and exclusion criteria. In respect of Contracts with an estimated value in excess of £50,000 or in respect of contracts which the Sponsor views as exposing the Council to excessive risk, a financial assessment of the potential tenderers' financial standing shall be undertaken

prior to short listing of tenderers or invitation to tender, depending upon the procedure to be used. In respect of procurement exercises with an estimated value in excess of the EU tendering threshold, checking of potential contractors' financial standing must be undertaken via Finance at ESPD stage and again, if necessary, prior to final commitment and award of Contract. Minimum standards must be defined by the Procurement Lead Officer with advice from Finance and Procurement Services and made known to all economic operators at commencement of the procurement procedure.

- (iii) Liquidated Damages. Dependent on the terms of the contract document, where a breach, default or negligent act on the part of the Contractor could result in direct losses to the Council, it will be the duty of the Sponsor to take appropriate action. This includes deducting pre-estimated liquidated damages, and subtracting any appropriate retentions.
- (iv) Conditions of Contract. These must ensure clear contract arrangements and should contain clauses that will protect the Council against a variety of risks, and the Sponsor must ensure that the conditions of contract are sufficient to deal with the risks involved in the project/contract.
- (v) Contingency Planning. Depending on the Sponsor's assessment of risk, a contingency plan may require to be produced that provides an outline of decisions and considers the programme's effects on public services and ensure that decisions are taken about those for which contingency arrangements will be needed. .
- (vi) Forms of Security. The Sponsor shall consider whether the nature of the project and the risks with the type of business concerned may require security for supplier/contractor performance. The Sponsor shall either confirm that no such security is necessary, in line with Council policy, or will decide what form of security may be appropriate.
- (vii) Staged Payments and Retentions. In accordance with Financial Regulations, no Supplies, Services or Works should be paid for until they have been formally agreed and any required testing carried out. In the event that stage payments are required for each phase of a project, formal agreement and any required testing of that phase must be complete prior to payment being made.
- (viii) The procurement process involves handling sensitive, commercial information and it is essential that no information is disclosed either to unauthorised officers of the Council or to any other person. Failure to keep information guarded could lead to compromise of the tendering procedure, court action, financial damages, delay and disruption to Council services and reputational damage.

Further advice on risk issues can be obtained from Governance and Law and Audit, Risk and Improvement.

12 REPORTING OF CONTRACTS AND CONTRACT EXPENDITURE

- (i) Prior to the commencement of any procurement exercise, the Sponsor must establish a budget forecast for the requirement and shall be able to demonstrate that a sufficient approved budget exists to cover this in accordance with section 2(ii) of Part 1 of these Contract Standing Orders. Sponsors must seek advice from the Executive Manager Capital Programme or the Executive Manager Finance to resolve any queries as to the adequacy or availability of approved funds.
- (ii) Where tenders are received that exceed the approved budget, the Sponsor must produce a plan for either managing the cost down to the level of budgetary provision or for making additional funds available. A summary of this plan must be reported to the Council's Corporate Management Team (CMT). CMT may approve such plans or require the Sponsor to seek approval from the relevant Committee/Council. Where the Sponsor proposes to manage the cost down, care must be taken to ensure that the proposals do not materially change the scope or requirement such as to require a new formal tendering exercise.

13 PROCUREMENT STRATEGY AND ANNUAL REPORTING

- (i) The Council has a duty to prepare a procurement strategy that sets out how it intends to ensure that its procurement activity delivers value for money and contributes to the Council's broader aims and objectives. The Council also has a duty to prepare and publish an annual procurement report.
- (ii) The Procurement Lead Officer of each Regulated Procurement is responsible for submitting details of the procurement to the Capital Programme Service as soon as practically possible after completion of the Regulated Procurement.
- (iii) The procurement report must also contain a summary of the regulated procurements the Council expects to carry out in the following two financial years. It is the responsibility of each Executive Manager to ensure that the required information is submitted to the Capital Programme Service timeously upon request.

14 CONSTRUCTION (DESIGN AND MANAGEMENT) REGULATIONS 2015

- (i) Duties under the Construction (Design and Management) Regulations 2015 require clients to provide pre-construction information to designers and contractors in any project involving works as defined in the CDM Regulations.
- (ii) Officers responsible for procurements affected by these CDM Regulations should seek relevant professional advice timeously. Further guidance is available from Health and Safety Section or Capital Programme Service. <http://www.hse.gov.uk/pubns/books/l153.htm>

15 TRANSFER OF UNDERTAKING (PROTECTION OF EMPLOYMENT) REGULATIONS

- (i) The regime under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”) is designed to protect employees whose contracts of employment are in effect transferred to a new employer who takes over all or part of the business of the old employer. The essence of the system is to preserve certain rights of the employee, and duties of the employer, as they were under the contract with the original employer.
- (ii) The Regulations apply to a relevant transfer. Regulation 3(1) of TUPE provides that there are two types of TUPE transfer –
 - a (“standard”) transfer of an undertaking, business or part of an undertaking or business situated immediately before the transfer in the United Kingdom where there is a transfer of an economic entity which retains its identity; or
 - a service provision change.

TUPE guidance must be sought from Human Resources, Procurement, Payroll/Pensions, and Governance and Law and appropriate time must be built into the project plan for all necessary staff and Union consultations.

16 CONTRACTS REGISTER AND TRANSPARENCY

- (i) The Council is required to maintain a contracts register. All Sponsors must ensure that all required information relating to contracts with an estimated value equal to or greater than £10,000 is notified to Capital Programme Service for inclusion on the register.

Information relating to Regulated Procurements will be published. An outline of the minimum requirements can be found in regulation 35 of the Procurement Reform (Scotland Act 2014: <http://www.legislation.gov.uk/asp/2014/12/section/35>)

17 EXCEPTIONS FROM CONTRACT STANDING ORDERS

Nothing in these Part 1 - Applicable Standards 2 to 18 and Part 2 - Operational Procedures 1 to 10 shall apply:

- (i) Where the Sponsor has satisfied the relevant Director:
 - (a) that the requirement is not readily obtainable from more than one supplier, service provider, or contractor, and it can be demonstrated that no equivalent is available or otherwise for technical reasons or due to time restraints; or that
 - (b) The prices of the goods, materials or specialist services are wholly controlled by trade organisations or government order and it can be demonstrated that no equivalent is available or otherwise for technical reasons or due to time restraints; or that
 - (c) The requirements are subject to intellectual property rights and it can be shown that either no suitable alternative is available, or that exposure to competition of an item covered by copyright, patent, or trademark would breach such rights.

- (ii) Where there is an existing contract for the supply of any class of goods, works or services. Such contracts may only be extended without fresh competition within reason, and in accordance with any limitations set out either in the Contract itself or the Contract Notice. At least one of the following shall apply:
- the extension is justified on the basis of best value and/or operational necessity in which case it may not exceed the allowance for extension as set out within the terms and conditions of the contract or by more than 50% over the original scope or value of the contract, whichever is the lesser;
 - the extension may be necessary in order to allow for the proper conduct of a competitive process,
 - the requirement for extension has been brought about by an unforeseeable circumstance not within the control of the Council.

In all cases the original contract must have been won via a competitive process and must be reasonable in all the circumstances.

Any extension which constitutes a deliberate material variation of the original contract by nature or extent must be the subject of fresh competition.

- (iii) Where the demand is for the execution of work or the supply of goods, materials or services, certified by the relevant Director as being required as an emergency measure so as not to permit the invitation of tenders. "Emergency" means only an event which could not reasonably have been foreseen.
- (iv) Where the work to be executed or the goods, supplies or services to be provided consist of repairs to or the supply of parts for existing proprietary machinery or plant and/ or the Council is bound by the terms of an agreement, by insurance requirements or by the terms of a warranty to use a specified contractor, supplier or provider.
- (v) Where the contract is for the supply of goods acquired on the Commodities Market.
- (vi) If the contract is for the supply of used or second hand goods or materials, and the relevant Director, where he or she is satisfied that it is in the interests of the Council to purchase such goods or materials and that they are fit for the purpose for which they are being purchased, may submit or accept an offer for the purchase of such goods or materials, provided that all contracts for the supply of such goods or materials shall be in writing and subject to the Law of Scotland.
- (vii) Where a compliant tendering exercise has been completed but where no Tenders have been received that can be accepted, either on technical grounds, in terms of value for money or any other competent reason.

All exceptions from Contract Standing Orders must be recorded. See Annex 7

Reporting Requirements for all Exceptions: Each exception from Contract Standing Orders must be reported as soon as possible, but no later than fourteen days from the decision to apply the exception, to the Director of Corporate Services. In addition, where the outturn cost exceeds £50,000 the exception shall be reported to the relevant Service Committee no later than six months from the date of the decision.

18 QUOTATIONS

Contracts under £50,000 require quotations or competitive tenders to be obtained.

- (i) It is recognised that quotation level requirements may carry less risk than those requiring formal tender.
- (ii) On that basis, quotations are dealt with entirely within sponsoring Services and will not normally involve the Council's Procurement Section.
- (i) For the avoidance of doubt, however, the provisions of these Contract Standing Orders will apply except that:
 - a) Quotations shall be managed entirely within Services.
 - b) Quotations may be sought via "Quick Quote" on the www.publiccontractsscotland.gov.uk (PCS) portal or from other sources should suitable contractors not be available through that service.
 - c) Supplier selection by means of Pre-Qualification or Supplier Appraisal Questionnaires shall not be necessary as the Sponsor or Procurement Lead Officer is deemed to have selected persons to provide quotations who he or she considers in his or her professional opinion as providing suitable competence and professional/financial standing.
 - d) Quotations may be returned via the PCS "Quick Quote" system or in paper copy in envelopes which will remain unopened until expiry of the deadline for submission. Quotations submitted only via PCS "Quick Quote" may be opened by one person. Those involving submission of one or more bids via paper copy however must be opened by two persons.
 - e) Evaluation of quotations will also take place entirely within Services, however technical and financial aspects should be evaluated separately by different staff.
 - f) A full and proper record of the process and the decision made must be maintained, for the purposes of transparency, best practice, value for money and audit purposes, by the Sponsor or Procurement Lead Officer.
 - g) Evidence of all relevant insurances required must be sought in all cases.

PART 2 - OPERATIONAL PROCEDURES FOR CONTRACTS OVER £50,000

1 AUTHORITY TO INVITE TENDERS AND PARTICIPATE IN PROCUREMENT WORK

- (i) Formal tendering exercises shall be managed by the Executive Manager – Capital Programme, subject to adequate approved budget being in place, unless authority to do so is delegated to other officers, either in the scheme of delegation, or as specifically approved by Committee. Tenders in respect of goods or equipment to be supplied by way of a lease arrangement may only be invited following approval from the Director of Corporate Services. A Contract Request Form must be completed and submitted to the Procurement Service prior to the commencement of any procurement exercise (See Annex 5).
- (ii) Tenders must be dealt with in accordance with these Part 2 – Operational Procedures. Further guidance on these can also be found at the Scottish Government’s Procurement & Commercial Directorate: <http://www.gov.scot/Resource/0049/00496919.pdf>
- (iii) For the avoidance of doubt no officer may undertake any of the work covered by these Contract Standing Orders, including but not being limited to the award of contract, at any value unless formally authorised to do so by the Director of Corporate Services or under such other specific delegation as set out in paragraph (i) above.
- (iv) Each procurement exercise shall have a Procurement Lead Officer who shall be responsible for the management and integrity of the procurement. No action may be taken in respect of any project and no external communication may be issued except with the express authority of the Procurement Lead Officer.
- (v) No officer who has direct or indirect personal pecuniary interest may participate in any tendering procedure, and all such interests must be declared prior to commencement of the tender exercise.
- (vi) The Procurement Lead Officer must ensure that sufficient lead time is built into the overall procurement timetable, bearing in mind the date the goods, services or works are required or the contract / framework agreement is due to commence.

2 CHOICE OF PROCEDURE

The Sponsor must choose the most appropriate procedure to be followed having considered amongst other things such issues as value of the procurement, its complexity and the risks associated with the supplies, works or services concerned. There are several procedures open for consideration. Generally, the main procedures that the Council follows are restricted (two stage) or open (single stage) procedures. Advice should be obtained from Procurement and Legal Services particularly if other procedures, such as competitive procedure with negotiation, are to be considered.

- (i) Restricted Procedure. This is a two stage process. Should the Sponsor choose to use select list or restricted procedure tendering, then the requirement shall be advertised in accordance with Section 6 of Part 2 of these Contract Standing Orders and expressions of interest invited. After the expiry of the period specified in the public notice, a select list of tenderers will be drawn up from the list of applicants returning required pre-selection information as set out in the Contract Notice and, where applicable, the European Single Procurement Document (ESPD). Invitations to tender may then be progressed by the Procurement Lead Officer subject to satisfactory evaluation of financial, technical and exclusion criteria of those economic operators who applied to be selected.
- (ii) Open Procedure. This is a single stage procedure. Should the Sponsor choose to use open procedure tendering, then the requirement shall be advertised in accordance with Section 6 of Part 2 of these Contract Standing Orders. Economic operators may submit tenders in response to the advertisement. Tenders must be accompanied by the required financial, technical and business information, including an ESPD where applicable.

NOTE: Where contracts are required to be advertised in the Official Journal of the European Union (OJEU), all Procurement Documents, including the invitation to tender document and the selection criteria, must be complete prior to publishing any Contract Notice.

3 FRAMEWORK AGREEMENTS

- (i) The Sponsor may decide to set up a framework agreement: see Section 5 of Part 1 of these Contract Standing Orders.
- (ii) The establishment of framework agreements is subject to the same requirements for advertising and evaluation as other contracts.
- (iii) The means by which individual contracts under a framework agreement are to be awarded must be set out within the terms of the framework agreement.

4 SUPPLIER SELECTION, EXCLUSION AND CONTRACT AWARD CRITERIA

- (i) The Procurement Lead Officer must set out the specific requirements, relevant exclusion grounds and the minimum standards that are relevant for the procurement exercise in the Contract Notice and/or the Procurement Documents.

The distinction between selection and award criteria is crucially important. Selection criteria (e.g. technical, professional, economic, financial, previous experience) are focussed on “the bidder” and award criteria (eg. quality, price) are focussed on “the bid”. This means selection criteria must be used at selection stage and cannot form part of the award stage.

There are clear stages in the process: exclusion grounds, selection criteria and award criteria.

Prior to the publication of any notice or invitation to tender, the Sponsor must decide on the objective evaluation criteria to be used in assessing:

- ESPD's, where used, (exclusion grounds)
- Pre-Qualification information (selection criteria)
- Tender submissions (award criteria)

The Council must have regard to the Scottish Government's Statutory Guidance on the Selection of Tenderers and Award of Contracts – Addressing Fair Work Practices, including the Living Wage, in Procurement, published October 2015. Procurement Lead Officers should consider this guidance. <http://www.gov.scot/Resource/0048/00486741.pdf>

(ii) **EXCLUSION:**

Exclusion grounds can be both mandatory and discretionary. Care must be taken to ensure that economic operators are not excluded where passage of time or evidence of subsequence compliance (“self-cleansing”) is provided.

Some examples of mandatory exclusion criteria are:

- Criminal convictions such as bribery or corruption or money laundering
- Blacklisting
- Breach of tax and social security obligations

Some examples of discretionary exclusion criteria are:

- Bankruptcy or insolvency
- The economic operator has shown significant and persistent deficiencies in the performance of a substantive requirement under a prior public contract
- The economic operator has withheld or seriously misrepresented information or is not able to provide information required for verification of the absence of grounds for exclusion or the fulfilment of selection criteria

(iii) **SELECTION:**

Selection criteria must not be confused with the award criteria. They are concerned with the capability and capacity of an economic operator to deliver the contract or framework agreement. They do not focus on how an economic operator proposes to perform the contract or framework agreement. In all cases criteria must be proportionate to the contract or framework agreement in question, taking into consideration the nature, scope, size and scale of the procurement concerned.

Selection criteria must always be designed to select the most suitable economic operators on their merits and should not be designed with the intent solely of reducing the number of economic operators that are qualified to participate.

Some examples of selection criteria are:

- Economic and financial standing (including annual accounts and bank reference)

- Technical and professional ability
- Environmental management policy
- Insurance requirements
- Health and safety
- Quality management
- References and previous experience (previous three years for goods and services and five years for works)

(iv) **AWARD:**

The award stage involves examination of the merits of the bids. This will identify which of the eligible tenderers will deliver best value for money for the Council based on the Most Economically Advantageous Tender (MEAT). Lowest price is not an option for above EU threshold contracts. The criteria must relate directly to the goods or services to be provided and not focus on the characteristics of the individual suppliers. Good criteria will ensure that responses from suppliers clearly address the most critical aspects of the specification and allow the evaluation panel to make a fair and equal comparison of the bids received.

Some examples of award criteria are:

- Quality/technical merit. Is the product or service proposed fit for purpose? How well does it perform?
- Design, functional characteristics and aesthetics. How should the product look and feel? How easy is it to use?
- Maintenance, ongoing technical support or after sales service. What support is required and available?
- Delivery or period of completion. Is a guaranteed turnaround time required?
- Price or cost. The whole life cost including the initial purchase price, operating costs etc. Life cycle costing may be considered where additional environmental costs can be attributed to the products or services being purchased.

The contract award criteria must be specified in the Contract Notice and the Procurement Documents and specify the relative weighting which it gives to each of those criteria to determine the MEAT. Where weighting is not possible for objective reasons, which reasons should be recorded, the Council must indicate the criteria in decreasing order of importance.

The scoring to be applied in the assessment of tenders (weighted or otherwise) must be established by the Procurement Lead Officer prior to publication of the Contract Notice. The Procurement Lead Officer should carefully consider the appropriate quality/price ratio to be applied.

Procurement Lead Officers should refer to both the Scottish Government Procurement Journey Guidance and Guidance under the Procurement Reform (Scotland) Act 2014, links to both of which are as follows:

<https://www.procurementjourney.scot/procurement-journey>

<http://www.gov.scot/Resource/0049/00496919.pdf>

5 CONTENT OF PROCUREMENT DOCUMENTS INCLUDING INVITATIONS TO TENDER

- (i) Invitations to tender must contain at least the following:
- the nature and purpose of the contract and detailed requirement specification
 - the last date and time when tenders will be received and a statement that late tenders shall not be considered further
 - tender return envelope enclosed, where applicable
 - the return address including, where applicable, the electronic address
 - the Procurement Documents including Contract documents noted below
 - that tender responses must be submitted in English
 - references to the documents required to support financial, technical, business and exclusion criteria
 - that the Council is not bound to accept the lowest or MEAT or any tender
 - whether or not variant bids will be allowed (must be specified in the contract notice)
 - the relative weighting of criteria for the award of the contract or, where appropriate, the descending order of importance of such criteria
 - the form of tender
 - the non-collusion certificate or certificate of bona fide tendering
 - that the Council is subject to the requirements of the Freedom of Information (Scotland) Act 2002 and Environmental Information (Scotland) Regulations 2004
 - the proposed amendments to contract form, if any
 - that the Council will not accept liability for tender costs
 - that lots may be tendered for separately or alternatively, reasons why lots or not available
 - that the contract, if awarded, shall be subject to the laws of Scotland and to the jurisdiction of the Scottish courts
- (ii) Tenders/ quotations shall be sought and obtained in writing and submitted in a sealed envelope bearing the words "Tender for....." followed by the name of the contract to which it relates by a time and date to be notified to all persons invited to tender or quote. If the Director of Corporate Services considers that it would be appropriate to obtain tenders/ quotations by electronic means, this shall only be done where the means proposed are sufficient to ensure appropriate procedural safeguards are in place and any such proposal has been approved/checked by Finance, Capital Programme and Governance and Law.
- (iii) Where tenders may be submitted electronically the procedure for doing so must be clearly set out in the invitation to tender, together with the electronic address.
- (iv) Contract Documents. Every contract subject to these Contract Standing Orders shall be in writing in an appropriate form, and shall specify all the applicable terms and conditions as appropriate, including a statement to the effect that:

- (a) Those terms and conditions shall apply, and that no others shall apply unless issued or accepted as a formal variation by the Council; and
- (b) that the Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract and supersedes all prior negotiations, representations and undertakings, whether written or oral, except that such Condition shall not exclude liability in respect of any fraudulent misrepresentation.
- (c) Where standard forms of Contract are used as a basis (e.g. Joint Construction Tribunal (JCT), Association of Consulting Engineers (ACE), New Engineering Contract (NEC) etc.) the Sponsor must demonstrate that sufficient supplementary terms and conditions are introduced so as to describe clearly the entire relationship between the Parties and to eliminate doubt.

6 ADVERTISING OF TENDERS

- (i) Where the estimated value of the requirement is less than £50,000 advertising is not mandatory but is recommended where greater competition is likely to result.
- (ii) Where the Procurement (Scotland) Regulations 2016 (the “slice” regulations) apply:
 - Requirements (other than for Health or Social Care Services - see Part 3) with an estimated value in excess of £50,000 but less than £164,176 (Supplies and Services) or excess of £2,000,000 (Works) shall be subject to competitive tendering and advertised via the Public Contracts Scotland web portal: www.publiccontractsscotland.gov.uk and in the media together with Council’s website as appropriate.
 - Requirements for Health or Social Care Services (See Part 3) with an estimated value in excess of £50,000 but less than £589,148 need not necessarily be subject to competitive tendering. This must be assessed on a contract by contract basis and consideration must be given to the nature and complexity of the requirement. A Contract Award Notice is required.
- (iii) Where the Public Contracts (Scotland) Regulations 2015 (EU Regulations) apply:
 - Requirements (other than for Social and Other Specific Services) with an estimated value in excess of £164,176 (Supplies and Services) or £4,104,394 (Works) shall be advertised in the Official Journal of the European Union (first), together with an appropriate level of advertising in the media and on the Council’s website and/or via the Public Procurement Portal: www.publiccontractsscotland.gov.uk as appropriate.

- Requirements for Social and Other Specific Services (See Part 3) with an estimated value in excess of £589,148 shall be notified/advertised in the Official Journal of the European Union (first), together with an appropriate level of advertising in the media and on the Council's website and/or via the Public Procurement Portal: www.publiccontractsscotland.gov.uk as appropriate.

(iv) Where the Utilities Contracts (Scotland) Regulations 2016 apply:

- Requirements with an estimated value in excess of £328,352 (Supplies and Services) or £4,104,394 (Works) shall be advertised in the Official Journal of the European Union (first), together with an appropriate level of advertising in the media and on the Council's website and/ or via the Public Procurement Portal: www.publiccontractsscotland.gov.uk as appropriate.

NOTE: In accordance with these Contract Standing Orders, where the Council is procuring as a utility, requirements with an estimated value in excess of £50,000 but less than £328,352 (Supplies and Services) or £4,104,394 (Works) shall be subject to competitive tendering and advertised in the media together with Council's website and/or via the Public Procurement Portal: www.publiccontractsscotland.gov.uk as appropriate

The single point of publication for all formal notices referred to above is the Executive Manager – Capital Programme. This means that all contracts subject to formal tendering procedures must be advertised via the Executive Manager – Capital Programme. Where advertising is not demanded by these Contract Standing Orders but is considered beneficial, the same requirement to advertise via the Executive Manager – Capital Programme applies.

7 HANDLING OF TENDERS AND PROCUREMENT DOCUMENTS

- (i) Any tender or quotation which is received after the time and date notified shall not be considered for acceptance and will be returned to the sender. A complete record shall be kept of the time and date of receipt of all tenders/quotations received and a separate record kept of all pre-tender discussions, queries and clarifications with suppliers, service providers and contractors, whether written or oral.

A record of all tenders received shall be kept by or on behalf of the Director of Corporate Services, including details of the names and addresses of tenderers. A record of confirmation from Finance Service of their financial status shall also be retained.

- (ii) Upon receipt, all tenders must be receipted and logged, and retained unopened and secure until the appointed time of opening. Electronic tender submissions are automatically recorded. Late attempts at submission are not allowed by the system. A record of each tender received, showing the name of the tenderer, date received, date of tender and Procurement Documents (where applicable) must be retained on file within the Procurement Service. Where prices are submitted as a schedule, the pricing field on the tender

recording form may be endorsed “see attached schedule”. This may be retained electronically.

Where tenders are submitted on a quality/price basis, the quality element will be opened and recorded as detailed above and passed to the evaluation team for assessment. The price element will be opened and recorded separately and sent by Procurement Service to the Procurement Lead Officer only after the quality element has been evaluated and recorded.

- (iii) Tenders must be opened at the appointed time of opening or as soon as possible thereafter, by at least three persons, one of whom must be an elected Member. Members of the opening team must not disclose any information to any unauthorised person whomsoever either within or outwith the Council.

KEY POINT: Price must not be disclosed or evaluated prior to the quality evaluation being completed and recorded.

- (iv) Tenders which include Bills of Quantities or some other price breakdown must be checked for arithmetical accuracy and where inaccuracies are found the tenderer must be given the opportunity to correct them in accordance to any relevant Code of Practice (e.g. ACE, NEC, ICE or JCT) applicable to the contract. If no particular code applies, the Procurement Documents must set out the mechanism for dealing with such errors.
- (v) The confidentiality of tenders must be respected, and no details may be disclosed to any tenderer or other unauthorised person regarding any tender other than their own during the conduct of a tendering exercise. Communications with bidders must be through Capital Programme Service unless specifically authorised by the Sponsor after having taken advice from the Capital Programme Service.

8 EVALUATION PROCEDURES AND AWARD OF CONTRACT

- (i) Contracts must be awarded in accordance with the contract award criteria specified in the Procurement Documents and/or Contract Notice and no others. Lowest price tenders are no longer permissible in EU procurements.
- (ii) The Procurement Lead Officer will ensure fair, equal, and transparent application of the contract award criteria.

Individual evaluators must provide written justification for each of their scores which will be retained on file and which may be produced in evidence should a challenge arise.

- (iii) Clarification questions and responses will be dealt with by the Procurement Section who shall liaise with the Procurement Lead Officer or such other officers as appropriate.
- (iv) Tenders may be rejected immediately where they fail to meet the published criteria, where they are qualified by alternative terms and conditions that

are unacceptable to the Council or where they cannot be considered to be capable of acceptance under Scots law.

- (iv) Following evaluation, notification of intention to award a contract on the basis of the contract award criteria must be issued simultaneously to all tenderers and candidates concerned, in respect of contracts tendered via OJEU, and a mandatory standstill period of at least ten days must elapse between this date and contract award in order to allow for the opportunity to seek further information and/or appeal. This must be explained to the successful tenderer in the notification letter.
- (v) A tender report shall be prepared by the Procurement Lead Officer immediately after evaluation of tenders and must, as a minimum, include the following:
 - Procedure followed, including relevant dates
 - Expressions of interest
 - Tenders invited
 - Tenders received
 - Prices submitted
 - Clarification sought (if any)
 - Contract award criteria applied
 - Evaluation outcome including scores
 - Recommendation to Sponsor together with reasons
 - The decision made and the Officer making it
 - Instruction to Procurement Service to issue award and other letters
- (vi) Letters of award will be issued by the Executive Manager - Governance and Law or his or her nominee.

9 TERMINATION AND VARIATION OF CONTRACTS

- (i) No contract may be terminated, or materially varied, on behalf of the Council without the prior approval of the Sponsor.
- (ii) Termination or variation shall be carried out strictly in accordance with the conditions of contract. Care must be taken to ensure compliance with any notifications and timescales for actions or responses. Early liaison with Capital Programme and Governance and Law is advised.

10 ENGAGEMENT OF CONSULTANTS

- (i) Consultancy is subject to the Public Procurement Regulations. In all cases a formal Statement of Requirements and Terms of Engagement must be developed, and in all cases requiring the conduct of quotation or tender exercises, a formal Statement of Requirements and Terms of Engagement must be agreed by the relevant Director prior to the engagement of the Consultant. Where it is likely that a former employee of the Council may be interested in undertaking the work, then in addition to the safeguards outlined in these Contract Standing Orders, quotations or formal tenders shall be invited regardless of contract value. Where it is likely that a former employee of the Council may be interested in undertaking such work, then in addition to the safeguards outlined in these Contract Standing Orders, quotations or

formal tenders must be invited regardless of contract value. No contract shall be awarded to a former employee who receives a pension under the Local Government Pension Scheme or from the Scottish Public Pension Agency, or who has received a redundancy payment from the Council without the prior approval of the Chief Executive or his nominee.

- (ii) It will be a condition of the engagement of the service of any architect, engineer, surveyor or other consultant who is to be responsible to the Council for the supervision of a contract on its behalf, that in relation to that contract they will –
 - (a) Comply with these Contract Standing Orders as though they were an officer of the Council;
 - (b) at any time during the carrying out of that contract, produce to the Director of Corporate Services on request, all relevant records or copies maintained in relation to that contract; and
 - (c) on completion of that contract, transmit appropriate records or copies to the appropriate Director.

PART 3 – PROCEDURES FOR HEALTH OR SOCIAL CARE SERVICES & SOCIAL AND OTHER SPECIFIC SERVICES

1 BACKGROUND AND INTRODUCTION

- (i) Buying many health or social care services requires careful consideration by the Council. The quality and availability of these services can have a significant impact on the quality of life, wellbeing and health of the people accessing the services, and their carers.
- (ii) Consequently, the legislation applicable to the procurement of such services is not as demanding as for other services. Where the estimated value of the requirement brings it above the EU threshold a “light touch” regime applies.
- (iii) It is nonetheless a requirement that Procurement Lead Officers and Sponsors seek to achieve value for money.
- (iv) Procurement Lead Officers and Sponsors must seek advice from Capital Programme and Governance and Law services.

2 PROCEDURES

- (i) It is necessary to estimate the total value of the contract including any extensions or addition. The estimated value will determine which procedure to follow. In all cases over £50,000 Procurement Lead Officers must have regard to the relevant Statutory Guidance and the requirements of the Procurement Reform (Scotland) Act 2014. [INSERT LINK]
 - a) Under £50,000

These are to be carried out by Procurement Lead Officers or Sponsor with also reference to the Council’s Commissioning and Procurement Framework. <http://www.shetland.gov.uk/coins/submissiondocuments.asp?submissionid=19165>
 - b) Between £50,000 and £589,148. The “slice” regulations (Health or Social Care Services)

These must be carried out in accordance with the Procurement (Scotland) Regulations 2016 (the “slice” regulations). A contract may be awarded for a health or social care service, as detailed in the Schedule to those regulations, without seeking offers in relation to the proposed contract. Advice must be sought from Capital Programme and Governance and Law where this is to be considered.
 - c) Over £589,148. “Light Touch Regime” (Social and Other Specific Services)

Social and Other Specific Services, which includes Health or Social Care Services are to be carried out in accordance with the “light touch” regime of Regulations 5(1)(d), 74 to 76 and Schedule 3 of the Public Contracts (Scotland) Regulations 2015.

It requires publication of notices to be sent to the EU Publications Office.

3 IN ALL CASES:

(i) **Negotiated Contracts**

(a) Where negotiated contracts are implemented, they shall be continuously monitored by the Sponsor throughout the period of the contract to ensure value for money and that service needs are best met.

(b) No provider shall be contracted unless their:-

- (i) Technical ability is certified as satisfactory by the Sponsor;
- (ii) Financial, economic and business standing is satisfactory;
- (iii) Compliance with Health and Safety and other relevant legislation has been evidenced.

(ii) **Exemptions**

There will be no requirement to tender for care or housing support services or other forms of self-directed service where the service user has the freedom to determine the identity of the service provider.

(iii) **Requirements for Adequate Publicity**

Where advertising is required it must be sufficient and carried out in accordance with the regulations applying.

(iv) **Procurement of Health or Social Care/ Social & other Specific Services**

(a) These Contract Standing Orders have been designed to accord with Scottish Government Statutory Guidance on the procurement of these services, however detailed information can be found at <http://www.gov.scot/Topics/Government/Procurement/policy/SocialCareProcurement>

(b) It shall be a requirement that any contract award procedure relating to the procurement of care and/or support services complies in full with this guidance.

(c) Where the estimated or actual costs of these services with service providers exceeds £50,000, these must be reported annually by the Sponsor to the Capital Programme Service.

(v) In all cases the Procurement and Commissioning Framework must be considered and adhered to, together with these Contract Standing Orders and the applicable regulatory regime.

<http://www.shetland.gov.uk/coins/submissiondocuments.asp?submissionid=19165>

A "NON COMPETITIVE ACTION" FORM MUST BE COMPLETED WHERE A DIRECT AWARD IS MADE (See Annex 7)

Procurement Lead Officers are recommended to visit the Procurement Journey website: <https://www.procurementjourney.scot/procurement-journey>

**ANNEX 1
CONTRACT STANDING ORDERS**

| PRESCRIBED SUMS: | Estimated cost (£) |
|---|--------------------------------|
| Exemption limit for contracts without competitive tendering | (Below) 10,000 |
| Exemption limit for contract using formal tender documents | (Below) 50,000 |
| Exemption limit for financial vetting | (Below) 50,000 |
| Exemption limit for leases/ purchase/ sale of property and land only delegated to the Executive Manager – Capital Programme | (Below) 100,000 |
| Exemption for leases (cumulative value) in consultation with Executive Manager Finance | (Below) 100,000 |
| EU CONTRACTS | |
| EU threshold in respect of goods and services (The Public Contracts (Scotland) Regulations 2015) | 164,176 |
| EU threshold in respect of works | 4,104,394 |
| EU threshold in respect of goods and services (The Utilities Contracts (Scotland) Regulations 2016) | 328,352 |
| EU threshold in respect of works, Utilities | 4,104,394 |
| EU - Social and other specific services | 589,148 |
| REGULATED PROCUREMENT (“SLICE” CONTRACTS) | |
| Threshold in respect of supplies and services (The Public Contracts (Scotland) Regulations 2016) | 50,000 |
| Threshold in respect of works (The Public Contracts (Scotland) Regulations 2016) | 2,000,000 |
| Health or Social Care Services (The Public Contracts (Scotland) Regulations 2016) | 50,000 – 589,148 |
| INSURANCE | |
| Employers Liability insurance minimum indemnity limit (applies irrespective of contract estimate) | 10,000,000 |
| Public Liability insurance minimum indemnity limit (applies irrespective of contract estimate) | 5,000,000 |
| Professional Indemnity insurance (professional services & consultancy only) | See Insurance Section Guidance |

Note: Where estimates are close to a prescribed sum advice must be sought from the Executive Manager Capital Programme.

ANNEX 2 PROCUREMENT (TENDER) PROCESS CHECKLIST

No tendering exercise may be commenced until the following issues have been considered and approved by the Project Sponsor.

| | Yes/No |
|--|--------|
| Aims and Objectives | |
| Business Case | |
| Budgetary Provision | |
| Estimated Value Over 4 Years | |
| Existing Contract and/or Framework Agreement (Council, or others)? | |
| | |
| Governance | |
| Officers Have Appropriate Qualification, Skills, Experience And Training | |
| Contract Request Form | |
| Proposed Procurement has Relevant Procurement, Technical, Financial And Legal Input/Advice | |
| Independent Decision Point Reviews For Innovative/Irregular Projects | |
| Project Board Members (where applicable) | |
| Evaluation Panel Members | |
| | |
| Regulatory & Licensing | |
| TUPE | |
| Construction, Design And Management Regulations | |
| VOSA, SEPA, HSE, etc. To be made available as early in the project as possible | |
| Planning Permission/Building Warrant. To be made available as early in the project as possible | |
| | |
| Strategic/Community Benefits | |
| Sourcing Strategy/Lotting Strategy/Procedure to be used | |
| Specification | |
| Equality Impact Assessment Screening | |
| Socio-Economic Sustainability | |
| Environmental Sustainability | |
| Sustainable Procurement Duty | |
| Community Benefits | |
| | |
| Commercial | |
| Risks And Contingency Plans | |
| Pre-Qualification / ESPD / Evaluation Criteria | |
| Tender Submission - Contract AwardCriteria | |
| Contract Terms And Conditions | |
| Financial Vetting | |
| Pricing Options and Price Control | |
| Contract Management | |
| Management Information and Key Performance Indicators | |
| Ordering and Invoicing | |

ANNEX 3 DEFINITIONS OF WORKS

ACTIVITIES CONSTITUTING WORKS

In this Schedule, 'NACE Rev.1' has the same meaning as in [Council Regulation \(EEC\) No 3037/90](#) on the statistical classification of economic activities in the European Community(1), and numerical references in the columns relating to the NACE Rev.1 relate to the Annex to that Regulation. In the event of any difference of interpretation between the CPV and the NACE Rev.1, the CPV nomenclature shall apply.

| NACE Rev. 1 | | | | | CPV Code |
|-------------|-------|--------------|--|---|----------|
| SECTION F | | CONSTRUCTION | | | |
| Division | Group | Class | Subject | Notes | |
| 45 | | | Construction | This division includes: construction of new buildings and works, restoring and common repairs. | 45000000 |
| | 45.1 | | Site preparation | | 45100000 |
| | | 45.11 | Demolition and wrecking of buildings; earth moving | This class includes: demolition of buildings and other structures, clearing of building sites, earth moving: excavation, landfill, levelling and grading of construction sites, trench digging, rock removal, blasting, etc. site preparation for mining, overburden removal and other development and preparation of mineral properties and sites. This class also includes: building site drainage. drainage of agricultural or forestry land. | 45110000 |
| | | 45.12 | Test drilling and boring | This class includes: test drilling, test boring and core sampling for construction, geophysical, geological or similar purposes. This class excludes: drilling of production oil or gas wells, see 11.20. water well drilling, see 45.25, shaft sinking, see 45.25, oil and gas field exploration, geophysical, geological and seismic surveying, see 74.20. | 45120000 |
| | 45.2 | | Building of complete constructions or parts thereof; civil engineering | | 45200000 |
| | | 45.21 | General | This class includes: | 45210000 |

| NACE Rev. 1 | | | | | CPV Code |
|-------------|-------|--------------|---|--|--|
| SECTION F | | CONSTRUCTION | | | |
| Division | Group | Class | Subject | Notes | |
| | | | construction of buildings and civil engineering works | <p>construction of all types of buildings construction of civil engineering constructions, bridges, including those for elevated highways, viaducts, tunnels and subways, long-distance pipelines, communication and power lines, urban pipelines, urban communication and power lines, ancillary urban works, assembly and erection of prefabricated constructions on the site.</p> <p>This class excludes: service activities incidental to oil and gas extraction, see 11.20, erection of complete prefabricated constructions from self-manufactured parts not of concrete, see divisions 20, 26 and 28, construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations, see 45.23, building installation, see 45.3, building completion, see 45.4, architectural and engineering activities, see 74.20, project management for construction, see 74.20.</p> | <p>Except: —45213316 45220000 45231000 45232000</p> |
| | | 45.22 | Erection of roof covering and frames | <p>This class includes: erection of roofs, roof covering, waterproofing.</p> | 45261000 |
| | | 45.23 | Construction of highways, roads, airfields and sport facilities | <p>This class includes: construction of highways, streets, roads, other vehicular and pedestrian ways, construction of railways, construction of airfield runways, construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations, painting of markings on road surfaces and car parks.</p> <p>This class excludes: preliminary earth moving, see 45.11.</p> | <p>45212212 and DA03 45230000 except: —45231000 —45232000 —45234115</p> |
| | | 45.24 | Construction of water | <p>This class includes: construction of:</p> | 45240000 |

| NACE Rev. 1 | | | | | CPV Code |
|-------------|-------|--------------|--|---|---|
| SECTION F | | CONSTRUCTION | | | |
| Division | Group | Class | Subject | Notes | |
| | | | projects | waterways, harbour and river works, pleasure ports (marinas), locks etc.; dams and dykes, dredging, subsurface work. | |
| | | 45.25 | Other construction work involving special trades | <p>This class includes: construction activities specialising in one aspect common to different kinds of structures, requiring specialised skill or equipment, construction of foundations, including pile driving, water well drilling and construction, shaft sinking, erection of non-self- manufactured steel elements, steel bending, bricklaying and stone setting, scaffolds and work platform erecting and dismantling, including renting of scaffolds and work platforms, erection of chimneys and industrial ovens.</p> <p>This class excludes: renting of scaffolds without erection and dismantling, see 71.32</p> | 45250000 45262000 |
| | 45.3 | | Building installation | | 45300000 |
| | | 45.31 | Installation of electrical wiring and fittings | <p>This class includes: installation in buildings or other construction projects of: electrical wiring and fittings, telecommunications systems, electrical heating systems, residential antennas and aerials, fire alarms, burglar alarm systems, lifts and escalators, lightning conductors, etc.</p> | 45213316 45310000 Except: — 45316000 |
| | | 45.32 | Insulation work activities | <p>This class includes: installation in buildings or other construction projects of thermal, sound or vibration insulation. This class excludes: waterproofing, see 45.22.</p> | 45320000 |
| | | 45.33 | Plumbing | <p>This class includes: installation in buildings or other construction projects of: plumbing and sanitary equipment, gas fittings,</p> | 45330000 |

| NACE Rev. 1 | | | | | CPV Code |
|-------------|-------|--------------|-----------------------------|---|----------------------------------|
| SECTION F | | CONSTRUCTION | | | |
| Division | Group | Class | Subject | Notes | |
| | | | | heating, ventilation, refrigeration or air- conditioning equipment and ducts, sprinkler systems This class excludes: installation of electrical heating systems, see 45.31. | |
| | | 45.34 | Other building installation | This class includes: installation of illumination and signalling systems for roads, railways, airports and harbours, installation in buildings or other construction projects of fittings and fixtures n.e.c. | 45234115 45316000 45340000 |
| | 45.4 | | Building completion | | 45400000 |
| | | 45.41 | Plastering | This class includes: application in buildings or other construction projects of interior and exterior plaster or stucco, including related lathing materials. | 45410000 |
| | | 45.42 | Joinery installation | This class includes: installation of not self-manufactured doors, windows, door and window frames, fitted kitchens, staircases, shop fittings and the like, of wood or other materials, interior completion such as ceilings, wooden wall coverings, movable partitions, etc. This class excludes: laying of parquet and other wood floor coverings, see 45.43 | 45420000 |
| | | 45.43 | Floor and wall covering | This class includes: laying, tiling, hanging or fitting in buildings or other construction projects of: ceramic, concrete or cut stone wall or floor tiles, parquet and other wood floor coverings carpets and linoleum floor coverings, including of rubber or plastic, terrazzo, marble, granite or slate floor or wall coverings, wallpaper. | 45430000 |
| | | 45.44 | Painting and glazing | This class includes: interior and exterior painting of buildings, painting of civil engineering structures, | 45440000 |

| NACE Rev. 1 | | | | | CPV Code |
|-------------|-------|--------------|---|--|-----------------------------------|
| SECTION F | | CONSTRUCTION | | | |
| Division | Group | Class | Subject | Notes | |
| | | | | installation of glass, mirrors, etc. This class excludes: installation of windows, see 45.42. | |
| | | 45.45 | Other building completion | This class includes: installation of private swimming pools, steam cleaning, sand blasting and similar activities for building exteriors, other building completion and finishing work n.e.c. This class excludes: interior cleaning of buildings and other structures see 74.70. | 45212212 and DA04 45450000 |
| | 45.5 | | Renting of construction or demolition equipment with operator | | 45500000 |
| | | 45.50 | Renting of construction or demolition equipment with operator | This class excludes: renting of construction or demolition machinery and equipment without operators, see 71.32. | 45500000 |

**ANNEX 4 DEFINITIONS OF SOCIAL AND OTHER SPECIFIC SERVICES (EU REGULATIONS)
HEALTH OR SOCIAL SERVICES (REGULATED CONTRACTS)**

SOCIAL AND OTHER SPECIFIC SERVICES (EU REGULATIONS)

| <i>CPV Code</i> | <i>Description</i> |
|--|--|
| 75200000-8; 75231200-6; 75231240-8; 79611000-0; 79622000-0 (Supply services of domestic help personnel); 79624000-4 (Supply services of nursing personnel) and 79625000-1 (Supply services of medical personnel) from 85000000-9 to 85323000-9; 98133100-5, 98133000-4; 98200000-5; 98500000-8 (Private households with employed persons) and 98513000-2 to 98514000-9 (Manpower services for households, Agency staff services for households, Clerical staff services for households, Temporary staff for households, Home-help services and Domestic services) | Health, social and related services |
| 85321000-5 and 85322000-2, 75000000-6 (Administration, defence and social security services), 75121000-0, 75122000-7, 75124000-1; from 79995000-5 to 79995200-7; from 80000000-4 Education and training services to 80660000-8; from 92000000-1 to 92700000-8; 79950000-8 (Exhibition, fair and congress organisation services), 79951000-5 (Seminar organisation services), 79952000-2 (Event services), 79952100-3 (Cultural event organisation services), 79953000-9 (Festival organisation services), 79954000-6 (Party organisation services), 79955000-3 (Fashion shows organisation services), 79956000-0 (Fair and exhibition organisation services) | Administrative social, educational, healthcare and cultural services |
| 75300000-9 | Compulsory social security services |
| 75310000-2, 75311000-9, 75312000-6, 75313000-3, 75313100-4, 75314000-0, 75320000-5, 75330000-8, 75340000-1 | Benefit services |
| 98000000-3; 98120000-0; 98132000-7; 98133110-8 and 98130000-3 | Other community, social and personal services including services furnished by trade unions, political organisations, youth associations and other membership organisation services |
| 98131000-0 | Religious services |
| 55100000-1 to 55410000-7; 55521000-8 to 55521200-0 (55521000-8 Catering services for private households, 55521100-9 Meals-on-wheels services, 55521200-0 Meal delivery service) 55520000-1 Catering services, 55522000-5 Catering services for transport enterprises, 55523000-2 Catering services for other enterprises or other institutions, 55524000-9 School catering services 55510000-8 Canteen services, 55511000-5 Canteen and other restricted-clientele cafeteria services, 55512000-2 Canteen management services, 55523100-3 School-meal services | Hotel and restaurant services |
| 79100000-5 to 79140000-7; 75231100-5; | Legal services, to the extent not excluded by regulation 11(1)(e) |
| 75100000-7 to 75120000-3; 75123000-4; 75125000-8 to 75131000-3 | Other administrative services and government services |
| 75200000-8 to 75231000-4 | Provision of services to the community |

| <i>CPV Code</i> | <i>Description</i> |
|--|--|
| 75231210-9 to 75231230-5; 75240000-0 To 75252000-7; 794300000-7; 98113100-9 | Prison related services, public security and rescue services to the extent not excluded by regulation 11(1)(k) |
| 79700000-1 to 79721000-4 (Investigation and security services, Security services, Alarm- monitoring services, Guard services, Surveillance services, Tracing system services, Absconder-tracing services, Patrol services, Identification badge release services, Investigation services and Detective agency services) 79722000-1(Graphology services), 79723000-8 (Waste analysis services) | Investigation and security services |
| 98900000-2 (Services provided by extra- territorial organisations and bodies) and 98910000-5 (Services specific to international organisations and bodies) | International services |
| 64000000-6 (Postal and telecommunications services), 64100000-7 (Post and courier services), 64110000-0 (Postal services), 64111000-7 (Postal services related to newspapers and periodicals), 64112000-4 (Postal services related to letters), 64113000-1 (Postal services related to parcels), 64114000-8 (Post office counter services), 64115000-5 (Mailbox rental), 64116000-2 (Post-restante services), 64122000-7 (Internal office mail and messenger services) | Postal services |
| 50116510-9 (Tyre-remoulding services), 71550000-8 (Blacksmith services) | Miscellaneous services |

HEALTH OR SOCIAL SERVICES (REGULATED CONTRACTS)

| <i>CPV Code</i> | <i>Description</i> |
|---|-------------------------------------|
| 75200000-8; 75231200-6; 75231240-8; 79611000-0; 79622000-0 (Supply services of domestic help personnel); 79624000-4 (Supply services of nursing personnel) and 79625000-1 (Supply services of medical personnel) from 85000000-9 to 85323000-9; 98133100-5, 98133000-4; 98200000-5; 98500000-8 (Private households with employed persons) and 98513000-2 to 98514000-9 (Manpower services for households, Agency staff services for households, Clerical staff services for households, Temporary staff for households, Home-help services and Domestic services) | Health, social and related services |

ANNEX 5 CONTRACT REQUEST FORM

1. **Services/Goods/Works required** *(outline of the type of Services/Goods/Works you require a contract for and attach your specification as per Contract Standing Orders Part 1 section 9)*

2. **Project Sponsor** *(State the name of the project sponsor who has approved the business case and budget)*

3. **Lead service** *(the Service or Services acting as the lead for the project - to be the Service or Services from which the budget is available)*

4. **Project Manager / Procurement Lead Officer** *(means the member of staff appointed by the Sponsor or Board governing the project to deliver the project / procurement outcome)*

5. **Estimated Value / Budget Approval / Ledger Code / Contract Duration / ERDF funding**

- a. *State the estimated value of the contract over the full contract period; and*
- b. *Budget value and confirmation that the budget has been approved by the appropriate budget holder; and*
- c. *State the ledger code applying that will also be used for related advertising costs, and*
- d. *The duration of the contract to be tendered, including any proposed extensions. For services, this should usually be between two to four years with potential for one or two year's extension.*
- e. *ERDF funded: YES/NO (delete as appropriate)*

6. **Risk**

- a. *State the risks to service provision of the project failing or not being taken forward (e.g. failure to deliver statutory duties); and*
- b. *Mitigating actions proposed for managing those risks*

7. **Approved Business Case** *(Enclose a copy of the approved business case for this exercise, where one has been prepared)*

8. **Evaluation Team Members** *(Where these are to be used, evaluators must have suitable technical skills and be suitably knowledgeable or qualified in relation to the subject matter of the tender.)*

9. **Intended Date of Commencement of Full Operations and Contract Period** *(State the target date of the commencement of full operations for the Services/Goods/Works being tendered. If appropriate, please indicate any reasons as to why this date must be achieved.)*

10. **Any Period required for Setting up Operations**

11. **Service Contact Name and telephone number**

12. **Should the Council's Estate Operations / Roads Maintenance Section be considered for the works**

13. **Procedure to be followed (Open/Restricted/etc.)**

Contract Request form Received/Approved by

Name _____ **Date** _____

Procurement Office Use

Allocated Procurement Team:

Section Contact:.....

Governance and Law Contact.....

(To be confirmed by Team Leader Legal)

ANNEX 6 – CONTRACT REGISTER MINIMUM REQUIREMENTS

Contracts register

- (1) A contracting authority must keep and maintain a register of contracts (a “contracts register”).
- (2) The contracts that must be registered are any contracts entered into as a result of a regulated procurement.
- (3) In relation to each contract, a contracts register must contain the following information—
 - (a) the date of award,
 - (b) the name of the contractor,
 - (c) the subject matter,
 - (d) the estimated value,
 - (e) the start date,
 - (f) the end date provided for in the contract (disregarding any option to extend the contract) or, where there is no date specified, a description of the circumstances in which the contract will end,
 - (g) the duration of any period for which the contract can be extended.
- (4) The authority may delete an entry in its contracts register only after the contract to which it relates has expired or been terminated.
- (5) The authority must make the information contained in its contracts register publicly available on the internet and by such other means as it considers appropriate.
- (6) However, the authority may withhold an entry or part of an entry in the register if it considers that making it publicly available would—
 - (a) impede law enforcement or otherwise be contrary to the public interest,
 - (b) prejudice the commercial interests of any person, or
 - (c) prejudice fair competition between economic operators.

ANNEX 7 - NON COMPETITIVE ACTION

1. It is Council policy that contracts for Supplies, Services and Works should be awarded on the basis of value for money following a genuine and effective competition. This policy recognises that there may be occasions where it is appropriate to award a contract without following a genuine and effective competition. This procedure is known as Non Competitive Action (NCA) and can only be applied in exceptional circumstances.
2. NCA will only be approved when a genuine business need exists which outweighs the need to subject the requirement to competition. Evidence in support of the NCA must stand up to scrutiny or challenge.
3. The Director of Corporate Services or her nominee has the authority to approve a NCA.
4. When seeking authority for NCA, there must be sufficient information contained within the request to enable the Director of Corporate Services or her nominee to consider it.
5. The Director of Corporate Services or her nominee, in consultation with the Executive Manager Capital Programme, the Procurement Manager, the Team Leader Legal Services and Executive Manager Finance as appropriate, will decide whether or not to authorise the request to proceed without competition.
6. Following approval a scanned copy of the signed Non-Competitive Action Form (NCA) must in all cases be sent to the Procurement Manager for inclusion on the NCA register.
7. Where a request for NCA is not approved, a competitive procedure will be necessary. The level of competition will depend on the value, nature and complexity of the procurement proposed.

Request for Non-Competitive Action

Note: Once completed and signed by the Director seeking the Exception this form must be sent to the Director of Corporate Services for Approval.

| Details of the service seeking non-competitive action | | |
|---|---|---------|
| 1. | Department | |
| 2. | Service | |
| 3. | Sponsor / Procurement Lead Officer (Name/Job Title) | |
| Details of NCA Exception Request | | |
| 1. | Business name. | |
| 2. | Contract title. | |
| 3. | Type of Contract (Supplies/Services/Works) | |
| 4. | Value (ex VAT). | £ |
| 5. | Duration. | |
| 6. | Is the request an amendment to an existing contract? | Yes/No. |
| 7. | If yes, was the original contract competitively tendered? | Yes/No. |
| 8. | Justification for Non-Competitive Action (expand as necessary). | |

Director seeking approval for NCA:

| | | | |
|------------------------------------|------|--|----|
| Signature | Date | | |
| Name (Block Capitals) | | | |
| I approve the exception requested. | Yes | | No |
| If no, reasons: | | | |

Director of Corporate Services

| | |
|-----------|------|
| Signature | Date |
|-----------|------|

Following decision a scanned copy of the signed Non-Competitive Action Form (NCA) must in all cases be sent to the Procurement Manager for inclusion on the NCA Register.

ANNEX 8 RETENTION SCHEDULE

For the S.I.C. Retention and Destruction Schedule follow link:-

<http://intranet2/Policy/Shared%20Documents/Retention%20Schedule%20Version%2011.2%202015.pdf>

Governance & Law
Contracts and Tendering
Sections 6.8 – 6.1