

Agenda Item	15
Report No	RES/14/16

Revision of Standing Orders Relating to Contracts

Report by Director of Finance

Summary

This report introduces changes in legislation and statutory guidances introduced by the Scottish Government, and aligns the high level provisions of the Council's own orders with these new requirements.

1. Introduction

1.1 The implementation of the:-

- EU Directive 2014/23/EU on the award of concession contracts
- EU Directive 2014/24/EU on public procurement
- EU Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors

by the Scottish Government as a devolved matter, and the commencement of the Procurement Reform (Scotland) Act 2014 which is purely domestic and applies to contracts with lower values than those covered by the above Directives has resulted in the replacement of the Public Contracts (Scotland) Regulations 2012 (containing 53 Regulations) with:-

1. The 2015 Public Contracts (Scotland) Regulations (containing 101 regulations),
2. The Procurement (Scotland) Regulations 2016;
3. Regulations covering Concessions;
4. Regulations covering Utilities which will affect our Harbour Board dealing in MGO (Marine Gas Oil); and
5. Six sets of statutory guidance comprising
 - i. Community Benefits
 - ii. The Duty of Sustainable Procurement
 - iii. Strategies and Annual Reports
 - iv. Supplier Selection and Contract Award
 - v. Fair Work Practices and
 - vi. Procurement of care services.

This is in pursuit of the Government's vision of making Public Procurement simpler and more streamlined.

- ### 1.2
- Additionally, the Council's review of its own Procurement practices and the requirement to engage more effectively with local SMEs (Small to Medium Enterprises), voluntary organisations, and communities require some significant behavioural changes. This applies particularly to issues such as the use of Pre-Qualification Questionnaires.

1.3 Members may wish to note that the Scottish Government is encouraging and easing the raising of challenges to Public Procurement decisions. It is highly likely therefore that the number and intensity of challenges will increase dramatically over the coming year and beyond.

1.4 As such adherence to appropriate standards of governance becomes increasingly important, Members may be reassured that in quality assurance of these orders, the Council's external legal advisors have confirmed that these are amongst the best they have seen.

2. Content of the New Orders

2.1 The structure of the Orders covers Policy and Standards only: the Orders do not cover the detailed methodologies required to deliver or manage strategies and contracts. These are set out in the Council's Procurement Manual. As such, whilst the Orders have necessarily been expanded slightly to reflect all of the above, only the main points have been reflected and there has been no attempt to copy down the detailed content of the above. Marked-up (**Appendix 1**) and clean copies (**Appendix 2**) are provided so that Members can easily see what specific changes are proposed.

2.2 Members may also wish to note that these orders have been externally verified by the Council's legal advisors who have commented that they are amongst the best they have seen.

3. Implications

3.1 Resource - community consultation in respect of the Council's annual strategy and plan is an additional resource burden, however proper programme and project management will mean that it can be dealt with within current resource levels. Significant training will also be required in operating within the new regulatory regime, in particular with regard to the obligation to award contracts only on the basis of the most economically advantageous tender. Community consultation in respect of specific projects is likely to impose a significant demand on resources and require much better long term programme and project planning.

3.2 Legal - the legal risk is one of not implementing these changes which would mean that the Council could not comply with its new statutory duties.

3.3 Risk - there are financial and reputational risks which would arise from successful challenges to which the Council would be vulnerable were these amendments not made.

3.4 Rural - these amendments relating to community engagement should have positive implications for the delivery of services in rural areas.

3.5 There are no Equalities, Climate Change/Carbon Clever or Gaelic implications to highlight.

Recommendation

Members are requested to approve implementation of the Council's Standing Orders Relating to Contracts April 2016.

Designation: Director of Finance

Date: 9 February 2016

Author: Ashley Gould, Head of Procurement

THE HIGHLAND COUNCIL

CONTRACT STANDING ORDERS

~~September 2012~~ April 2016

V1.0

CONTRACT STANDING ORDERS

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INTRODUCTION

1. EXECUTIVE SUMMARY

The purpose of these Orders is to implement within the Council the requirements of legislation and the fundamental principles of the Treaty of Rome applicable to the award of contracts.

These are

Freedom of movement of goods
Freedom of establishment
Freedom to provide services

With their derived principles being:

Equal treatment,
Non-discrimination,
Mutual recognition,
Proportionality
Transparency

They recognise the rights of anyone interested in providing goods, works or services to or on behalf of the Council to be treated in accordance with these principles at all levels of expenditure, which are applicable at all levels of financial commitment.

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.

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 all establishments including schools, care homes, and operations to which responsibility for awarding contracts is delegated or outsourced.

Responsibility and accountability for all procurement within the Council lies with the ~~Officer~~ Procurement SRO, who shall be a member of the Council's Executive Leadership Team and who has authority to determine all matters relating to procurement subject to compliance with legal requirements. The ~~Officer~~ Procurement SRO may delegate areas of procurement to other officers of the Council.

Requirements for ~~goods and services~~ services, supplies and works with a value of £5,000 or more, ~~and requirements for works with a value of £15,000 or more~~, shall be subject to requests for competitive quotations, unless they are covered by one or more of the exceptions or exemptions noted below. Requirements for ~~goods~~, services, or ~~supplies~~ works with a value of £50,000 or more, and requirement for works with a value of £2,000,000 shall be subject to formal tendering procedures unless they are covered by one or more of the exceptions or exemptions noted below. These Prescribed Sums are set out at Annex 1 to these Orders. Quotations are dealt with entirely by authorised staff within sponsoring Services and will not involve the

Council's Procurement Team. Formal tenders for ~~Goods and~~ Services ~~and~~ Supplies are managed by the Council's Procurement Team who will agree a project plan with the Project Sponsor in each case. It will be the responsibility of all participants to adhere to agreed timescales and it will not be the responsibility of one part of the team to make up time should another part of the team not do so.

Staff authorised to manage quotations must take part in the Council's level 1 Procurement training course. Staff authorised to carry out tasks relating to formal tenders as part of their function must take part in level 1 and level 2 training.

Advertising will take place as follows as a minimum:

- Requirements with a value in excess of £50,000 but less than £1~~6473,176,934~~ (Supplies and Services) or £4,~~348104,350-394~~ (Works): Council's own Website via the Public Procurement Portal: www.publiccontractsscotland.gov.uk
- Requirements with a value in excess of £~~173,934164,176~~ (Supplies and Services) or £~~4,348,354,104,394~~0 (Works): Official Journal of the European Union (first) and the Council's own Website, both via the Public Procurement Portal

The single point of publication for these notices will be the ~~Officer 2~~Corporate Procurement Lead Officer who shall be a member of the Council's Senior Leadership Team and a Head of Service. This means that all Contracts subject to formal tendering procedures must be advertised via the ~~Officer 2~~Corporate Procurement Lead Officer, and that where quotation level requirements are advertised on a voluntary basis, the same requirement applies.

No transactions or commitments made or costs incurred may be split to avoid the necessity of appropriate calls for competition.

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

Tendering for goods, services, and works within the Council shall be carried out by electronic means unless specific agreement has been made with the ~~Officer 4~~Procurement SRO that they shall be dealt with manually.

Procurement tasks shall be undertaken only by empowered staff, each of whom must have specific delegation allocated to them using the form at Annex 2 of these Orders.

Procurement via collaborative contracts such as those awarded by Procurement Scotland, Scotland Excel or the Office of Government Commerce (OGC) may be undertaken without further competition depending on the particular procedure recommended by the Agency concerned at the discretion of the ~~Officer 4~~Procurement SRO. In all cases periodic 'value for money' checks involving other alternatives should be carried out as such agencies do not guarantee or always offer best value. The Council has committed itself to membership of Scotland Excel for the lifetime of the revision of these Orders, 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 are added, or the rules of Best Value require otherwise. These must be tested prior to commitment, but once committed; this commitment will apply through the life of the contract concerned. In such cases the ~~Officer 2~~Corporate Procurement Lead Officer shall provide justification

| for non-participation to the ~~Officer~~1Procurement SRO and the Council's representative Members of the Scotland Excel Joint Committee, and following their approval, to the Director of Scotland Excel.

Breaches of these Orders shall be passed to Internal Audit for investigation as potential disciplinary matters, and shall be summarised and reported quarterly to the Senior Management Team



PROJECT 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	
Existing Contract	
Business Case	
Budgetary Provision	
Estimated Value Over 4 Years	
Governance	
Officers Have Appropriate Qualification, Skills, Experience And Training	
Procurement Authorisation Forms	
Project Has Relevant Procurement, Technical, Financial And Legal Input/Advice	
Independent Decision Point Reviews For Innovative/Irregular Projects	
Evaluation Panel Members	
Tender Board 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	
Specification	
Equality Impact Assessment Screening	
Socio-Economic Sustainability	
Environmental Sustainability	
Commercial	
Risks And Contingency Plans	
PQQ And ITT Evaluation Criteria	
Contract Terms And Conditions	
Financial Vetting	
Pricing And Price Control	
Contract Management, MI And KPIs	
Ordering and Invoicing	

CONTEXT

1.0 Commencement

- 1.1 These Orders (“the Contract Standing Orders”) shall apply and have effect from ~~1st September 2012~~ 18th April 2016 and shall be subject to annual review.

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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 those staff whose job role involves carrying out any of the tasks set out in the Procurement Authorisation Form at Annex 2, and who have been properly trained and qualified to do so. Such staff must have a Procurement Authorisation form approved by their line manager and the ~~Officer~~ 4Procurement SRO as part of their Staff induction.

“Building construction works contracts” means Works contracts, as defined by the Public Contracts (Scotland) Regulations 2015, included as Annex 8, but excluding infrastructure construction contracts

“Contract” means an agreement between that 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 Direct Labour or Direct Service Organisations, cannot therefore be contractual in nature, but must be subject to the principles of Best Value

“Contracting Authority” means The Highland Council: this is the Contracting Authority in all Contracts into which the Council or any part of the Council enters.

“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.

“Corporate Procurement Lead Officer” in the context of the advertising, arrangement and management of competitive tendering and quotation exercises and award of contracts includes any Principal Contracts Officer or Contracts Officer within the Council’s Procurement Operation

~~“Officer 1”: for the purposes of these Orders includes the Officer 2 acting on his behalf.~~

“EU Regulated Procurement” means any procurement project covered by the Public Contracts (Scotland) Regulations 2015, the Public Concessions (Scotland) Regulations 2016, or the Public Utilities (Scotland) Regulations 2016.

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~~“Officer 2” in the context of the advertising, arrangement and management of competitive tendering and quotation exercises and award of contracts includes any~~

~~Principal Contracts Officer or Contracts Officer within the Strategic Procurement Division.~~

European Single Procurement Document (ESPD) means the selection tool which replaces the Pre-Qualification Questionnaire, as set out in Scottish Procurement Policy note 1/2016. It is based on the concept of self-certification and is aimed at reducing bureaucracy and making public contracts more accessible to SMEs.

“Infrastructure construction works contracts” means Works contracts, as defined by the Public Contracts (Scotland) Regulations 2015, included at Annex 8, but excludes contracts which relate to the construction, maintenance or modification of buildings insulated in whole or in part.

“Most economically Advantageous Tender” means that giving maximum value for money over the lifetime of the contract for the goods, services or works delivered thereby, taking into account all material matters, visible or invisible, including but not being limited to quality and price. This is the only acceptable means of deciding upon which tenderer should be awarded a contract in terms of the public procurement regulations, and for the avoidance of doubt no contract may be awarded on the basis of lowest price alone. It must be noted that in assessing the most economically advantageous tender, the costs taken into account must be material to the purposes of the contract. In other words, the cost must bear upon a significant measurable characteristic of the requirement being procured

~~“Most economically advantageous tender” means that giving maximum value for money over the lifetime of the contract for the goods, services or works delivered thereby, taking into account all material matters, visible or invisible, including but not being limited to quality and price. Other than “lowest price” it is the only acceptable means of deciding upon which tenderer should be awarded a contract in terms of the public procurement regulations. It must be noted that in assessing the most economically advantageous tender, the costs taken into account must be material to the purposes of the contract. In other words, the cost must bear upon a significant measurable characteristic of the requirement being procured~~

“Partners” are defined as any organisations with which the Council works to deliver its objectives, with a formal agreement of roles (contract, funding agreement, Service Level 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.

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

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

“Procurement Officer” means a member of the Strategic Procurement Division or other Official empowered to award contracts on behalf of the Council by the ~~Officer~~ 4Procurement SRO in accordance with Annex 2 of these orders.

“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. That officer must not be drawn from the technical project team or be the project sponsor themselves. 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. That officer must be a member the Chartered Institute of Purchasing and Supply (MCIPS) or have and maintain sufficient experience, skills, and training as to be able to acquire membership upon application to the Chartered Institute and must evidence this to the satisfaction of the ~~Officer~~ 2Corporate Procurement Lead Officer. Alternatively they may be supervised by such a person but in such cases final decisions relating to the conduct of such work shall be a matter for that supervisor.

“Procurement SRO”: for the purposes of these Orders includes the Corporate Procurement Lead Officer acting on his behalf. The Procurement SRO shall be a member of the Council’s Executive Leadership Team and who has authority to determine all matters relating to procurement subject to compliance with legal requirements. The Procurement SRO may delegate areas of procurement to other officers of the Council.

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

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

“Regulated Procurement” means any procurement project covered by the terms of the Procurement Reform (Scotland) Act 2014, the Procurement (Scotland) Regulations 2016, and their associated Statutory Guidances

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“Services” means any of the activities set out at annex 6

“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 ~~Officer~~ 4Procurement SRO to undertake specific tasks relating to contracts. .

“Service Provider” “Supplier” and “Contractor” shall have the meanings ascribed to them as set out in the Public Contracts (Scotland) Regulations 2015 <http://www.legislation.gov.uk/ssi/2015/446/contents/made><http://www.legislation.gov.uk/ssi/2012/88/contents/made>

“Sponsor” or “Sponsoring Director” means the owner of and budget holder for the requirement as distinct from the Procurement Officer carrying out commercial action on their behalf. The Project Sponsor/Project 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

“Works” A ‘work’ 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 also set out at Annex 6

3.0 Extent and Introduction

These Contract Standing Orders are made under section 81 of the 1973 Act. They shall apply to the entering into by the Council, or on its behalf, of contracts for the supply, or lease, of Supplies, Services, and Works, as the case may be, unless classified as being exemptions or exceptions from these Contract Standing Orders. For the avoidance of doubt, these orders do apply to PFI/PPP, Joint Venture, and similar contracts.

They are written in accordance with the terms of the Scottish Government Procurement Policy Handbook, and Scottish Procurement Policy Notes, and shall be implemented by application of the standards and procedures set out in the Highland Council Procurement Manual as published at the time of the requirement arising.

It is not the purpose of these Orders to duplicate all the provisions of the Directive, the various Regulations, the Act, or the Statutory Guidances related thereto. The Council recognises that other competitive routes than those set out in these Orders may from time to time be available to the Council such as the Competitive Dialogue, Competitive Procedure with Negotiation, and Innovation Partnership. These will be rare, and where they occur, the generality of these orders shall apply, however reference will be made in each case to the specific Regulation(s) applicable to the project in determining the particular governance thereof.

Policy responsibility for the governance of commercial business shall rest with the ~~Officer 4~~Procurement SRO.

Subject to the requirements of the Council’s 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 ~~Officer 4~~Procurement SRO 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.

- a) agreement of specifications with user Services
- b) construction of contract terms and conditions
- c) development of sourcing and contracting strategies
- d) agreement of procurement budget heads
- e) selection of tenderers
- f) opening and evaluation of tenders
- g) award of ~~contracts, and~~ framework arrangements, and dynamic purchasing systems including participation in collaborative contracts awarded by others
- h) Appointment of consultants

Note that in these Orders, actions and responsibilities assigned to the ~~Officer 4~~Procurement SRO will be executed on his behalf by the ~~Officer 2~~Corporate Procurement Lead Officer, who for the avoidance of doubt shall also be the Proper Officer for the purpose of awarding and signing procurement contracts, variations, extensions, novation orders and terminations and on behalf of the Council. This authority may be delegated, but only by means of a properly executed procurement authorisation form (see Annex 2)

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 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 Reform (Scotland) Act 2014, The Public Contracts (Scotland) Act 2015~~2~~, the Public Contracts & Public Utilities ~~Amendment~~ (Scotland) Regulations ~~2009 SSI 428/2009~~2015, The Procurement (Scotland) Regulations 2016, The Climate Change (Scotland) Act 2009, the Equality Act 2010, The Freedom of Information (Scotland) Act 2002, The Data Protection Act 1998, and The Bribery Act 2011.

5.0 Breach of Contract Standing Orders

Any breach or non-compliance with these Contract Standing Orders must on discovery be reported immediately to the Head of Audit and Risk Management acting on behalf of the ~~Officer 4~~Procurement SRO. The Head of Audit and Risk Management may undertake any necessary investigation and report the findings to the relevant Service Director and Chief Executive, as appropriate and disciplinary proceedings may result from such reports.

6.0 Reporting to Committees

In circumstances where reports have to be provided to a Committee this should be the relevant Service Committee as specified. This will only be required where an exception to these Orders is required, where tendered costs or service levels have to be managed down or amended to meet affordability levels, or where a sponsor proposes an award to a contractor other than that providing the lowest cost or most economically advantageous tender.

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://www.highland.gov.uk/downloads/file/3920/code_of_conduct_conflict_of_interest_form 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 on 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 on the procurement exercise related thereto

8.0 Consultation and Publication of Annual Procurement Strategies

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In order to be meaningful and effective, engagement must be proportionate, manageable, and forward looking enough to allow time to incorporate findings into individual requirement contracting/Procurement Strategies.

By January of each year, the Council will therefore develop an annual corporate Procurement Strategy which shall contain the following

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- How it intends to ensure that its regulated procurements will contribute to the carrying out of its functions and the achievement of its purposes
- How it intends to ensure that its regulated procurements will deliver value for money
- How it intends to ensure that its regulated procurements will be carried out in compliance with its duties under section 8 of the Procurement Reform (Scotland) Act 201:
 - Treat relevant economic operators equally and without discrimination
 - Act in a transparent and proportionate manner
 - Sustainable procurement duty
- The Council's general policy on
 - i. the use of community benefits requirements
 - ii. consulting and engaging with those affected by its procurements
 - iii. the living wage being paid to persons involved in producing, providing or constructing the subject matter of regulated procurements
 - iv. the promotion of compliance with Health and Safety legislation
 - v. the procurement of fairly and ethically traded goods and services.
- How it intends its approach to regulated procurements involving the provision of food to (i) improve the health, wellbeing and education of communities in the authorities area, and (ii) promote the highest standards of animal welfare
- How it authority intends to ensure that, so far as reasonably practicable, the following payments are made no later than 30 days after the invoice (or similar claim) relating to the payment is presented
 - i. Payments due by the authority to a contractor
 - ii. Payments due by a contractor to a sub-contractor
 - iii. Payments due by a sub-contractor to a sub-contractor

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The Council recognises its obligation to consult stakeholders including businesses, third sector organisations, communities and citizens who may have an interest in the Council's contracting for services. In support of this it will, in developing the above annual strategy

and operational plans, seek the views of, inter-alia, the Federation of Small Businesses, the relevant Chambers of Commerce, and the Highland Third Sector Interface. It will also use appropriate means of communication such as the Citizens' and Communities Panels with regard to specific questions relating to which non-statutory services they may wish to be involved in or assume responsibility for

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The Council will publish a list of all its contracts with a value of £50,000 or more which it intends to open up to competition in the year covered by the Strategy, plus the subsequent financial year.

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At the tactical operational project level, each relevant project over the next-but-one financial year should be assessed in terms of the sustainable procurement impact assessment and then relevant stakeholders which may include Communities Panels given the opportunity to suggest

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1. Whether they would wish to take over delivery of some or all aspects of the service concerned, and if not
2. What community benefits they would wish to see delivered
3. What lotting strategy they would wish to see delivered based on actual industry/community group capacity

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Question 1 could only be applied to non-statutory services

This publication and engagement scheme will also apply to non-statutory services which the Council wishes to cease to provide or which it wishes to open up to delivery by community groups on a grant funded or other non-contractual basis

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9.0 Ceasing and Transfer of Services, and Alternative Funding

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Where transfer of an operation involves no transfer of funding then the Council is free to identify any suitable body it wishes to take on the transferring service.

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Where funding will be available but will be below the level at which the Principles of "Following the Public Pound" and the formal threshold for tendering for Services (£50K for the life of the agreement), the Council needs to make its best endeavours to identify potential sources in the areas in which the Services are needed. Where more than one exists, all must be given the opportunity to submit proposals for delivering the service. The Council may, with justification, limit its search to community groups, charitable organisations, or other "not for profit" bodies

Where funding will be available but will hit or exceed the level at which the Principles of "Following the Public Pound" and the formal threshold for tendering for Services (£50K for the life of the agreement), the Council needs to publicise the opportunity for the benefit of potential sources in the areas in which the Services are needed. Where more than one exists, all must be given the opportunity to submit proposals for delivering the service. The Council may, with published justification, limit its search to community groups, charitable organisations, or other "not for profit" bodies

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Any awards made or agreements entered into following this must be limited, in terms of remedies for failure to deliver the service, to nothing more than clawing back funds where no attempt had been made to deliver the service, or where the funds had been used for a different purpose.

Whilst this applies to opportunities proactively made available, it does not necessarily affect the general basis on which organisations apply to the Council for grant funding for activities that they rather than the Council identifies. The Council does not oblige itself therefore to open up to other potential providers, any direct request for grant funding that any potential applicant identifies themselves and wishes to pursue. The Council will take cognisance on a case by case basis however of the potential to be affected by State Aid regulations

Where there is a requirement to publicise such opportunities, this will be done on the same basis and in the same place as the Council's commercial opportunities. This is because many of these transferring opportunities may arise as part of a changing approach to an existing commercial approach.

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CONTRACT STANDING ORDERS – PART 1 APPLICABLE STANDARDS

1 EXEMPTIONS FROM STANDING ORDERS

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

- (i) All contracts with a total estimated cost not exceeding the Prescribed Sums for quotations set out at Annex 1;
- (ii) Any contract of employment;
- (iii) Any contract excluded under the terms of the Public Contract (Scotland) Regulations ~~2012~~2015 or the Procurement (Scotland) Regulations 2016;
- (iv) Any contract relating to the disposal or lease of land or other capital asset.
- (v) Any arrangement in which the Council shall fund an external operator to provide services on a non-contractual basis (Grant funded activities as defined in the guidance produced by the Head of Policy). In such circumstances the principles of the Following the Public Pound Code shall apply.

2 EXCEPTIONS FROM STANDING ORDERS

Nothing in these Applicable Standards 3 to 16 and Operational Procedures 1 to 15 shall apply:

- (i)
 - (a) Where the Sponsor has satisfied the ~~Officer 1~~ Procurement SRO 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 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 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. Note that where an item is described by a reference to a trade name, it must be followed by the phrase “or equivalent; or
- (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 competition,
- 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* an open competition 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) The demand is for the execution of work or the supply of goods, materials or services, certified by the relevant Service 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. Each case must be reported to the ~~Officer 4~~ Procurement SRO and next meeting of the Relevant Service Committee; or
- (iv) 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 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; or
- (v) The contract is for the supply of goods acquired on the Commodities Market.

All instances of such exceptions arising shall be reported to the Relevant Service Committee.

3 BUDGETARY PROVISION AND PRECAUTIONARY TENDERING

- (i) The Council's Financial Regulations make reference to the requirement to control capital and revenue expenditure, and therefore the terms of those Regulations must be implemented in the context of activity covered by these Orders.
- (ii) The Sponsor of any procurement project must certify that sufficient funds exist prior to the commencement of any contracting action. If the 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 Procurement 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.

4 BUSINESS CASES

- (i) Before committing funds to or commencing a project or competition for any commercial arrangement in excess of the threshold for tendering via OJEU (whether advertised there or not) the Sponsor must ensure that a business case has been established. This must examine all possibilities for meeting the requirement. It must also show that no other contract which could be used already exists within the Council. In each project a Contract Request Form must be completed by the Sponsor before procurement action may commence

5 DISPENSING WITH COMPETITION

- (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 Amsterdam and Rome. Decisions to proceed with a non-competitive purchase above the prescribed sum for the obtaining of quotations, and the justifications for taking them must be recorded, and must only be made within the rules set out in Orders 1 and 2 above.
- (iii) Procurement *via* collaborative contracts such as those awarded by Procurement Scotland, Scotland Excel or the Government Procurement Service may be undertaken without further competition depending on the particular procedure recommended by the Agency concerned at the discretion of the ~~Officer 1~~Procurement SRO or ~~Officer 2~~Corporate Procurement Lead Officer acting on his behalf. In all cases periodic 'value for money' checks involving other alternatives should be carried out as such agencies do not guarantee or always offer best value. The Council has committed itself to membership of Scotland Excel for the lifetime of the revision of these Orders, 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 ~~Officer 2~~Corporate Procurement Lead Officer shall provide justification for non-participation to the ~~Officer 1~~Procurement SRO and the Council's Members of the Scotland Excel Joint Committee, and following their approval, to the Director of Scotland Excel.
- (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. In any case of doubt the matter will be referred to the Officer 2Corporate Procurement Lead Officer who will determine the correct application of the principle Aggregation to be applied to the requirements in question.

6 PERIODIC SUPPLIES AND FRAMEWORK AGREEMENTS, AND DYNAMIC PURCHASING SYSTEMS

- (i) The period of such arrangements shall not exceed four years without specific justification which must be published when the requirement is advertised.
- (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 within a framework agreement which allows for direct award of call-off contracts without further competition, formal tendering shall be carried out only once prior to the commencement of such arrangement.

~~(ii)~~ ~~(ii)~~ Where Frameworks specify the establishment of contracts via competition between operators in the Framework, this shall be carried out prior to the commencement of each individual call-off.

~~(iii)~~ Once awarded, a framework shall remain closed to the admission of new contractors/suppliers/service providers for the lifetime of the Framework

~~(iv)~~ Calls for competition must always be made under the terms of a Dynamic Purchasing System where a call-off contract is required.

~~(v)~~ Participation in a Dynamic Purchasing system must remain open to the participation of new entrants during its lifetime, subject to their submission of a compliant tender.

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7 AGGREGATION OF DEMAND, LOTTING OF CONTRACTS PARTNERSHIP WORKING, AND SHARED SERVICE CONTRACTS

(i) Where 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, and no part of the Council shall operate independently of any other. In order to establish the value of a contract where no specific value is known, spending on the requirement over a period of four years shall be used as the basis of valuation

(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 for the provision of the Supplies, Services, or Works concerned where such requirements arise in those Services. New Contracts shall be reported to the Weekly Business Meeting for circulation throughout Services and shall be published on the Council Intranet.

(vi) Using the stakeholder consultation method set out at Paragraph 8 of Part 1 of these orders, and with reference to

a) the Sustainable Procurement Impact Assessment at Annex 6 to these Orders, and

b) the Council's statutory duty to consider the ways in which its contract may be used to enhance the economic wellbeing of the area it serves.

The Council shall in respect of each contract, consider how it may be broken down into lots, and where this cannot be done, a justification for not doing so shall appear in the Contract Notice.

(iii) Partnership arrangements are a valid means of achieving best value through procurement. The establishment of partnerships must be subject to formal competition and must protect the interests of the Council, by the use of formally agreed and written terms and conditions.

(v) Consideration should always be given to the possibility of joining with other organisations to tender jointly for similar requirements, and research undertaken prior to commencement as to the feasibility of this approach.

(vi) In accordance with Scottish Government Local Authority Procurement Circular 1/2007, 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.

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8 FREEDOM OF INFORMATION

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

(ii) To allow for the operation of the requirements of the Freedom of Information (Scotland) Act, the EU Procurement Directives, and the Public Contracts (Scotland) Regulations, a Contracts Register shall be published on the Council's public website. Each Service Director shall ensure that the ~~Officer~~ Procurement SRO is provided with sufficient information to enable this to be kept up to date.

9 SPECIFICATIONS

~~(i)~~ ~~(i)~~ Formal Specifications or statements of requirement shall be developed either by the project Sponsor ~~or by the project Sponsor~~ in conjunction with the ~~Officer~~ Procurement Lead Officer 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.

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Specifications shall not be accepted as final until the Procurement Lead Officer is satisfied as to their commercial viability.

(ii) The Project Sponsor must ensure that technical specifications for regulated and EU-regulated procurements give equal access to all interested parties and do not create unjustified obstacles to the opening up of public procurement to competition or encouraging innovation. Sponsors shall specify requirements for award criterion in generic technical or performance terms. Technical specifications must not refer to materials or goods of a specific make or source or to a particular process or trademark, patent, type, origin or means of production which has the effect of favouring or eliminating particular suppliers.

(iii) Where specifiers produce specifications referring to the Sponsor shall ensure that the Procurement Lead Officer or Project manager returns that specification to the specifier for correction in accordance with this Order.

(iv) This requirement may only be dispensed with in exceptional circumstances, where the subject of the contract cannot otherwise be described by reference to technical specifications which are sufficiently precise and intelligible to all suppliers. However, where this exception applies, any such references in the technical specification must be accompanied by the words "or equivalent". Where a Sponsor does make such a reference, a written justification shall be provided as part of the contract notice or invitation to participate or quote, including an explanation as to why it was not possible to describe the product by reference to technical or performance characteristics.

(v) Where technical specifications make reference to technical standards they shall be set out in accordance with the following hierarchy:

- (i) British standards transposing European standards
- (ii) European technical assessments
- (iii) Common technical specifications
- (iv) International standards
- (v) Other technical reference systems established by the European standardisation bodies.

(vi) In the absence of the above technical standards, public bodies may refer to the following:

- (i) British standards
- (ii) British technical approvals
- (iii) British technical specifications relating to the design, calculation and execution of the work or works and use of the project.

In this instance each reference to a technical standard must be accompanied by the words "or equivalent".

Sponsors may include references in specifications to mandatory technical rules which go beyond the relevant EU standards, provided these are non-discriminatory, without prejudice to the relevant European standards or specifications and otherwise compatible with EU community law.

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10 SUSTAINABILITY, COMMUNITY BENEFITS AND EQUAL OPPORTUNITIES/WORKFORCE MATTERS

~~(i)~~ (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 comprised by doing so in accordance with the requirements of the Directive, the Regulations, and the~~, 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 2009.

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~~(ii)~~ In recognition of the Sustainable Procurement duty, the Council shall in respect of all Regulated and EU Regulated procurement projects, assess the requirement in terms of its potential to derive economic, social, and economic benefits generally; and specifically in terms of the area it serves. Sponsors shall use the Sustainable Procurement Impact Assessment set out at Annex 4 to these Orders to make this determination. They shall then build into the project appropriate measures covering selection and award, contractual terms, specifications, and key performance indicators aimed at appropriate achievement of community benefits and sustainable procurement impacts

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~~(iii)~~ The Council pays due regard to the Scottish Government Statutory Guidances in respect of the Sustainable Procurement duty and the achievement of Community Benefits. In general terms however it takes the view that allowing businesses and other groups to determine the best means of achieving these, and using their commercial acumen and innovative skills to compete them, is of greater benefit than specifying exactly what is to be achieved as part of the specification.

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~~(iv)~~ The Council pays due regard to the Scottish Government Statutory Guidance on addressing fair work practices, including the living wage, in Procurement, <http://www.gov.scot/Topics/Government/Procurement/policy/SPPNSSPANS/policy-notes/2015/SPPN42015><http://www.gov.scot/Topics/Government/Procurement/policy/SPPNSSPANS/policy-notes/2015/SPPN42015>. The Council will implement this to the full extent permitted by statute in all significant contracts for the provision of Services and Works.

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~~(iv)~~ 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. Where a contractor is carrying out a public function on behalf of the Council, the legal liability for equality duties in relation to that function remains with the Council which contracts out the function.

Prior to commencement therefore, all contracts with a value requiring tendering via OJEU for the provision of works and/or services shall be subject as a minimum to initial screening for an Equality Impact Assessment (EQIA), and the full production of an EQIA if the initial screening shows that to be appropriate. .

Further information on equality legislation, including guidance on the public sector equality duties and how they apply to procurement, can be found on the Equality and Human Rights Commission (EHRC) website: <http://www.equalityhumanrights.com>, and advice should also be sought from the Council's Equal opportunities Officer.

- (iii) (v) Records of the name and location of each business submitting and expression of interest, and those submitting SAQ/PQQs and/or formal tenders must have the type of business recorded on the same tracking form (e.g. micro-SME, SME, Social Enterprise, Voluntary Organisation, Women Owned Business, LLP, BME, PLC, UK Multinational, foreign Multinational) in order to accurately monitor engagement with each sector to demonstrate pursuit of Single Outcome Agreement requirements

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11 PROCUREMENT, PROJECT, AND CONTRACT RISK, AND PROJECT MANAGEMENT

- (i) These orders are written in order to ensure that officials operate in a way that conforms to the requirements of relevant legislation. In this way, the Council and individuals are protected from legal risk as far as can be reasonably foreseen. Individuals who break the rules set out within these orders not only expose the Council to unnecessary risk, but are also themselves exposed in cases where their actions constitute a criminal act.
- (ii) As such, Projects may only be initiated by officers who have the appropriate qualification, skills, experience and training. In addition, it must be ensured that projects have relevant professional procurement, technical, financial, and legal input/ advice. Only officers who have had Procurement Authorisation Forms approved and have attended and approved procurement training course may carry out the tasks listed on the procurement authorisation form.
- (iii) Formal Reviews will be introduced for innovative/ irregular projects, or those with a value in excess of £3M over the life of the contract. These will occur at key decision points in each project's lifecycle and will be subject to governance by the major projects board or equivalent. These reviews will be documented, with decisions recorded, and will be undertaken by a team appointed by the major projects board, independent of the project and will thereby give assurance that the project is being delivered effectively and in a controlled manner
- (iv) Where a project involves the establishment of an arm's length organisation by the Council, the Project Sponsor must provide the Chief Executive with assurance that all appropriate legal arrangements have been made and full documentary evidence has been provided
- (v) In respect of a project with a value in excess of the OJEU tendering threshold (whether advertised there or not) the additional advice available in Treasury or OGC Guidance such as that relating to Option Appraisals, Joint Ventures, VFM and Risk Management and Project Models not covered in these orders, the Procurement Manual, Scottish Procurement Directorate documentation or Scottish Futures Trust documentation, must be used as appropriate in

Council Projects. Specialists in Capital finance and procurement will be able to provide advice on these matters.

12 SIGNIFICANT TRADING OPERATIONS

- (i) The Council has implemented a number of Significant Trading Operations. In order to qualify as such, these operations need to operate in a competitive environment, and this includes bidding for Council business as a long term in-house provider, where such activity is carried out. Where such bids are successful, these operations are entitled to the same status as an external contractor for the exclusive provision of services covered by the related tendering exercise over the lifetime of the advertised contract.
- (ii) The requirements of these Contract Standing Orders apply in full to Trading Operations' commercial activities, and Services must ensure that where supplies, works or services with a value in excess of the prescribed sum are required, sufficient time is built into the project programme to allow for tendering on their behalf by the Trading Operation. Requirements for the provision of supplies, works, or services may be awarded to "in-house" providers without competition as long as the requirements of Best Value can be met and demonstrated.

13 REPORTING OF CONTRACTS AND CONTRACT EXPENDITURE

- (i) Prior to the commencement of any formal tender exercise, the Sponsor must establish a budget forecast for the requirement and shall certify that sufficient funds exist to cover this in accordance with paragraph 4 of these Orders. The Sponsor's written commitment to this level of funding shall be passed to the ~~Officer 2~~Corporate Procurement Lead Officer prior to commencement, and this shall be recorded and kept on file within his office.
- (ii) On award of any formally tendered contract, the subject of the contract, successful tenderer, budget figure and actual forecast expenditure shall be reported by the ~~Officer 4~~Procurement SRO to the Weekly Business Meeting and published in the Council's Contracts Register on its website.
- ~~(vii)~~ ~~(iii)~~ — Where the forecast expenditure figure based on received tenders exceeds the budgetary figure, the Sponsor must produce a plan for either managing the cost down to the level of budgetary provision or for making additional funds available, and a summary of this plan must also be reported to the ~~Officer 4~~Procurement SRO.

~~(viii)~~ Within three months of the end of each financial year the Council shall publish a report on its website showing, in respect of each contract awarded at both quotation and formal tender level

- a) The title of each contract
- b) The value of the contract
- c) The type of competition used (quotation, open, restricted, competitive dialogue etc.)
- d) The number of expressions of interest received and the locations from which they were sent

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- e) The number of pre-qualification questionnaires received (if appropriate), and the location and type of each candidate (SME, Social Enterprise, Charity, Community Group, Multinational Company etc.)
- f) The number of tenders invited and the locations and types of candidates invited
- g) The number of tenders or quotations received, and the location and type of each tenderer (SME, Social Enterprise, Charity, Community Group, Multinational Company etc.)
- h) The identity/ies of the successful tenderer(s), and their location and type
- i) Any community/environmental benefits identified for the contract and a note of what has been delivered

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14 CONSTRUCTION (DESIGN AND MANAGEMENT) REGULATIONS 2007/2015

- (i) Duties under the Construction (Design and Management) Regulations ~~2007~~ 2015 require clients to provide pre-construction information to designers and contractors in any project involving works as defined in the CDM Regulations.
- (ii) Further guidance ~~is available~~ should be sought ~~from Housing Property Services Property Risk Management Unit and on~~ \ntpahg1\documentmanagement\Risk Management\Operational\CDM\CDM2007\cdm2007.htm ~~the Property Section within Development and Infrastructure Service~~

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15 TRANSFER OF UNDERTAKING (PROTECTION OF EMPLOYMENT) REGULATIONS

- (i) Where the Council seeks to outsource an activity currently provided in house or where the Council is re-tendering a service already provided by an external provider, TUPE will affect any staff who have the essential part of their on-going duties delivering the service immediately before the project commences (staff working intensively on a service for a very short period of time who are not normally engaged in that service will not be affected) and will be entitled to transfer to the new employer under TUPE.
- (ii) Prior to the commencement of any project involving contracting for services, TUPE, guidance must be sought from Personnel, Procurement, Payroll/Pensions, and Legal Services, and appropriate time must be built into the project plan for all necessary staff and Union consultations.
- (iii) The Council is obliged to provide the expected numbers of staff affected to prospective tenderers at commencement of the exercise. At the point of invitations to tender, the information set out in Annex 8 must be provided to prospective tenderers in respect of each staff member affected.
- (iv) This must be clarified by a statement to the effect that final numbers will be provided at least two weeks before contract commencement, but that no liability for the accuracy of this information will be taken prior to that point, and that numbers are subject to variation.

- (v) Any such contracts must contain a provision obliging the incoming service provider to keep records of staff assigned to the service and to provide that information on demand in order to enable re-tendering at the end of the contract.
- (vi) Where the Council is re-tendering a service, it will be necessary firstly to ask the existing service provider whether or not they believe that TUPE applies. If they believe that TUPE will apply, then they must make the information set out at Annex 8 available to potential new providers of the same service on exactly the same basis as the Council did on first outsourcing the activity. They must provide the information to the council and the Council will issue it with PQQ/ITT documentation, however the Council will take no liability for this information and must advise bidders that they must verify this information with the existing service provider, who will be legally and contractually bound to reply. Tender documentation must contain a term indemnifying the Council for liability in respect of the reliability of this information.
- (v) Once contracts are let, either on first outsourcing or at re-tender, the Council has a legal duty to ensure that the incoming service provider acts in accordance with their TUPE obligations.

16 CONTRACTS REGISTER AND TRANSPARENCY

- (i) The Council maintains a contracts register on its website, along with a list of all contracts to be advertised in the following ~~twelve months~~two years which ~~should~~shall be updated ~~at least~~ quarterly.
- (ii) All contracts with a value of £50000 or more must be published in the contacts register via the Council's Procurement Team~~Office~~
- (iii) The Council shall maintain a single, centrally managed internal contracts register for the purposes of business panning which shall be managed by the Council's Procurement Team. It shall also maintain a web-based contracts register via the www.publiccontractsscotland.gov.uk portal to meet its statutory requirements of transparency

Each Service Director shall provide a plan to the ~~Officer 4~~Procurement SRO no later than ~~28th February~~1st November each year showing their plans for contracting activity in the following ~~two Financial calendar y~~Years, in order to allow for the publication of ~~Prior Information Notices~~the Council's Annual Procurement Strategy and Plan by 31st December of each year.

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PART 2 OPERATIONAL PROCEDURES

1 AUTHORITY TO INVITE TENDERS AND PARTICPATE IN PROCUREMENT WORK

- (i) Formal tendering exercises shall be managed by the ~~Officer 2~~Corporate Procurement Lead Officer, following receipt of budgetary certification and business case, unless authority to do so is delegated by the ~~Officer 4~~Procurement SRO to other Directors, either in the scheme of delegation, or specifically through authorisation of a Delegated Authority Form (Annex 2). A Contract request form shall be completed by the Sponsor prior to commencement in each case <http://ntintra1/fin/purchasing/rules.htm>
- (ii) Tenders in respect of goods or equipment to be supplied by way of a lease arrangement may only be invited following approval from the ~~Officer 4~~Procurement SRO.

~~(vi) (iii)~~ — Tenders with a value in excess of the prescribed sums must be dealt with in accordance with the EU Commission Open, Restricted, ~~Accelerated Restricted, Negotiated~~Negotiated with Competition, Innovation Partnership, or Competitive Dialogue ~~Procedures~~methods. Timescales for these can be found in the ~~Consolidated Procurement Directive~~ http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/l_134/l_13420040430en01140240.pdf ~~Public Contracts (Scotland) Regulations 2015:~~ http://www.legislation.gov.uk/ssi/2015/446/pdfs/ssi_20150446_en.pdf

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- (iv) For the avoidance of doubt no member of Council staff may undertake any of the work covered by these Orders, including but not being limited to the award of contract at any value unless formally authorised to do so by the ~~Officer 4~~Procurement SRO, and subsequently trained through the Employee Development Unit.
- (v) Projects may only be initiated by officers who have the appropriate qualification, skills, experience and training. Procurement tasks may only be undertaken by staff who have attended the Council's training courses. In addition, it must be ensured that projects have relevant and appropriate professional technical, financial and legal input/ advice. Each project shall have a procurement lead officer who shall be responsible for the management and integrity of each procurement project. 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.

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2 ADVERTISING OF TENDERS

- (i) In order to meet the requirements of the European Commission for adequate publicity of opportunities, advertising will take place as follows as a minimum:

a. Requirements with a value in excess of £50,000 but less than £164,176 (Supplies and Services) or in excess of £2,000,000 but less than £4,104,394 (Works): Council's own Website via the Public Procurement Portal: www.publiccontractsscotland.gov.uk

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~~b. Requirements with a value equal to or in excess of £164,176 (Supplies and Services) or £4,104,3940 (Works): Official Journal of the European Union (first) and the Council's own Website, both via the Public Procurement Portal~~

~~a) Requirements with a value of £50,000 or more but less than £173,934 (Supplies and Services) or £4,348,350 (Works): Council's own Website via the Public Procurement Portal: www.publiccontractsscotland.gov.uk~~

~~b) Requirements with a value in excess of £173,934 (Supplies and Services) or £4,348,350 (Works): Official Journal of the European Union (first) and the Council's own Website, both via the Public Procurement Portal~~

The single point of publication for these notices will be the Officer 2Corporate Procurement Lead Officer. This means that all Contracts subject to formal tendering procedures must be advertised via the Officer 2Corporate Procurement Lead Officer, and that where quotation level requirements are advertised on a voluntary basis, the same requirement applies

3 — FRAMEWORK AGREEMENTS

~~(i) — The Sponsor may decide to set up framework agreements in which parties admitted to the framework by way of competition may be invited to tender via further mini-competitions for individual contracts for the provision of goods, materials, services or works of specified categories, or in which direct orders can be placed on parties admitted to the framework without further competition. In the former case, invitations to tender for such contracts shall be limited to parties admitted to the framework~~

~~(ii) — The establishment of framework agreements is subject to the same requirements for advertising and evaluation as contracts. No such framework may have a lifetime of greater than four years without specific and justifiable reason being recorded for the commitment to a longer period. Framework Agreements may be made with one provider or with at least three providers, unless a multiple-supplier framework is required and only two competent tenders are received.~~

~~(iv) — The means by which individual contracts within Framework Agreements are to be awarded must be set out within the terms of the framework during its formation.~~

4 TENDERING VIA RESTRICTED PROCEDURES AND AD-HOC LISTS.

~~(i-) Should the Sponsors may only choose to use ad-hoc list or restricted procedure tendering in accordance with the guidance note at Annex 6 to these Orders. Where this route is chosen, then the requirement shall be advertised in accordance with Part 2 Para 2 of these 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 either a Single European Procurement Document (ESPD) or (only where this is not~~

available) a questionnaires or providing other evidence of competence as set out in the advertisement. Invitations may then be made as detailed in part 7 of the Highland Council Procurement Manual.

(ii) Where a Restricted procedure is used, The ESPD must be made available electronically and freely to all candidates at the time of publishing the Contract notice, along with all other relevant procurement documentation. In selecting the candidates to be invited to tender, the Sponsor must accept the ESPD, consisting of an updated self-declaration as preliminary evidence confirming that the relevant candidate fulfils the conditions necessary for being invited to tender. The sponsor may require candidates and tenderers at any moment during the procedure to submit all or any of the supporting documents where this is necessary to ensure the proper conduct of the procedure.

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5 OPEN TENDERING

(i) (i) Should the Sponsor choose to use an open tendering procedure, then the requirement shall be advertised in accordance with Part 2 Para 2 of these Orders, and expressions of interest invited. All persons responding must then be invited to tender as detailed in the Highland Council Procurement Manual.

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(ii) Where an Open procedure is used, The ESPD must be made available electronically and freely to all potential tenderers at the time of publishing the Contract notice, along with all other relevant procurement documentation. In carrying out appraisal of tenderers, the Sponsor must accept the ESPD, consisting of an updated self-declaration as preliminary evidence confirming that the relevant tenderer fulfils the conditions necessary for being invited to tender. The sponsor may require tenderers at any moment during the procedure to submit all or any of the supporting documents where this is necessary to ensure the proper conduct of the procedure.

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6 USE OF PERFORMANCE DATA IN TENDERING

(i) In selection of tenderers, The Council is entitled to ask for completion certificates or other written evidence of the successful completion of project over the previous three years (services and supplies projects) or five years (works) by candidates or tenderers. Where this cannot be provided, it can be requested from relevant Contracting Authorities. The examples cited can be used as proof of expertise but the documentation requested in itself cannot be scored as confirmed by Statutory Guidance currently being drafted in support of the new Regulations: "This question should not be scored by the buyer, as it is only used to verify any examples provided by the bidder in response to the Experience question."

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(ii) As set out in the same Statutory Guidance, potential tenderers can be excluded where they have "shown significant or persistent deficiencies in the performance of a substantive requirement under a previous contract, which led to early termination of that contract, damages or other comparable sanctions". . This must be based on objective proof only.

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(iii) Where the Contracting Authority has either obligations or concerns to ensure particular standards relevant to the delivery of a contract on the basis of compliance with Health and Safety or other similar Regulations, the Contracting Authority may either set a minimum relevant and proportionate standard which it must declare: failure of any potential tenderer to meet such a standard would automatically result in the disqualification of that candidate. This may be, for instance, a requirement to have had no HSE, SEPA, VOSA, or Traffic Commissioner's (as relevant) actions or judgements against the candidate in the last x years.

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(iv) Where a potential tenderer is excluded from tendering on the basis of any of the above grounds, the length of that exclusion must be proportionate with the seriousness of the reason for exclusion:

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a) In the case of a potential tenderer being excluded on the basis of paragraph 6(ii) above, a proportionate period of time must be allowed for during which an excluded potential tenderer may improve or "self-cleanse" their practices and after which potential tenderers may not be automatically excluded only on that basis and must be allowed to take part in competitive tendering on the basis of new information provided by them.

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b) In the case of a potential tenderer being excluded on the basis of paragraph 6 (iii) above, once the requirements of appropriate regulatory Authorities and any minimum proportionately applied period since the last offence has passed, potential tenderers must be allowed once again to submit tenders.

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(v) Use of performance data or tendering history other than as described above is prohibited

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76 CONTENT OF INVITATIONS TO TENDER

(i.) For each contract the potential tenderers shall be issued a formal invitation to tender, detailing 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
- the return address
- that the Council is not bound to accept the lowest or any tender
- whether or not variant bids will be allowed (must be specified in the contract notice)
- The evaluation criteria to be used in priority order and with any weighting given.
- the draft contract document
- the no collusion certificate or certificate of bona fide tendering
- that the Council is subject to the requirements of the Freedom of Information (Scotland) Act, with non-disclosure items form
- the proposed amendments to contract form

- That the Council will not accept liability for bid costs.
- (ii) Detailed procedures in respect of the recording, handling, and management of tender documents are shown in the Highland Council Procurement Manual.
- (iii) The confidentiality of tenders must be respected, and no details may be disclosed to any tenderer regarding any tender other than their own during the conduct of a tender. 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. All communications with bidders will be passed only through the procurement lead officer. Staff of other organisations shall only be permitted to participate in or act as observers to any part of a procurement project with the express prior authority of the procurement lead officer

78 SUPPLIER SELECTION AND CONTRACT AWARD CRITERIA

~~(i) (i)~~ 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 both Pre-Qualification questionnaires (if a two stage competition is involved) and tenders. Pre-Qualification criteria must be set in such a way as to ascertain and select tenderers who are qualified to tender, ~~and~~ contract award criteria must be set in such a way as to ascertain and award contract(s) in favour of the most appropriate tender(s) put forward in response to the invitation in terms of the most economically advantageous ~~or lowest priced~~ tender. The Council must identify the most economically advantageous tender on the basis of the best price-quality ratio, which must be assessed on the basis of criteria linked to the subject-matter of the public contract in question and must include the price or cost, using a cost-effectiveness approach.

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~~(ii)~~ These criteria must be weighted according to the needs of the contract, and both the criteria and their weightings must be published in the Pre-Qualification/tender documentation. In the case of ~~tenders carried out in accordance with EU tendering procedures, both Regulated and EU Regulated contracts~~ the criteria and weightings must be set out in the ~~OJEU Contract~~ notice or Pre-Qualification/Supplier Appraisal Questionnaire and Invitation to Tender. Supplier Appraisal Criteria must include technical capability and compliance with any relevant health and safety or other relevant regulatory body's requirements, payment of social security liabilities, and taxation requirements. Where these criteria are not met, tenders must be rejected. The reasons for using the agreed evaluation criteria must be ~~recorded~~ provided to unsuccessful candidates to tenderers at the time of their application/tender being rejected.

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~~(ii) (ix)~~ Pre-Qualification questionnaires and tenders must be checked and evaluated only on the basis of the published criteria, and no others, and contract awards must be made solely on the basis of that evaluation. Evaluation matrices are available within part 7 of the procurement manual. Evaluation of Pre-Qualification questionnaires must be based on assessment of the financial, legal, and technical standing of the potential tenderer only, and tender evaluation criteria must be based on assessment of actual proposals for meeting the requirement. The criteria used for Pre-Qualification may not be

used in tender evaluation and the two sets of criteria must be distinct from each other.

With regards to the use of past performance as a contributing factor in supplier selection, it may only be used in determining technical competence in accordance with the Regulations. Technical competence in terms of whether an economic operator meets any minimum standards of technical or professional ability required of economic operators may be assessed by the contracting authority through various means. These include (but are not limited to) a list of contracts executed over the past five years (or other period proportionate with the value and risk involved) along with certificates of satisfactory completion for the most important of those contracts, indicating in each case—

- (i) The value of the consideration received;
- (ii) When and where the work or works were carried out; and
- (iii) Specifying whether they were carried out according to the rules of the trade or profession and properly completed;

Where such certificates are not issued by Authorities, bidders may be asked to provide such a list which would then be verified with the Authority(ies) concerned. Such projects could include ones delivered to the Council, but must not be limited to them exclusively. Where a bidder is a new business, an average of all scores in this criterion may be applied to that bidder's submission.

This system may only be used where no governing body exists which will certify an economic operator's competence to provide goods, works, or services relevant to the requirement. Such valid and current certificates issued by regulating bodies must be accepted as evidence of technical competence.

Unless certification by a regulating body is a requirement of operating in the industry relevant to the requirement, bidders must not be asked to demonstrate competence merely by membership of a given institution. Rather they must be required to prove competence and should they choose to do so through membership of an institute or professional association, must be required to demonstrate objectively why membership denotes competence.

- (iii) Awards of contract may only be made by the ~~Officer 1~~Procurement SRO, or staff delegated by him to do so. Where a contract to be awarded is not the lowest priced or most economically advantageous, the view of the relevant Committee (or time not permitting, the Chair or Vice Chair of the relevant Committee) must be sought prior to award being made by the relevant Director or Procurement Officer and the reasons for making the award must be reported to the next available meeting of the relevant Service Committee.
- (iv) Acceptable standards or pass marks relating to the financial, legal, and technical standing of the potential tenderer and supplier evaluation methodologies to be applied in Supplier Selection/Shortlisting/PQQ/SAQ assessments must be stated within the appropriate questionnaire. Supplier Appraisal Questionnaires used in open tendering should not be scored for the

purpose of ranking and elimination of bidders, but must only be used to determine the suitability or otherwise of each individual bidder.

- (v) Contract Award/Evaluation criteria may include
- Price (Whole Life Cost including running costs)
 - Quality defined in terms of
 - Technical Merit
 - Aesthetic and Functional Characteristics
 - Environmental Characteristics
 - Effectiveness
 - After Sales Service/Support
 - Technical Assistance/Training
 - Delivery Date/Installation
 - Social Issues

(vi) For the avoidance of doubt, experience of the supplier/service provider/contractor, shall not be used as a contract award criterion, but only as a means of determining relevant technical expertise at PQQ/SAQ stage, and where used for that purpose, must not relate solely to experience of working with Highland Council but rather to similar-relevant projects in any referent organisation. Requests for evidence of work on relevant projects must not be so prescriptive as to deter competition, nor must they be disproportionate to the risk under consideration. Instead they must be drafted in a way which will encourage competition and wherever reasonable, open up the opportunity to new businesses. Note that rReferences must not be scored and may only be used for the purposes of verifying other information. It is permissible to ask in a PQQ what proportion of a contract a bidder would intend to sub-contract, but only with a view to asking at tender stage how this would be managed, and the response in the PQQ must not be scored.

- (v) In all cases, these must be relevant and objectively measurable, and all criteria and their associated weightings must be published either with the contract notice or the invitation to tender. Selection criteria applied to SAQ/PQQs must be proportionate to the requirement in hand, i.e. requirements for turnover and number of staff must not be more restrictive than required for safe delivery of the requirement, and increased scoring should not be given for levels of such metrics over and above that required. Where membership of a particular organisation or qualification is required, the principle of mutual recognition must be upheld, and the words "or equivalent" inserted.

89 HANDLING OF TENDERS MANAGEMENT OF TENDERS

- (i) Competitions must be managed so as ensure transparency, proportionality, and equality of treatment both a quotation and formal tender level. In respect of both quotations and tenders, the Council's tender/quotation tracking form must be used in full and where a project is not being managed by the Council's Procurement Services Section, must be returned to that section following completion of the competition.
- (ii) Tenderers will be required to return their tenders via the Council's-national electronic tendering system (Public Contracts Scotland-Tender (PCST)) or the Tender Post Box in the Public Contracts Scotland Portal, or via the PCS Quick

Quote System, or by hard copy only if none of these methods are this is impossible. Tenderers must be advised that open e-mail is not an acceptable method for returning tender documents. Late tenders and late submissions of outline and detailed solutions in Competitive Dialogue procedures may not be considered and if submitted in hard copy must be returned unopened to the tenderer unless tenderers can prove that lateness was caused by factors beyond their control.

(iii) Upon receipt, all tenders must be receipted and logged, and retained unopened and secure until the advertised time of opening. A record of each tender received, showing the name of the tenderer, date received, date of tender, and value of tender must be retained on file. Where prices are submitted as a schedule, the pricing field on the tender recording form may be endorsed "see attached schedule" and a copy of the tender's pricing pages attached to the form and retained with it. This may be retained electronically.

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(iv) Tenders must be opened at the advertised time of opening or as soon as possible thereafter, simultaneously, by at least three persons, one of whom must be entirely independent of the exercise, unless the Council's electronic tendering system is used in which case tenders may be opened by one officer. In such cases however, a tender opening form must still be completed by at least three members of the evaluation team as soon as possible after the closing date for submissions

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(iv) Tenders which include Bills of Quantities 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) that is appropriate for the contract. If no particular code applies, the same opportunity must be afforded to such tenderers on the understanding that none of the individual figures constituting the wrongly calculated cost may be altered.

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910 EVALUATION PROCEDURES AND AWARD OF CONTRACT

- (i) Contracts must be awarded in accordance with the published criteria and no others.
- (ii) Evaluation will be split and Supplier Appraisal/Pre-Qualification Questionnaires and tenders will be separated so that initial evaluation and scoring will be carried out as follows
 - Technical Evaluation: Specifiers/Requirement Owners supported by the procurement lead officer. The technical evaluation panel must consist of at least two staff. The Procurement lead officer will not carry out technical evaluation, but will ensure fair, equal, and justified application of the evaluation criteria
 - Financial Evaluation: The procurement lead officer supported by Finance as appropriate (e.g. for complex evaluations). See Paragraph (iii) of this section of the Orders
 - Contract Evaluation: the procurement lead officer supported by Legal Services as appropriate

- Sustainability Evaluation (where relevant): the procurement lead officer or Specifiers/Requirement Owners supported by Policy as appropriate (e.g. for complex evaluations)

Following initial assessment and individual marking, formal evaluation meetings will be convened by the Procurement lead officer, to allow for finalisation of all markings on the same day, or where this is impossible, on consecutive days. Any discrepant marks will be examined to ascertain whether they arose from an erroneous reading of the tender, and once scorers are content with their scores and any reasons for discrepant scores formally recorded, scores will be fed into the evaluation spreadsheet which will generate overall final scoring.

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

- (iii) Clarification questions and responses at both PQQ and ITT stage will be dealt with by the Procurement lead officer only.
- (iv) Tenders may be rejected immediately where they fail to meet the published criteria or where alternative terms and conditions are put forward which are unacceptable to the Council.
- (v) Following evaluation, notification of intention to award a contract and rejection of tenders on the basis of the evaluation criteria must be issued simultaneously, in respect of contracts tendered via OJEU, and a period of at least ten days must elapse between this date and contract commencement in order to allow unsuccessful tenderers to appeal². This must be explained to the successful contractor in the letter of intention to award. In respect of other contracts, the procurement lead officer may issue the notifications of award and rejection immediately. Information relating to the addressees and the information with which they must be provided is set out at regulation 32 of the Public Contracts (Scotland) Regulations [20122015](#).
- (vi) Prior to the award of any formally tendered contract, the procurement lead officer will produce a tender report based on the template set out within the Council's Procurement Manual to these Orders for consideration by the project sponsor.
- (vii) In respect of tenders with a value requiring advertising via OJEU, a formal tender board meeting shall be convened chaired by the Director of the sponsoring service, and the tender evaluation panel will present the report and their conclusions to the tender board for consideration.
- (vii) Project sponsors may elect to convene tender boards in respect of contracts with lower values, but in all cases the tender report must be accepted by the project sponsor before any indication of the Council's intention to award a contract is published.
- (viii) Letters of award in respect of all contracts within the ~~Officer-2Corporate~~ [Procurement Lead Officer](#)'s remit will be issued from the HC procurement office

and awarded in accordance with the Scheme of Delegation to the ~~Officer~~ **Procurement SRO**. Letters of award in respect of contracts delegated to other Directors will be signed and issued by them and copied to the Highland Council Procurement Office. Letters of award in respect of contract award via quotations exercises or directly without competition will be copied to the Highland Council Procurement office.

10—11 RISK MANAGEMENT PROCEDURES

- (i) In each formal tender, the Sponsor will assess the level of risk they wish to undertake and that which they wish to transfer to a Contractor 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 performance bonds. Risk management tools include the following and further advice can be obtained from Internal Audit and Risk Management
- (ii) 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 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 Council's Insurance manager should be consulted when establishing a list of required insurances.
- (iii) Financial Vetting: In respect of Contracts with a value in excess of the prescribed sum, or in respect of contracts which the Sponsor views as exposing the Council to excessive risk, a formal financial assessment of the potential tenderers' financial standing shall be undertaken prior to shortlisting of tenderers or at Pre-Qualification stage, depending upon the procedure used. In respect of projects with a value in excess of the OJEU tendering threshold, checking of potential contractors' financial standing must be undertaken via Finance at PQQ/SAQ stage and again prior to final commitment and award of Contract, at the discretion of the Project Sponsor. Minimum standards must be defined by the project team and made known to all bidders at commencement of the advertising of the competition.
- (iv) Liquidated Damages: Dependent on the terms of the contract document, where a breach, default or negligent act on the part of the Contractor 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 making any appropriate retentions where such retentions are

agreed as genuine pre-estimates of loss and may not be construed as unenforceable penalty clauses,

- (v) Conditions of Contract: these must ensure clear contract arrangements and should contain clauses that will protect the Council against a variety of risks, and sponsors must ensure that the conditions of contract are sufficient to deal with the risks involved in the project/contract.
- (vi) 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. .
- (vii) Forms of Security: Where a contract pre-tender estimate exceeds the prescribed sum, or, where the Sponsor ascertains that the Council is exposed to sufficient risk, the Sponsor shall consider whether the Council should require security for its due performance. He shall either certify that no such security is necessary or will decide what form of security may be appropriate. Forms include Parent Company Guarantees, Escrow Agreements, or Performance Bonds for the due performance of the contract. Note: "On Demand" Bonds are deemed unfair and should not be used. Where bonds are required, they should be from reputable UK based issuers.
- (viii) Staged Payments and Retentions: In accordance with Financial Regulations, no Supplies, Services or Works should be paid for until they have been formally accepted and any required testing carried out. In the event that stage payments are required for each phase of a project, formal acceptance and any required testing of that phase must be complete prior to payment being made.

124 QUOTATIONS

- (i) It is recognised that Quotation level requirements carry less risk than those requiring formal tender.
- (ii) On that basis, Quotations are dealt with entirely within sponsoring Services and will not involve the Council's Procurement Team
- (iii) For the avoidance of doubt however, the remaining provisions of these Orders will apply except that
 - a) Contract budgets need not be reported to the ~~Officer~~ **2Corporate Procurement Lead Officer**, nor contracts to the Weekly Business meeting, and any necessary reduction of costs will be a matter for the project Sponsor (Part 1 Para 13)
 - b) Quotations shall be managed entirely within Services (Part 2 Para 1)
 - c) Quotations need not be advertised but may be sought via the www.publiccontractsscotland.gov.uk (PCS) portal or from other sources should suitable contractors not be available through that service(Part 2 Para 2)
 - d) Part 2 Paras 3 to 5 shall not apply
 - e) Supplier selection by means of Pre-Qualification ~~of~~ Supplier Appraisal Questionnaires shall not be necessary as the Sponsor is deemed to have

selected Companies to provide quotations who he or she is willing to vouch as providing suitable competence and professional/financial standing (part 2 Para 7)

- f) 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 (Part 2 Para 8)
 - g) Evaluation of quotations will also take place entirely within Services, however technical and financial aspects should be evaluated separately by different staff
- (iv) Detailed instructions relating to the conduct of Quotation exercises relating to services, supplies, and works are at <http://ntintra1/fin/purchasing/contract-docs/quotation-instructions.pdf>

132 CONTRACT DOCUMENTS

- (i) Every contract subject to these Orders shall be in writing in an approved form, and shall specify all the applicable terms and conditions, drawn from the Highland Council standard terms and conditions of contract or other specialist or professional bodies’ 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 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;
- (ii) Where external bodies’ 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. Such conditions must be drawn from the Council’s set of Corporate terms and conditions and the resulting contract shall not open the Council to a level of risk higher than that covered by the Council’s own Corporate Conditions.

14 CONTRACTUAL KEY PERFORMANCE INDICATORS

- (i) Contracts must be managed in order to ensure that contractors/service providers/suppliers execute their contracts correctly and in full. Each contractor/service provider/supplier will therefore be required to complete and return a regular performance report based on the template contained in the Council’s standard contractual document.
- (ii) The specific Key Performance Indicators used must be linked to the specification/statement of requirements, and the frequency of reporting must

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be based on the assessed level of risk involved in the contract. In all cases however, performance levels in respect of the payment of sub-contractors and sub-sub-contractors must be included, and where the delivery of community benefits forms part of the contract, these must be reported at least annually.

153 TERMINATION AND VARIATION OF CONTRACTS

- (i) ~~(i)~~ No contract may be terminated, or materially varied, on behalf of the Council without the prior approval of the Sponsor.
- (ii) No contract may be varied away from its advertised value, scope, requirement or nature without a fresh call for competition being issued unless
 - (a) The proposed variation was specifically allowed for in the initial call for competition or
 - (b) The variation modifies the contract to less than a 50% change in its originally advertised value or scope or
 - (c) a new contractor replaces one to which the contracting authority had initially awarded the contract or framework as a consequence of complete or partial succession into the position of the initial contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that fulfils the criteria for qualitative selection initially established, provided that this does not entail other substantial modifications to the contract or framework and is not aimed at circumventing the application of this Order; and,
 - (d) where all of the following conditions are fulfilled—
 - (i) the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen;
 - (ii) the modification does not alter the overall nature of the contract or framework;
 - (iii) any increase in price does not exceed 50 % of the initial contract value or framework agreement;

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164 ENGAGEMENT OF CONSULTANTS

- (i) Consultancy is subject to the full rigour of 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 ~~Officer~~ Procurement SRO 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 Standing Orders, quotations or formal tenders shall be invited regardless of contract value. No contract shall be awarded to a former employee in receipt of a Council pension without the specific approval of the Chief Executive

- (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 a Service Director of the Council;
 - (b) at any time during the carrying out of the contract, produce to the ~~Officer 4~~ **Procurement SRO** on request, all relevant records or copies maintained in relation to the contract; and
 - (c.) on completion of a contract, transmit appropriate records or copies to the appropriate Service Director.

165 **PROCEDURES FOR THE PROCUREMENT OF RESIDUAL (“PART B”) SERVICES SOCIAL AND OTHER SPECIFIC SERVICES**

(i) — Procurement of services

- ~~(a) — The Council may not enter into a negotiated contractual agreement with a provider in respect of the Services listed as falling into this category at Annex 4 to these Orders without seeking competition unless one of the Exemptions or Exceptions set out within these orders can be demonstrated to apply~~
- ~~(b) — Wherever possible the use of free and open competition shall be taken up.~~
- ~~(c) — Where negotiated contracts are implemented, they shall be continuously monitored and amended as necessary and shall be approved annually by the appropriate Committee.~~
- ~~(d) — No provider shall be contracted unless their:-
 - ~~(i) — Technical ability is certified as satisfactory by the Sponsor;~~
 - ~~(ii) — Financial standing is satisfactory;~~
 - ~~(iii) — Compliance with Health and Safety legislation has been evidenced.~~~~

(ii) — Exemption

- ~~(a) — 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

- ~~(a) — In circumstances relating to “Part B” requirements, the terms of EU Commission Interpretive Communication 2006/C179/02 on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives shall be adhered to:~~

http://www.govopps.co.uk/guidance_db_files/ec_directives/communication_en.pdf

(iv) Procurement of Care and Support Services

(a) These orders have been designed to accord with Scottish Government Guidance on the procurement of these services, however detailed information can be found at

<http://www.scotland.gov.uk/Resource/Doc/325109/0104824.pdf>

(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.

(i) In respect of the Services listed at Schedule 3 of the Public contracts (Scotland) Regulations 2015 and as subsequently amended, requirements with a value equal to or exceeding the level of threshold 3 of Annex 1 of these Orders, shall be opened up to competition in accordance with Regulations 74 to 76 of those Regulations

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(ii) In respect of the Services listed at Schedule 3 of the Public contracts (Scotland) Regulations 2015 and as subsequently amended, requirements with a value equal to or exceeding the level of threshold 4 but less than threshold 4 of Annex 1 of these Orders, shall be opened up to competition in accordance with the requirements of the Procurement Reform (Scotland) Act 2014 and with due regard to the linked Statutory Guidance on the Procurement of Care and Support Services.

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(iii) Whilst the Council recognises that the Statutory Guidance referred to above at 16.2 does not cover the majority of the Services listed at Schedule 3 of the Regulations, it takes the view that it would be illogical to impose a competitive regime in respect of such requirements valued at between thresholds 3 and 4 of Annex 1 of these Orders, than the Regulations apply in respect of requirements with a value equal or exceeding threshold 3

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**ANNEX 1
CONTRACT STANDING ORDERS
PRESCRIBED SUMS:**

<u>1</u>	Exemption limit for contracting using using formal tendering documents (Services and Supplies).	(Below) 50,000
<u>2</u>	Exemption limit for contracting using formal tendering (Works)	<u>2,000,000</u>
<u>3</u>	Exemption Limit for contracting as per the Public Contracts (Scotland) Regulations 2015 (Social and Other Specific Services, as per Schedule 3 of the Regulations)	<u>625,050</u>
<u>4</u>	Exemption Limit for contracting as per the Procurement reform (Scotland) Act 2014 (Social and Other Specific Services, as per Schedule 3 of the Regulations)	<u>50,000</u>
<u>5</u>	For the purposes of the Procurement Reform (Scotland) Act, threshold at which contracts shall be considered "major" (Services, Supplies, and Works)	<u>4,000,000</u>
<u>6</u>	Exemption limit for contract using quotations (services, supplies and works	(Below) 5,000
	Supply (including lease) of goods, services and materials	(Below) 15,000
	Maintenance/works contracts.	
<u>7</u>	Exemption limit for financial vetting	(Below) 500,000
<u>8</u>	Exemption limit for leases to be approved by the Officer <u>Procurement SRO</u>	(Below) 100,000
<u>9</u>	Contract limit for performance bonds	(Over) 500,000
<u>10</u>	EU tendering threshold in respect of goods and services	173,000 <u>164176</u>
<u>11</u>	EU tendering threshold in respect of works	4,104,394 <u>4,348,000</u>
<u>12</u>	Minimum value for employers' liability insurance	5,000,000
<u>13</u>	Minimum value for public liability insurance	5,000,000
<u>14</u>	Minimum value for professional indemnity insurance (professional services and consultancy only)	1,000,000

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Annex 2

CONTRACT STANDING ORDERS
OFFICER 1 PROCUREMENT SRO DELEGATED AUTHORITY TO PARTICIPATE IN PROCUREMENT TASKS

It shall be a condition of exercising the undernoted duties that each Officer entitled to do so shall have this form completed and authorised by the **Officer 1 Procurement SRO** prior to doing so.

OFFICER'S NAME:		TITLE:	
SERVICE:	SECTION:	LOCATION/ AREA:	
Contract and/or any Value Limits to which Authority extends :			
Date Authorisation Limited Until:			
Works (Y/N) : (requires CDM training)		Supplies and All Services (Y/N):	

PLEASE COMPLETE BY TICKING THE RELEVANT BOXES BELOW:

ACTIVITY: QUOTATIONS (UP TO THE PRESCRIBED SUM)	
Administration of Quotation Procedures	<input type="checkbox"/>
Draw up Specifications and Statements of Requirements	<input type="checkbox"/>
Utilise Standard Templates to Create Quotation Documents	<input type="checkbox"/>
Prepare Lists of Prospective Suppliers	<input type="checkbox"/>
Award Contracts at Less Than Formal Tender Value	<input type="checkbox"/>
ACTIVITY: TENDERS (FOR THE PRESCRIBED SUM AND OVER)	
Select Method of Tendering	<input type="checkbox"/>
Draw up Specifications and Statements of Requirements	<input type="checkbox"/>
Formulate Contractual Terms and Conditions	<input type="checkbox"/>
Determine Evaluation Criteria	<input type="checkbox"/>
Draft Contract Notice (Advert)	<input type="checkbox"/>
Draft Contract Specific PQQ Questions	<input type="checkbox"/>
Evaluate PQQ / SAQ Submissions	<input type="checkbox"/>
Issue Invitations to Tender and Contract Documents (Works / Care Contracts Only)	<input type="checkbox"/>
Participate in SAQ / PQQ / Tender Evaluation	<input type="checkbox"/>
Recommend Award of Contract	<input type="checkbox"/>
Award Contracts (Works / Care Contracts Only)	<input type="checkbox"/>
Obtain Committee / Committee Chair Approval	<input type="checkbox"/>

Accepted by: _____ (Authorised Officer) Date: _____
 Authorised By: _____ (Service Line Manager) Date: _____
 Approved by: _____ (for **Officer 1 Procurement SRO**) Date: _____

Annex 3 Procurement Tasks and Responsibilities

No	Task	Who is responsible?	How Long does it Take, and are there any Special requirements?
1	Obtain Business Case approval and draft Specification/Statement of Responsibilities	Service	This depends. Anything from a day or two to a month or two depending on the complexity of the contract
2	Discuss and Agree Specification, Evaluation Criteria, Procedure, staff to be involved, and timescales	Procurement in the case of the Officer <u>4Procurement SRO</u> remit, or the project manager for devolved areas of procurement and Service	This depends. Anything from a day or two to a month or two depending on the complexity of the contract
3	Prepare Contract Documents, Pre-Qualification Questionnaires, Invitation to Tender and Draft Contract	Procurement in the case of the Officer <u>4Procurement SRO</u> remit, or the project manager for devolved areas of procurement	This depends. Anything from a day or two to a month or two depending on the complexity of the contract. Drafts will be returned to the Service, whose staff will have 5 working days to request any alterations and return to Procurement. Procurement will finalise the documents within another 5 working days
4	Advertise Contract	Procurement	This will not take place until all contract documents are ready for issue.
5	Deal with enquiries from Suppliers	Procurement in the case of the Officer <u>4Procurement SRO</u> remit, or the project manager for devolved areas of procurement will receive and answer all queries, with reference to Service for Technical details	This takes place throughout the competition from the time the contract is advertised. It is important that all suppliers are treated equally, hence Service staff should not deal with queries themselves, but pass them onto Procurement who will ensure all suppliers have the same information made available at the same time
6	Receive PQQ submissions for Restricted (2 stage) procedures	Procurement in the case of the Officer <u>4Procurement SRO</u> remit, or the project manager for devolved areas of procurement	No less than 30 days for projects advertised in OJEU, whatever is agreed to be reasonable in terms of the effort required to complete them by bidders for lower value projects.

Annex 3 Procurement Tasks and Responsibilities

7	Obtain any missing or incomplete documents and pass to Service once complete	Procurement in the case of the Officer <u>4Procurement SRO</u> remit, or the project manager for devolved areas of procurement	Often policies or other required documents are missing; Procurement will check the completeness of all submissions and chase any missing documentation as appropriate. A week is generally allowed for this
8	Read and draft score PQQ submissions (Restricted Procedure)	Service and Procurement in the case of the Officer <u>4Procurement SRO</u> remit, or the project manager for devolved areas of procurement	Time take will depend on the number received, hence will vary from tender to tender. It is important Services recognise that this is time consuming and factor resources in accordingly. See 9 below for the detail of who does what.
9	Evaluate PQQ submissions (restricted Procedure)	Procurement in the case of the Officer <u>4Procurement SRO</u> remit, or the project manager for devolved areas of procurement will organise and Chair, Service to provide staff to advise	<p>Generally 2 days are allowed for this, though depending on the number to be evaluated it may need more or less time.</p> <p>Technical Evaluation: Specifiers/Requirement Owners supported by Procurement or Service contracting teams where the Project is covered by delegated procurement. The technical evaluation panel must consist of at least two staff. Procurement staff will not carry out technical evaluation, but will ensure fair, equal, and justified application of the evaluation criteria</p> <p>Financial Evaluation: Procurement staff in respect of the Officer <u>2Corporate Procurement Lead Officer</u>'s remit, or the project manager in respect of other requirements, supported by Finance as appropriate (e.g. for complex evaluations)</p> <p>Sustainability Evaluation (where relevant): Procurement staff in respect of the Officer <u>2Corporate Procurement Lead Officer</u>'s remit, or the project manager in respect of other requirements with reference to Specifiers/Requirement Owners supported by Policy as appropriate (e.g. for complex evaluations)</p>

Annex 3 Procurement Tasks and Responsibilities

10	Invite Tenders	Procurement in the case of the Officer <u>4Procurement SRO</u> remit, or the project manager for devolved areas of procurement	Restricted or two stage Procedure: no less than 40 days for projects advertised in OJEU, whatever is agreed to be reasonable in terms of the effort required to complete them by bidders for lower value projects. Open or one stage Procedure: no less than 45 days for projects advertised in OJEU, whatever is agreed to be reasonable in terms of the effort required to complete them by bidders for lower value projects.
11	Receive and Open Tenders	Procurement in the case of the Officer <u>4Procurement SRO</u> remit, or the project manager for devolved areas of procurement with Service Representation	A Service representative requires being present for the opening unless wholly electronic tenders are received. Should be scheduled to take place as soon as practically possible after closure of the tendering period and should be completed within one day.
12	Obtain any missing or incomplete documents and pass to Service	Procurement in the case of the Officer <u>4Procurement SRO</u> remit, or the project manager for devolved areas of procurement	A week is generally allowed for this. Often policies or other required documents are missing, Procurement will check the completeness of all submissions and chase any missing documentation as appropriate
13	Read tender submissions and score in draft	Service	This is essential so that Service staff are prepared for the Evaluation panel meeting. Time take will depend on the number received, hence will vary from tender to tender. It is important Services recognise that this is time consuming, and factor resources in accordingly.
14	Undertake Financial and Legal checks where required	Procurement in the case of the Officer <u>4Procurement SRO</u> remit, or the project manager for	Any required supplier checks will be co-ordinated by Procurement during both the PQQ and Tender stages. Time taken will depend on the number and level of detail required.

Annex 3 Procurement Tasks and Responsibilities

		devolved areas of procurement	
15	Tender Evaluation Panel Meeting	Procurement in the case of the Officer <u>4Procurement SRO</u> remit, or the project manager for devolved areas of procurement will organise and chair, Service to provide staff to evaluate	<p>Generally 2 days are allowed for this, though depending on the number to be evaluated it may not take as long.</p> <p>Technical Evaluation: Specifiers/Requirement Owners supported by Procurement or Service contracting teams where the Project is covered by delegated procurement. The technical evaluation panel must consist of at least two staff. Procurement staff will not carry out technical evaluation, but will ensure fair, equal, and justified application of the evaluation criteria</p> <p>Financial Evaluation: Procurement staff in respect of the Officer <u>2Corporate Procurement Lead Officer</u>'s remit, or the project manager in respect of other requirements, supported by Finance as appropriate (e.g. for complex evaluations)</p> <p>Contract Evaluation: Procurement staff in respect of the Officer <u>2Corporate Procurement Lead Officer</u>'s remit, or the project manager in respect of other requirements with reference to Legal Services as appropriate</p> <p>Sustainability Evaluation (where relevant): Procurement staff in respect of the Officer <u>2Corporate Procurement Lead Officer</u>'s remit, or the project manager in respect of other requirements with reference to Specifiers/Requirement Owners supported by Policy as appropriate (e.g. for complex evaluations)</p>
16	Write Tender Report	Procurement in the case of the Officer <u>4Procurement SRO</u> remit, or the project manager for devolved areas of procurement,	A week is allowed for this

Annex 3 Procurement Tasks and Responsibilities

		with Service staff checking final draft	
17	Organise Tender Board Meeting	Service	This generally takes place the week after 16 above
18	Award of contract and debriefs	Procurement in the case of the Officer <u>4Procurement SRO</u> remit, or the project manager for devolved areas of procurement with Service input as required	This takes place following 17 above, and for over the OJEU threshold contracts requires a week to draft the letters and debrief information followed by a 10 day standstill period
19	Post award contract management	Service with Procurement support as appropriate in the case of the Officer <u>4Procurement SRO</u> remit, or the project manager for devolved areas of procurement	Throughout the life of the contract

Annex 3 Procurement Tasks and Responsibilities **4 Sustainable Procurement Impact Assessment**

Sustainability Objective	Current Impacts			Justification	Action				
	Magnitude	Probability	Significance		PQQ/SAQ	Specification	Contract Conditions	Evaluation	Development
ENVIRONMENTAL	-	-	-	-	-	-	-	-	-
<u>Fuel</u>	-	-	0	-	-	-	-	-	-
<u>Carbon</u>	-	-	0	-	-	-	-	-	-
<u>Water</u>	-	-	0	-	-	-	-	-	-
<u>Waste</u>	-	-	0	-	-	-	-	-	-
<u>Resource Depletion</u>	-	-	0	-	-	-	-	-	-
<u>Emissions to Air and Water</u>	-	-	0	-	-	-	-	-	-
<u>Hazardous Substances</u>	-	-	0	-	-	-	-	-	-
<u>Biodiversity</u>	-	-	0	-	-	-	-	-	-
SOCIAL	-	-	-	-	-	-	-	-	-
<u>Equality, Diversity & Inclusion</u>	-	-	0	-	-	-	-	-	-
<u>Labour Standards</u>	-	-	0	-	-	-	-	-	-
<u>Health & Safety</u>	-	-	0	-	-	-	-	-	-
<u>SME/ Soc Ent/Vol Org/SE</u>	-	-	0	-	-	-	-	-	-
<u>Employment & Skills Opportunities</u>	-	-	0	-	-	-	-	-	-
<u>Poverty</u>	-	-	0	-	-	-	-	-	-
ECONOMIC	-	-	-	-	-	-	-	-	-
<u>Economic Regeneration</u>	-	-	0	-	-	-	-	-	-
<u>Costs of Prosecutions</u>	-	-	0	-	-	-	-	-	-
<u>Cost Reduction & Performance Improvement</u>	-	-	0	-	-	-	-	-	-
<u>Efficiency</u>	-	-	0	-	-	-	-	-	-
<u>Value for Money</u>	-	-	0	-	-	-	-	-	-
<u>Whole Life Costing</u>	-	-	0	-	-	-	-	-	-
<u>Monetisation of Impacts e.g. Cost of NOx SOx COx</u>	-	-	0	-	-	-	-	-	-

Annex 3 Procurement Tasks and Responsibilities Sustainable Procurement Self-Assessment Framework

	Foundation Level 1	Embed Level 2	Practice Level 3	Enhance Level 4	Lead Level 5
People	Sustainable procurement champion identified. Key procurement staff have received basic training in sustainable procurement principles. Sustainable procurement is included as part of a key employee induction programme.	All procurement staff have received basic training in sustainable procurement principles. Key staff have received advanced training on sustainable procurement principles.	Targeted refresher training on latest sustainable procurement principles. Performance objectives and appraisal include sustainable procurement factors. Simple incentive programme in place.	Sustainable procurement included in competencies and selection criteria. Sustainable procurement is included as part of employee induction programme.	Achievements are publicised and used to attract procurement professionals. Internal and external awards are received for achievements. Focus is on benefits achieved. Good practice shared with other organisations.
Policy, Strategy & Communications	Agree overarching sustainability objectives. Simple sustainable procurement policy in place endorsed by CEO. Communicate to staff and key suppliers.	Review and enhance sustainable procurement policy, in particular consider supplier engagement. Ensure it is part of a wider Sustainable Development strategy. Communicate to staff, suppliers and key stakeholders.	Augment the sustainable procurement policy into a strategy covering risk, methods integration, marketing, supplier engagement, measurement and review. Strategy endorsed by CEO.	Review and enhance the sustainable procurement strategy, in particular recognising the potential of new technologies. Try to link strategy to EMS and include in overall corporate strategy.	Strategy is: reviewed regularly, externally scrutinised and directly linked to organisations' EMS. The Sustainable Procurement strategy recognised by political leaders, is communicated widely. A detailed review is undertaken to determine future priorities and a new strategy is produced beyond this framework.
Competition	Expenditure analysis undertaken and key sustainability impacts identified. Key contracts start to include general sustainability criteria. Contracts awarded on the basis of value-for-money, not lowest price. Procurers adopt Quick Wins.	Detailed expenditure analysis undertaken, key sustainability risks assessed and used for prioritisation. Sustainability is considered at an early stage in the procurement lifecycle of most contracts. Whole-life-cost analysis adopted.	All contracts are assessed for general sustainability risks and management actions identified. Risks managed throughout all stages of the contract lifecycle. Targets to improve sustainability are agreed with key suppliers.	Detailed sustainability risks assessed for high impact contracts. Project/contract sustainability governance is in place. A life-cycle approach to cost/impact assessment is applied.	Life-cycle analysis has been undertaken for key commodity areas. Sustainability Key Performance Indicators agreed with key suppliers. Progress is rewarded or penalised based on performance. Barriers to sustainable procurement have been removed. Best practice shared with other organisations.
Engaging Suppliers Measurements &	Key supplier spend analysis undertaken and high sustainability impact suppliers identified. Key suppliers targeted for engagement and views on procurement policy sought.	Detailed supplier spend analysis undertaken. General programme of supplier engagement initiated, with senior manager involvement.	Targeted supplier engagement programme in place, promoting continual sustainability improvement. Two way communication between procurer and supplier exists with incentives. Supply chains for key spend areas have been mapped.	Key suppliers targeted for intensive development. Sustainability audits and supply chain improvement programmes in place. Achievements are formally recorded. CEO involved in the supplier engagement programme.	Suppliers recognised as essential to delivery of organisations' sustainable procurement strategy. CEO engages with suppliers. Best practice shared with other/peer organisations. Suppliers recognise they must continually improve their sustainability profile to keep the clients business.
Results	Key sustainability impacts of procurement activity have been identified.	Detailed appraisal of the sustainability impacts of the procurement activity has been undertaken. Measures implemented to manage the identified high risk impact areas.	Sustainability measures refined from general departmental measures to include individual procurers and are linked to development objectives.	Measures are integrated into a balanced score card approach reflecting both input and output. Comparison is made with peer organisations. Benefit statements have been produced.	Measures used to drive organisational sustainable development strategy direction. Progress formally benchmarked with peer organisations. Benefits from sustainable procurement are clearly evidenced. Independent audit reports available in the public domain

Annex 3-Procurement Tasks and Responsibilities5 Sustainable Procurement Self-Assessment Framework

How to Decide When to Use A Restricted /Two Stage Competition/European Single Procurment Document (ESPD) (formerly a Pre-Qualification Questionnaire)

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General

1 Is your contract worth at least the current value of the EU Tendering Threshold?

If no, then don't use a Restricted Competition unless there is a clear risk justifying it which you can describe to the tenderers themselves.

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For "over the threshold" projects only:

1 Is there a large market with lots of competition?

If yes, use a Restricted Competition as it will save you time in assessing large numbers of bids and bidders time in developing them.

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2 Is this a specialist market with only a few operators capable of doing what you need, or is the successful bidder easily replaced?

If yes, then don't use a Restricted Competition. You will be able to ask a very small number of pass/fail questions in a single stage assessment which will eliminate unsuitable bidders, and if you publish these in advance with your advert, those bidders are likely to "self-deselect"

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3 Do you want to encourage competition where you think there may be very little?

If yes, don't use a Restricted Competition as the restricted route is seen by businesses as being more complex and onerous than open route. Note that the selection stages of competitions attract more complaints than actual awards of contract!

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4 Can you define your requirement, your contract, and your financing options properly?

If no, you are more likely to be using a more complex procurement route such as a competitive dialogue and in this case a Restricted Competition will be needed.

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5 Do you have concerns that the industry you are working with may be subject to organised crime or have issues with adherence with specific environmental, social, legal or financial requirements?

If yes, you should use a Restricted Competition as this will allow you to deal with these issues before allowing undesirable operators the chance to bid, and the opportunity to test and score based on objective factors, the areas where you have concerns.

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ANNEX 4 DOCUMENT RETENTION SCHEDULE

Note: These records may be electronic or digital rather than hard copy. Note also that these are minimum standards. In some cases, for example in respect of EU funded projects, the funding authority may require longer retention periods, or the contract itself may contain long term liability conditions which will require them to be retained for the period of the liability. Care should be taken in each case to ensure that the correct period is used.

Document	Retention Period
Contract documents (per Limitations Act 1980)	Current + 5 Years
Evaluation reports	"
Hire/Rental Agreements	"
HM Revenue and Customs Import documentation	"
Maintenance/Software licence agreements	"
Purchase Orders	"
Specifications	"
Successful Tenders	"
Successful Quotations	"
Variation Orders	"
Unsuccessful Quotations	Current + 1 Year
Unsuccessful Tenders	"
Pre-Qualification/Supplier Appraisal Questionnaires	"
Tender Envelopes (from award)	1 Month
All procurement documentation relating to projects benefiting from European funding.	10 years from the date of final payment of any related account

ANNEX 5 DEFINITIONS OF SUPPLIES, SERVICES, AND WORKS

For the avoidance of doubt, the scope of works/construction contracts and services contracts is broken down as follows, in line with definitions set out within the Consolidated Procurement Directive

CONSTRUCTION

Construction of new buildings and works, restoring and common repairs including

Site preparation

Demolition and wrecking of buildings; earth moving:

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,

Site preparation for mining including overburden removal and other development and preparation of mineral properties and sites

Building site drainage

Drainage of agricultural or forestry land

Test drilling and boring including test drilling, test boring and core sampling for construction, geophysical, geological or similar purposes

General construction of buildings and civil engineering works including

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

This class excludes:

Erection of complete prefabricated constructions from self-manufactured parts not of concrete,

Erection of roof covering and frames including erection of roofs roof covering waterproofing

Construction of highways, roads, airfields and sports facilities including

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

ANNEX 5 DEFINITIONS OF SUPPLIES, SERVICES, AND WORKS

Painting of markings on road surfaces and car parks

This class excludes:

Preliminary earth moving,

Construction of water projects including

Construction of:

Waterways, harbour and river works, pleasure

Ports (marinas), locks,

Dams and dykes

Dredging

Subsurface work

Other construction work involving special trades including

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

Building installation: Installation of electrical wiring and fittings including

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

Insulation work activities including

Installation in buildings or other construction projects of thermal, sound or vibration insulation

Plumbing including

Installation in buildings or other construction projects of:

Plumbing and sanitary equipment

Gas fittings

Heating, ventilation, refrigeration or air-conditioning

ANNEX 5 DEFINITIONS OF SUPPLIES, SERVICES, AND WORKS

Equipment and ducts
Sprinkler systems

Other building installation including

Installation of illumination and signalling systems for roads, railways, airports and harbours
Installation in buildings or other construction projects of fittings and fixtures

Building completion

Plastering including:

Application in buildings or other construction projects of interior and exterior plaster or stucco, including related lathing materials

Joinery installation including:

Installation of non-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

Floor and wall covering including:

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

Painting and glazing including:

Interior and exterior painting of buildings
Painting of civil engineering structures
Installation of glass, mirrors,

Other building completion including:

Installation of swimming pools
Steam cleaning, sand blasting and similar activities for building exteriors other building completion and finishing work

PRIORITY SERVICES

Maintenance and repair services (excluding the fabric of buildings and other constructions)

Land transport services and courier services, except transport of mail
Air transport services of passengers and freight, except transport of mail
Transport of mail by land and by air
Telecommunications

Financial services:

(a) Insurance services
(b) Banking and investment services (4)
Computer and related services

ANNEX 5 DEFINITIONS OF SUPPLIES, SERVICES, AND WORKS

Research and development services
Accounting, auditing and bookkeeping services
Market research and public opinion polling services
Management consulting services and related services
Architectural services; engineering services and integrated engineering services;
Urban planning and landscape engineering services; related scientific and technical consulting services; technical testing and analysis services
Advertising services
Building-cleaning services and property management services
Publishing and printing services on a fee or contract basis
Sewage and refuse disposal services; sanitation and similar services

Also excluded: services involving the acquisition or rental, by whatever financial procedures, of land, existing buildings, or other immovable property or concerning rights thereon;

Annex II B (“Part B” or RESIDUAL SERVICES)

~~Hotel and restaurant services~~
~~Rail transport~~
~~Water transport services~~
~~Supporting and auxiliary transport services~~
~~Legal services~~
~~Personnel placement and supply services~~
~~Investigation and security services, except armoured car services~~
~~Education and vocational education services~~
~~Health and social services~~
~~Recreational, cultural and sporting services~~
~~Other services~~

SOCIAL AND OTHER SPECIFIC SERVICES

Note that the Common Procurement Vocabulary (CPV) reference numbers have been removed from this list for ease of reading. Where the Council is contemplating relying on Regulations 74 to 76 of the Public Contracts (Scotland) Regulations 2015, Schedule 3 must be referred to directly and use will be limited to the specific CPV codes listed in that Schedule. Note also that this list is exclusive: no service excluded from the list below can be covered by either the miscellaneous services category or the “other services” category previously available

Health, social and related services:

1. (Supply services of domestic help personnel)
2. Supply services of nursing personnel)
3. Supply services of medical personnel)
4. (Private households with employed persons)
5. (Manpower services for households, Agency staff services for households, Clerical staff services for households, Temporary staff for households,
6. Home-help services and Domestic services)

Administrative social, educational, healthcare and cultural services

1. (Administration, defence and social security services),

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ANNEX 5 DEFINITIONS OF SUPPLIES, SERVICES, AND WORKS

2. Education and training services
3. (Exhibition, fair and congress
4. organisation services
5. (Seminar organisation services),
6. (Event services),
7. (Cultural event organisation services
8. (Festival organisation services),
9. (Party organisation services),
10. (Fashion shows organisation services),
11. (Fair and exhibition organisation services)

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Compulsory social security services

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Benefit services

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Other community, social and personal services including services furnished by trade unions, political organisations, youth associations and other membership organisation services

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Religious services

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Hotel and restaurant services

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1. Catering services for private households,
2. Meals on wheels services,
3. Meal delivery service)
4. Catering services,
5. Catering services for transport enterprises,
6. Catering services for other enterprises or other institutions,
7. School catering services
8. Canteen services,
9. Canteen and other restricted-clientele cafeteria services
10. Canteen management services,
11. School-meal services

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Legal services, to the extent not excluded by regulation 11(1)(e)

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Other administrative services and government services

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Provision of services to the community

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Prison related services, public security and rescue services to the extent not excluded by regulation 11(1)(k)

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Investigation and security services

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1. 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) (Graphology services),
2. Waste analysis services)

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ANNEX 5 DEFINITIONS OF SUPPLIES, SERVICES, AND WORKS

International services

1. Services provided by extraterritorial organisations and bodies) and Services specific to international organisations and bodies

Postal services

2. Postal and telecommunications services
3. Post and courier services
4. Postal services
5. Postal services related to newspapers and periodicals
6. Postal services related to letters
7. Postal services related to parcels
8. Post office counter services
9. Mailbox rental
10. Post-restante services
11. Internal office mail and messenger services

Miscellaneous services

1. Tyre-remoulding services
2. Blacksmith services

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ANNEX 6 INFORMATION REQUIRED FOR TUPE PURPOSES

Information on staff to be provided by the Highland Council or incumbent service provider to enable tender pricing

Information Item	Employee 1	Employee 2	Employee 3	Employee 4 etc.
Date of Birth				
Age				
Continuous Service Start Date With Current Employer				
required periods of notice				
gender				
pensionable service in years/days as at DDMMYY				
employers contributions				
employees contributions				
job title				
salary				
hourly rate				
employment status				
contracted hours				
annual holiday entitlement				
holiday pay entitlement				
sick pay entitlement				
overtime allowance in last 12 months				

Annex 7 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 section 9*)

2. **Project Sponsor** (*State the name of the project sponsor who has approved the business case and budget, Contract Standing Orders 3ii, 4i*)

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. **Estimated Value / Budget Approval / Contract Duration**

- a. *State the estimated value of the tender over the full contract period; and*
b. *confirmation that the budget has been approved by the appropriate budget holder; and*
c. *The duration of the contract to be tendered, including any proposed extensions. This should usually be between two to four years with potential for one or two year's extension.*
(*Contract Standing Orders section 7*)

5. **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*
(*Contract Standing Orders Applicable Standard section 11*)

6. **Approved Business Case** (*Enclose a copy of the approved business case for this tender as required in The Highland Council Contract Standing Orders 4i. Also, sustainability and Equal Opportunities Impact Assessment as per Contract Standing Orders section 10 if applicable*)

Annex 7 Contract Request Form

7. Evaluation Team Members *(As per Contract Standing Orders 11ii, 7 and 9. Evaluators must have suitable technical skills and be suitably knowledgeable or qualified in relation to the subject matter of the tender. All evaluators must also have procurement authorisation)*

8. Intended Date of Commencement of Full Operations *(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.)*

9. Any Period required for Setting up Operations

10. TUPE Issues *(State whether or not members of council staff or staff of the existing contractor may be affected by a transfer to a new service provider)*

11. Service Contact Name and telephone number

Tender Request form Received/Approved by

Name _____ **Date** _____

Procurement Office Use

Allocated Procurement Team:-

- Corporate
- Facilities Management
- Technical

THE HIGHLAND COUNCIL

CONTRACT STANDING ORDERS

**April 2016
V1.0**

CONTRACT STANDING ORDERS

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INTRODUCTION

1. EXECUTIVE SUMMARY

The purpose of these Orders is to implement within the Council the requirements of legislation and the fundamental principles of the Treaty of Rome applicable to the award of contracts.

These are

Freedom of movement of goods
Freedom of establishment
Freedom to provide services

With their derived principles being:

Equal treatment,
Non-discrimination,
Mutual recognition,
Proportionality
Transparency

They recognise the rights of anyone interested in providing goods, works or services to or on behalf of the Council to be treated in accordance with these principles at all levels of expenditure, which are applicable at all levels of financial commitment.

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.

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 all establishments including schools, care homes, and operations to which responsibility for awarding contracts is delegated or outsourced.

Responsibility and accountability for all procurement within the Council lies with the Procurement SRO, who shall be a member of the Council's Executive Leadership Team and who has authority to determine all matters relating to procurement subject to compliance with legal requirements. The Procurement SRO may delegate areas of procurement to other officers of the Council.

Requirements for services, supplies and works with a value of £5,000 or more, shall be subject to requests for competitive quotations, unless they are covered by one or more of the exceptions or exemptions noted below. Requirements for services, or supplies with a value of £50,000 or more, and requirement for works with a value of £2,000,000 shall be subject to formal tendering procedures unless they are covered by one or more of the exceptions or exemptions noted below. These Prescribed Sums are set out at Annex 1 to these Orders. Quotations are dealt with entirely by authorised staff within sponsoring Services and will not involve the Council's Procurement Team. Formal tenders for Services and Supplies are managed by the Council's Procurement Team who will agree a project plan with the Project Sponsor in

each case. It will be the responsibility of all participants to adhere to agreed timescales and it will not be the responsibility of one part of the team to make up time should another part of the team not do so.

Staff authorised to manage quotations must take part in the Council's level 1 Procurement training course. Staff authorised to carry out tasks relating to formal tenders as part of their function must take part in level 1 and level 2 training.

Advertising will take place as follows as a minimum:

- Requirements with a value in excess of £50,000 but less than £164,176 (Supplies and Services) or £4,104,394 (Works): Council's own Website via the Public Procurement Portal: www.publiccontractsscotland.gov.uk
- Requirements with a value in excess of £164,176 (Supplies and Services) or £4,104,394 (Works): Official Journal of the European Union (first) and the Council's own Website, both via the Public Procurement Portal

The single point of publication for these notices will be the Corporate Procurement Lead Officer who shall be a member of the Council's Senior Leadership Team and a Head of Service. This means that all Contracts subject to formal tendering procedures must be advertised via the Corporate Procurement Lead Officer, and that where quotation level requirements are advertised on a voluntary basis, the same requirement applies.

No transactions or commitments made or costs incurred may be split to avoid the necessity of appropriate calls for competition.

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

Tendering for goods, services, and works within the Council shall be carried out by electronic means unless specific agreement has been made with the Procurement SRO that they shall be dealt with manually.

Procurement tasks shall be undertaken only by empowered staff, each of whom must have specific delegation allocated to them using the form at Annex 2 of these Orders.

Procurement via collaborative contracts such as those awarded by Procurement Scotland, Scotland Excel or the Office of Government Commerce (OGC) may be undertaken without further competition depending on the particular procedure recommended by the Agency concerned at the discretion of the Procurement SRO. In all cases periodic 'value for money' checks involving other alternatives should be carried out as such agencies do not guarantee or always offer best value. The Council has committed itself to membership of Scotland Excel for the lifetime of the revision of these Orders, 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 are added, or the rules of Best Value require otherwise. These must be tested prior to commitment, but once committed; this commitment will apply through the life of the contract concerned. In such cases the Corporate Procurement Lead Officer shall provide justification for non-participation to the Procurement SRO and the Council's representative Members of the Scotland Excel Joint Committee, and following their approval, to the Director of Scotland Excel.

Breaches of these Orders shall be passed to Internal Audit for investigation as potential disciplinary matters, and shall be summarised and reported quarterly to the Senior Management Team



PROJECT 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	
Existing Contract	
Business Case	
Budgetary Provision	
Estimated Value Over 4 Years	
Governance	
Officers Have Appropriate Qualification, Skills, Experience And Training	
Procurement Authorisation Forms	
Project Has Relevant Procurement, Technical, Financial And Legal Input/Advice	
Independent Decision Point Reviews For Innovative/Irregular Projects	
Evaluation Panel Members	
Tender Board 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	
Specification	
Equality Impact Assessment Screening	
Socio-Economic Sustainability	
Environmental Sustainability	
Commercial	
Risks And Contingency Plans	
Selection And ITT Evaluation Criteria	
Contract Terms And Conditions	
Financial Vetting	
Pricing And Price Control	
Contract Management, MI And KPIs	
Ordering and Invoicing	

CONTEXT

1.0 Commencement

- 1.1 These Orders (“the Contract Standing Orders”) shall apply and have effect from 18th April 2016 and shall be subject to annual review.

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 those staff whose job role involves carrying out any of the tasks set out in the Procurement Authorisation Form at Annex 2, and who have been properly trained and qualified to do so. Such staff must have a Procurement Authorisation form approved by their line manager and the Procurement SRO as part of their Staff induction.

“Building construction works contracts” means Works contracts, as defined by the Public Contracts (Scotland) Regulations 2015, included as Annex 8, but excluding infrastructure construction contracts

“Contract” means an agreement between that 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 Direct Labour or Direct Service Organisations, cannot therefore be contractual in nature, but must be subject to the principles of Best Value

“Contracting Authority” means The Highland Council: this is the Contracting Authority in all Contracts into which the Council or any part of the Council enters.

“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.

“Corporate Procurement Lead Officer” in the context of the advertising, arrangement and management of competitive tendering and quotation exercises and award of contracts includes any Principal Contracts Officer or Contracts Officer within the Council’s Procurement Operation

“EU Regulated Procurement” means any procurement project covered by the Public Contracts (Scotland) Regulations 2015, the Public Concessions (Scotland) Regulations 2016, or the Public Utilities (Scotland) Regulations 2016.

“European Single Procurement Document (ESPD)” means the selection tool which replaces the Selection Questionnaire, as set out in Scottish Procurement Policy note 1/2016. It is based on the concept of self-certification and is aimed at reducing bureaucracy and making public contracts more accessible to SMEs.

“Infrastructure construction works contracts” means Works contracts, as defined by the Public Contracts (Scotland) Regulations 2015, included at Annex 8, but excludes contracts which relate to the construction, maintenance or modification of buildings insulated in whole or in part.

“Most economically Advantageous Tender” means that giving maximum value for money over the lifetime of the contract for the goods, services or works delivered thereby, taking into account all material matters, visible or invisible, including but not being limited to quality and price. This is the only acceptable means of deciding upon which tenderer should be awarded a contract in terms of the public procurement regulations, and for the avoidance of doubt no contract may be awarded on the basis of lowest price alone. It must be noted that in assessing the most economically advantageous tender, the costs taken into account must be material to the purposes of the contract. In other words, the cost must bear upon a significant measurable characteristic of the requirement being procured

“Partners” are defined as any organisations with which the Council works to deliver its objectives, with a formal agreement of roles (contract, funding agreement, Service Level 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.

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

“Procurement Officer” means a member of the Strategic Procurement Division or other Official empowered to award contracts on behalf of the Council by the Procurement SRO in accordance with Annex 2 of these orders.

“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. That officer must not be drawn from the technical project team or be the project sponsor themselves. 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. That officer must be a member the Chartered Institute of Purchasing and Supply (MCIPS) or have and maintain sufficient experience, skills, and training as to be able to acquire membership upon application to the Chartered Institute and must evidence this to the satisfaction of the Corporate Procurement Lead Officer. Alternatively they may be supervised by such a person but in such cases final decisions relating to the conduct of such work shall be a matter for that supervisor.

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

“Procurement SRO”: for the purposes of these Orders includes the Corporate Procurement Lead Officer acting on his behalf. The Procurement SRO shall be a member of the Council’s Executive Leadership Team and who has authority to determine all matters relating to procurement subject to compliance with legal requirements. The Procurement SRO may delegate areas of procurement to other officers of the Council.

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

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

“Regulated Procurement” means any procurement project covered by the terms of the Procurement Reform (Scotland) Act 2014, the Procurement (Scotland) Regulations 2016, and their associated Statutory Guidances

“Services” ‘means any of the activities set out at annex 6

“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 Procurement SRO to undertake specific tasks relating to contracts. .

“Service Provider” “Supplier” and “Contractor” shall have the meanings ascribed to them as set out in the Public Contracts (Scotland) Regulations 2015 <http://www.legislation.gov.uk/ssi/2015/446/contents/made>

“Sponsor” or “Sponsoring Director” means the owner of and budget holder for the requirement as distinct from the Procurement Officer carrying out commercial action on their behalf. The Project Sponsor/Project 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

“Works” A ‘work’ 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 also set out at Annex 6

3.0 Extent and Introduction

These Contract Standing Orders are made under section 81 of the 1973 Act. They shall apply to the entering into by the Council, or on its behalf, of contracts for the supply, or lease, of Supplies, Services, and Works, as the case may be, unless classified as being exemptions or exceptions from these Contract Standing Orders. For the avoidance of doubt, these orders do apply to PFI/PPP, Joint Venture, and similar contracts.

They are written in accordance with the terms of the Scottish Government Procurement Policy Handbook, and Scottish Procurement Policy Notes, and shall be implemented by application of the standards and procedures set out in the Highland Council Procurement Manual as published at the time of the requirement arising.

It is not the purpose of these Orders to duplicate all the provisions of the Directive, the various Regulations, the Act, or the Statutory Guidances related thereto. The Council recognises that other competitive routes than those set out in these Orders may from time to time be available to the Council such as the Competitive Dialogue, Competitive Procedure with Negotiation, and Innovation Partnership. These will be rare, and where they occur, the generality of these orders shall apply, however reference will be made in each case to the specific Regulation(s) applicable to the project in determining the particular governance thereof.

Policy responsibility for the governance of commercial business shall rest with the Procurement SRO.

Subject to the requirements of the Council's 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 Procurement SRO 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.

- a) agreement of specifications with user Services
- b) construction of contract terms and conditions
- c) development of sourcing and contracting strategies
- d) agreement of procurement budget heads
- e) selection of tenderers
- f) opening and evaluation of tenders
- g) award of , framework arrangements, and dynamic purchasing systems including participation in collaborative contracts awarded by others
- h) Appointment of consultants

Note that in these Orders, actions and responsibilities assigned to the Procurement SRO will be executed on his behalf by the Corporate Procurement Lead Officer, who for the avoidance of doubt shall also be the Proper Officer for the purpose of awarding and signing procurement contracts, variations, extensions, novation orders and terminations and on behalf of the Council. This authority may be delegated, but only by means of a properly executed procurement authorisation form (see Annex 2)

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 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 Reform (Scotland) Act 2014, The Public Contracts (Scotland) Act 2015, the Public Contracts & Public Utilities (Scotland) Regulations 2015, The Procurement (Scotland) Regulations 2016, The Climate Change (Scotland) Act 2009, the Equality Act 2010, The Freedom of Information (Scotland) Act 2002, The Data Protection Act 1998, and The Bribery Act 2011.

5.0 Breach of Contract Standing Orders

Any breach or non-compliance with these Contract Standing Orders must on discovery be reported immediately to the Head of Audit and Risk Management acting on behalf of the Procurement SRO. The Head of Audit and Risk Management may undertake any necessary investigation and report the findings to the relevant Service Director and Chief Executive, as appropriate and disciplinary proceedings may result from such reports.

6.0 Reporting to Committees

In circumstances where reports have to be provided to a Committee this should be the relevant Service Committee as specified. This will only be required where an exception to these Orders is required, where tendered costs or service levels have to be managed down or amended to meet affordability levels, or where a sponsor proposes an award to a contractor other than that providing the lowest cost or most economically advantageous tender.

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://www.highland.gov.uk/downloads/file/3920/code_of_conduct_conflict_of_interest_form 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 on 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 on the procurement exercise related thereto

8.0 Consultation and Publication of Annual Procurement Strategies

In order to be meaningful and effective, engagement must be proportionate, manageable, and forward looking enough to allow time to incorporate findings into individual requirement contracting/Procurement Strategies.

By January of each year, the Council will therefore develop an annual corporate Procurement Strategy which shall contain the following

- How it intends to ensure that its regulated procurements will contribute to the carrying out of its functions and the achievement of its purposes
- How it intends to ensure that its regulated procurements will deliver value for money
- How it intends to ensure that its regulated procurements will be carried out in compliance with its duties under section 8 of the Procurement Reform (Scotland) Act 201:

- Treat relevant economic operators equally and without discrimination
 - Act in a transparent and proportionate manner
 - Sustainable procurement duty
- The Council's general policy on
 - i.the use of community benefits requirements
 - ii.consulting and engaging with those affected by its procurements
 - iii.the living wage being paid to persons involved in producing, providing or constructing the subject matter of regulated procurements
 - iv.the promotion of compliance with Health and Safety legislation
 - v.the procurement of fairly and ethically traded goods and services.
 - How it intends its approach to regulated procurements involving the provision of food to (i) improve the health, wellbeing and education of communities in the authorities area, and (ii) promote the highest standards of animal welfare
 - How it authority intends to ensure that, so far as reasonably practicable, the following payments are made no later than 30 days after the invoice (or similar claim) relating to the payment is presented
 - i.Payments due by the authority to a contractor
 - ii.Payments due by a contractor to a sub-contractor
 - iii.Payments due by a sub-contractor to a sub-contractor

The Council recognises its obligation to consult stakeholders including businesses, third sector organisations, communities and citizens who may have an interest in the Council's contracting for services. In support of this it will, in developing the above annual strategy and operational plans, seek the views of, inter-alia, the Federation of Small Businesses, the relevant Chambers of Commerce, and the Highland Third Sector Interface. It will also use appropriate means of communication such as the Citizens' and Communities Panels with regard to specific questions relating to which non-statutory services they may wish to be involved in or assume responsibility for

The Council will publish a list of all its contracts with a value of £50,000 or more which it intends to open up to competition in the year covered by the Strategy, plus the subsequent financial year. .

At the tactical operational project level, each relevant project over the next-but-one financial year should be assessed in terms of the sustainable procurement impact assessment and then relevant stakeholders which may include Communities Panels given the opportunity to suggest

1. Whether they would wish to take over delivery of some or all aspects of the service concerned, and if not
2. What community benefits they would wish to see delivered
3. What lotting strategy they would wish to see delivered based on actual industry/community group capacity

Question 1 could only be applied to non-statutory services

This publication and engagement scheme will also apply to non-statutory services which the Council wishes to cease to provide or which it wishes to open up to delivery by community groups on a grant funded or other non-contractual basis

9.0 Ceasing and Transfer of Services, and Alternative Funding

Where transfer of an operation involves no transfer of funding then the Council is free to identify any suitable body it wishes to take on the transferring service.

Where funding will be available but will be below the level at which the Principles of “Following the Public Pound” and the formal threshold for tendering for Services (£50K for the life of the agreement), the Council needs to make its best endeavours to **identify** potential sources in the areas in which the Services are needed. Where more than one exists, all must be given the opportunity to submit proposals for delivering the service. The Council may, with justification, limit its search to community groups, charitable organisations, or other “not for profit” bodies

Where funding will be available but will hit or exceed the level at which the Principles of “Following the Public Pound” and the formal threshold for tendering for Services (£50K for the life of the agreement), the Council needs to **publicise** the opportunity for the benefit of potential sources in the areas in which the Services are needed. Where more than one exists, all must be given the opportunity to submit proposals for delivering the service. The Council may, with published justification, limit its search to community groups, charitable organisations, or other “not for profit” bodies

Any awards made or agreements entered into following this must be limited, in terms of remedies for failure to deliver the service, to nothing more than clawing back funds where no attempt had been made to deliver the service, or where the funds had been used for a different purpose.

Whilst this applies to opportunities proactively made available, it does not necessarily affect the general basis on which organisations apply to the Council for grant funding for activities that they rather than the Council identifies. The Council does not oblige itself therefore to open up to other potential providers, any direct request for grant funding that any potential applicant identifies themselves and wishes to pursue. The Council will take cognisance on a case by case basis however of the potential to be affected by State Aid regulations

Where there is a requirement to publicise such opportunities, this will be done on the same basis and in the same place as the Council’s commercial opportunities. This is because many of these transferring opportunities may arise as part of a changing approach to an existing commercial approach.

CONTRACT STANDING ORDERS – PART 1 APPLICABLE STANDARDS

1 EXEMPTIONS FROM STANDING ORDERS

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

- (i) All contracts with a total estimated cost not exceeding the Prescribed Sums for quotations set out at Annex 1;
- (ii) Any contract of employment;
- (iii) Any contract excluded under the terms of the Public Contract (Scotland) Regulations 2015 or the Procurement (Scotland) Regulations 2016;
- (iv) Any contract relating to the disposal or lease of land or other capital asset.
- (v) Any arrangement in which the Council shall fund an external operator to provide services on a non-contractual basis (Grant funded activities as defined in the guidance produced by the Head of Policy). In such circumstances the principles of the Following the Public Pound Code shall apply.

2 EXCEPTIONS FROM STANDING ORDERS

Nothing in these Applicable Standards 3 to 16 and Operational Procedures 1 to 15 shall apply:

- (i)
 - (a) Where the Sponsor has satisfied the Procurement SRO 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 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 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. Note that where an item is described by a reference to a trade name, it must be followed by the phrase “or equivalent; or
- (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 competition,
- 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* an open competition 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) The demand is for the execution of work or the supply of goods, materials or services, certified by the relevant Service 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. Each case must be reported to the Procurement SRO and next meeting of the Relevant Service Committee; or
- (iv) 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 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; or
- (v) The contract is for the supply of goods acquired on the Commodities Market.

All instances of such exceptions arising shall be reported to the Relevant Service Committee.

3 BUDGETARY PROVISION AND PRECAUTIONARY TENDERING

- (i) The Council's Financial Regulations make reference to the requirement to control capital and revenue expenditure, and therefore the terms of those Regulations must be implemented in the context of activity covered by these Orders.
- (ii) The Sponsor of any procurement project must certify that sufficient funds exist prior to the commencement of any contracting action. If the 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 Procurement 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.

4 BUSINESS CASES

- (i) Before committing funds to or commencing a project or competition for any commercial arrangement in excess of the threshold for tendering via OJEU (whether advertised there or not) the Sponsor must ensure that a business case has been established. This must examine all possibilities for meeting the requirement. It must also show that no other contract which could be used already exists within the Council. In each project a Contract Request Form must be completed by the Sponsor before procurement action may commence

5 DISPENSING WITH COMPETITION

- (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 Amsterdam and Rome. Decisions to proceed with a non-competitive purchase above the prescribed sum for the obtaining of quotations, and the justifications for taking them must be recorded, and must only be made within the rules set out in Orders 1 and 2 above.
- (iii) Procurement *via* collaborative contracts such as those awarded by Procurement Scotland, Scotland Excel or the Government Procurement Service may be undertaken without further competition depending on the particular procedure recommended by the Agency concerned at the discretion of the Procurement SRO or Corporate Procurement Lead Officer acting on his behalf. In all cases periodic 'value for money' checks involving other alternatives should be carried out as such agencies do not guarantee or always offer best value. The Council has committed itself to membership of Scotland Excel for the lifetime of the revision of these Orders, 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 Corporate Procurement Lead Officer shall provide justification for non-participation to the Procurement SRO and the Council's Members of the Scotland Excel Joint Committee, and following their approval, to the Director of Scotland Excel.
- (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. In any case of doubt the matter will be referred to the Corporate Procurement Lead Officer who will determine the correct application of the principle Aggregation to be applied to the requirements in question.

6 PERIODIC SUPPLIES FRAMEWORK AGREEMENTS, AND DYNAMIC PURCHASING SYSTEMS

- (i) The period of such arrangements shall not exceed four years without specific justification which must be published when the requirement is advertised.
- (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 within a framework agreement which allows for direct award of call-off contracts without further competition, formal tendering shall be carried out only once prior to the commencement of such arrangement.
- (ii) Where Frameworks specify the establishment of contracts via competition between operators in the Framework, this shall be carried out prior to the commencement of each individual call-off.
- (iii) Once awarded, a framework shall remain closed to the admission of new contractors/suppliers/service providers for the lifetime of the Framework
- (iv) Calls for competition must always be made under the terms of a Dynamic Purchasing System where a call-off contract is required.
- (v) Participation in a Dynamic Purchasing system must remain open to the participation of new entrants during its lifetime, subject to their submission of a compliant tender.

7 AGGREGATION OF DEMAND, LOTTING OF CONTRACTS PARTNERSHIP WORKING, AND SHARED SERVICE CONTRACTS

- (i) Where 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, and no part of the Council shall operate independently of any other. In order to establish the value of a contract where no specific value is known, spending on the requirement over a period of four years shall be used as the basis of valuation
- (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 for the provision of the Supplies, Services, or Works concerned where such requirements arise in those Services. New Contracts shall be reported to the Weekly Business Meeting for circulation throughout Services and shall be published on the Council Intranet.
- (vi) Using the stakeholder consultation method set out at Paragraph 8 of Part 1 of these orders, and with reference to
 - a) the Sustainable Procurement Impact Assessment at Annex 6 to these Orders, and

- b) the Council's statutory duty to consider the ways in which its contract may be used to enhance the economic wellbeing of the area it serves.

The Council shall in respect of each contract, consider how it may be broken down into lots, and where this cannot be done, a justification for not doing so shall appear in the Contract Notice.

- (iii) Partnership arrangements are a valid means of achieving best value through procurement. The establishment of partnerships must be subject to formal competition and must protect the interests of the Council, by the use of formally agreed and written terms and conditions.
- (v) Consideration should always be given to the possibility of joining with other organisations to tender jointly for similar requirements, and research undertaken prior to commencement as to the feasibility of this approach.
- (vi) In accordance with Scottish Government Local Authority Procurement Circular 1/2007, 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.

8 FREEDOM OF INFORMATION

- (i) The Council shall treat its commercial and contractual relationships as confidential to the extent allowed by the Freedom of Information (Scotland) Act.
- (ii) To allow for the operation of the requirements of the Freedom of Information (Scotland) Act, the EU Procurement Directives, and the Public Contracts (Scotland) Regulations, a Contracts Register shall be published on the Council's public website. Each Service Director shall ensure that the Procurement SRO is provided with sufficient information to enable this to be kept up to date.

9 SPECIFICATIONS

- (i) Formal Specifications or statements of requirement shall be developed either by the project Sponsor in conjunction with the Procurement Lead Officer 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. Specifications shall not be accepted as final until the Procurement Lead Officer is satisfied as to their commercial viability.
- (ii) The Project Sponsor must ensure that technical specifications for regulated and EU-regulated procurements give equal access to all interested parties and do not create unjustified obstacles to the opening up of public procurement to competition or encouraging innovation. Sponsors shall specify requirements for award criterion in generic technical or performance terms. Technical specifications must not refer to materials or goods of a specific make or source

or to a particular process or trademark, patent, type, origin or means of production which has the effect of favouring or eliminating particular suppliers.

- (iii) Where specifiers produce specifications referring to the Sponsor shall ensure that the Procurement Lead Officer or Project manager returns that specification to the specifier for correction in accordance with this Order.
- (iv) This requirement may only be dispensed with in exceptional circumstances, where the subject of the contract cannot otherwise be described by reference to technical specifications which are sufficiently precise and intelligible to all suppliers. However, where this exception applies, any such references in the technical specification must be accompanied by the words “or equivalent”. Where a Sponsor does make such a reference, a written justification shall be provided as part of the contract notice or invitation to participate or quote, including an explanation as to why it was not possible to describe the product by reference to technical or performance characteristics.
- (v) Where technical specifications make reference to technical standards they shall be set out in accordance with the following hierarchy:
 - (i) British standards transposing European standards
 - (ii) European technical assessments
 - (iii) Common technical specifications
 - (iv) International standards
 - (v) Other technical reference systems established by the European standardisation bodies.
- (vi) In the absence of the above technical standards, public bodies may refer to the following:
 - (i) British standards
 - (ii) British technical approvals
 - (iii) British technical specifications relating to the design, calculation and execution of the work or works and use of the project.

In this instance each reference to a technical standard must be accompanied by the words “or equivalent”.

Sponsors may include references in specifications to mandatory technical rules which go beyond the relevant EU standards, provided these are non-discriminatory, without prejudice to the relevant European standards or specifications and otherwise compatible with EU community law.

10 SUSTAINABILITY, COMMUNITY BENEFITS AND WORKFORCE MATTERS

- (i) To the full extent permitted under legislation at the time of undertaking the Contract, and in accordance with the requirements of the Directive, the Regulations, and the , 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 2009.

- (ii) In recognition of the Sustainable Procurement duty, the Council shall in respect of all Regulated and EU Regulated procurement projects, assess the requirement in terms of its potential to derive economic, social, and economic benefits generally; and specifically in terms of the area it serves. Sponsors shall use the Sustainable Procurement Impact Assessment set out at Annex 4 to these Orders to make this determination. They shall then build into the project appropriate measures covering selection and award, contractual terms, specifications, and key performance indicators aimed at appropriate achievement of community benefits and sustainable procurement impacts
- (iii) The Council pays due regard to the Scottish Government Statutory Guidances in respect of the Sustainable Procurement duty and the achievement of Community Benefits. In general terms however it takes the view that allowing businesses and other groups to determine the best means of achieving these, and using their commercial acumen and innovative skills to compete them, is of greater benefit than specifying exactly what is to be achieved as part of the specification.
- (iv) The Council pays due regard to the Scottish Government Statutory Guidance on addressing fair work practices, including the living wage, in Procurement, <http://www.gov.scot/Topics/Government/Procurement/policy/SPPNSSPANS/policy-notes/2015/SPPN42015><http://www.gov.scot/Topics/Government/Procurement/policy/SPPNSSPANS/policy-notes/2015/SPPN42015>. The Council will implement this to the full extent permitted by statute in all significant contracts for the provision of Services and Works.
- (iv) 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. Where a contractor is carrying out a public function on behalf of the Council, the legal liability for equality duties in relation to that function remains with the Council which contracts out the function.

Prior to commencement therefore, all contracts with a value requiring tendering via OJEU for the provision of works and/or services shall be subject as a minimum to initial screening for an Equality Impact Assessment (EQIA), and the full production of an EQIA if the initial screening shows that to be appropriate. .

Further information on equality legislation, including guidance on the public sector equality duties and how they apply to procurement, can be found on the Equality and Human Rights Commission (EHRC) website: <http://www.equalityhumanrights.com>, and advice should also be sought from the Council's Equal opportunities Officer.

- (v) Records of the name and location of each business submitting and expression of interest, and those submitting selection questionnaires and/or formal tenders must have the type of business recorded on the same tracking form (e.g. micro-SME, SME, Social Enterprise, Voluntary Organisation, Women Owned Business, LLP, BME, PLC, UK Multinational, foreign Multinational) in

order to accurately monitor engagement with each sector to demonstrate pursuit of Single Outcome Agreement requirements

11 PROCUREMENT, PROJECT, AND CONTRACT RISK, AND PROJECT MANAGEMENT

- (i) These orders are written in order to ensure that officials operate in a way that conforms to the requirements of relevant legislation. In this way, the Council and individuals are protected from legal risk as far as can be reasonably foreseen. Individuals who break the rules set out within these orders not only expose the Council to unnecessary risk, but are also themselves exposed in cases where their actions constitute a criminal act.
- (ii) As such, Projects may only be initiated by officers who have the appropriate qualification, skills, experience and training. In addition, it must be ensured that projects have relevant professional procurement, technical, financial, and legal input/ advice. Only officers who have had Procurement Authorisation Forms approved and have attended and approved procurement training course may carry out the tasks listed on the procurement authorisation form.
- (iii) Formal Reviews will be introduced for innovative/ irregular projects, or those with a value in excess of £3M over the life of the contract. These will occur at key decision points in each project's lifecycle and will be subject to governance by the major projects board or equivalent. These reviews will be documented, with decisions recorded, and will be undertaken by a team appointed by the major projects board, independent of the project and will thereby give assurance that the project is being delivered effectively and in a controlled manner
- (iv) Where a project involves the establishment of an arm's length organisation by the Council, the Project Sponsor must provide the Chief Executive with assurance that all appropriate legal arrangements have been made and full documentary evidence has been provided
- (v) In respect of a project with a value in excess of the OJEU tendering threshold (whether advertised there or not) the additional advice available in Treasury or OGC Guidance such as that relating to Option Appraisals, Joint Ventures, VFM and Risk Management and Project Models not covered in these orders, the Procurement Manual, Scottish Procurement Directorate documentation or Scottish Futures Trust documentation, must be used as appropriate in Council Projects. Specialists in Capital finance and procurement will be able to provide advice on these matters.

12 SIGNIFICANT TRADING OPERATIONS

- (i) The Council has implemented a number of Significant Trading Operations. In order to qualify as such, these operations need to operate in a competitive environment, and this includes bidding for Council business as a long term in-house provider, where such activity is carried out. Where such bids are successful, these operations are entitled to the same status as an external contractor for the exclusive provision of services covered by the related tendering exercise over the lifetime of the advertised contract.

- (ii) The requirements of these Contract Standing Orders apply in full to Trading Operations' commercial activities, and Services must ensure that where supplies, works or services with a value in excess of the prescribed sum are required, sufficient time is built into the project programme to allow for tendering on their behalf by the Trading Operation. Requirements for the provision of supplies, works, or services may be awarded to "in-house" providers without competition as long as the requirements of Best Value can be met and demonstrated.

13 REPORTING OF CONTRACTS AND CONTRACT EXPENDITURE

- (i) Prior to the commencement of any formal tender exercise, the Sponsor must establish a budget forecast for the requirement and shall certify that sufficient funds exist to cover this in accordance with paragraph 4 of these Orders. The Sponsor's written commitment to this level of funding shall be passed to the Corporate Procurement Lead Officer prior to commencement, and this shall be recorded and kept on file within his office.
- (ii) On award of any formally tendered contract, the subject of the contract, successful tenderer, budget figure and actual forecast expenditure shall be reported by the Procurement SRO to the Weekly Business Meeting and published in the Council's Contracts Register on its website.
- (vii) Where the forecast expenditure figure based on received tenders exceeds the budgetary figure, the Sponsor must produce a plan for either managing the cost down to the level of budgetary provision or for making additional funds available, and a summary of this plan must also be reported to the Procurement SRO.
- (viii) Within three months of the end of each financial year the Council shall publish a report on its website showing, in respect of each contract awarded at both quotation and formal tender level
 - a) The title of each contract
 - b) The value of the contract
 - c) The type of competition used (quotation, open, restricted, competitive dialogue etc.)
 - d) The number of expressions of interest received and the locations from which they were sent
 - e) The number of selection questionnaires received (if appropriate), and the location and type of each candidate (SME, Social Enterprise, Charity, Community Group, Multinational Company etc.)
 - f) The number of tenders invited and the locations and types of candidates invited
 - g) The number of tenders or quotations received, and the location and type of each tenderer (SME, Social Enterprise, Charity, Community Group, Multinational Company etc.)
 - h) The identity/ies of the successful tenderer(s), and their location and type
 - i) Any community/environmental benefits identified for the contract and a note of what has been delivered

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) Further guidance should be sought from [the](#) Property Section within Development and Infrastructure Service

15 TRANSFER OF UNDERTAKING (PROTECTION OF EMPLOYMENT) REGULATIONS

- (i) Where the Council seeks to outsource an activity currently provided in house or where the Council is re-tendering a service already provided by an external provider, TUPE will affect any staff who have the essential part of their on-going duties delivering the service immediately before the project commences (staff working intensively on a service for a very short period of time who are not normally engaged in that service will not be affected) and will be entitled to transfer to the new employer under TUPE.
- (ii) Prior to the commencement of any project involving contracting for services, TUPE, guidance must be sought from Personnel, Procurement, Payroll/Pensions, and Legal Services, and appropriate time must be built into the project plan for all necessary staff and Union consultations.
- (iii) The Council is obliged to provide the expected numbers of staff affected to prospective tenderers at commencement of the exercise. At the point of invitations to tender, the information set out in Annex 8 must be provided to prospective tenderers in respect of each staff member affected.
- (iv) This must be clarified by a statement to the effect that final numbers will be provided at least two weeks before contract commencement, but that no liability for the accuracy of this information will be taken prior to that point, and that numbers are subject to variation.
- (v) Any such contracts must contain a provision obliging the incoming service provider to keep records of staff assigned to the service and to provide that information on demand in order to enable re-tendering at the end of the contract.
- (vi) Where the Council is re-tendering a service, it will be necessary firstly to ask the existing service provider whether or not they believe that TUPE applies. If they believe that TUPE will apply, then they must make the information set out at Annex 8 available to potential new providers of the same service on exactly the same basis as the Council did on first outsourcing the activity. They must provide the information to the council and the Council will issue it with selection/ITT documentation, however the Council will take no liability for this information and must advise bidders that they must verify this information with the existing service provider, who will be legally and contractually bound to reply. Tender documentation must contain a term indemnifying the Council for liability in respect of the reliability of this information.

- (v) Once contracts are let, either on first outsourcing or at re-tender, the Council has a legal duty to ensure that the incoming service provider acts in accordance with their TUPE obligations.

16 CONTRACTS REGISTER AND TRANSPARENCY

- (i) The Council maintains a contracts register on its website, along with a list of all contracts to be advertised in the following two years which shall be updated quarterly.
- (ii) All contracts with a value of £50000 or more must be published in the contacts register via the Council's Procurement Team
- (iii) The Council shall maintain a single, centrally managed internal contracts register for the purposes of business planning which shall be managed by the Council's Procurement Team. It shall also maintain a web-based contracts register via the www.publiccontractsscotland.gov.uk portal to meet its statutory requirements of transparency

Each Service Director shall provide a plan to the Procurement SRO no later than 1st November each year showing their plans for contracting activity in the following two calendar years, in order to allow for the publication of the Council's Annual Procurement Strategy and Plan by 31st December of each year.

PART 2 OPERATIONAL PROCEDURES

1 AUTHORITY TO INVITE TENDERS AND PARTICPATE IN PROCUREMENT WORK

- (i) Formal tendering exercises shall be managed by the Corporate Procurement Lead Officer, following receipt of budgetary certification and business case, unless authority to do so is delegated by the Procurement SRO to other Directors, either in the scheme of delegation, or specifically through authorisation of a Delegated Authority Form (Annex 2). A Contract request form shall be completed by the Sponsor prior to commencement in each case <http://ntintra1/fin/purchasing/rules.htm>
- (ii) Tenders in respect of goods or equipment to be supplied by way of a lease arrangement may only be invited following approval from the Procurement SRO.
- (vi) Tenders with a value in excess of the prescribed sums must be dealt with in accordance with the EU Commission Open, Restricted, Negotiated with Competition, Innovation Partnership, or Competitive Dialogue methods. Timescales for these can be found in the Public Contracts (Scotland) Regulations 2015: http://www.legislation.gov.uk/ssi/2015/446/pdfs/ssi_20150446_en.pdf
- (iv) For the avoidance of doubt no member of Council staff may undertake any of the work covered by these Orders, including but not being limited to the award of contract at any value unless formally authorised to do so by the Procurement SRO, and subsequently trained through the Employee Development Unit.
- (v) Projects may only be initiated by officers who have the appropriate qualification, skills, experience and training. Procurement tasks may only be undertaken by staff who have attended the Council's training courses. In addition, it must be ensured that projects have relevant and appropriate professional technical, financial and legal input/ advice. Each project shall have a procurement lead officer who shall be responsible for the management and integrity of each procurement project. 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.

2 ADVERTISING OF TENDERS

- (i) In order to meet the requirements of the European Commission for adequate publicity of opportunities, advertising will take place as follows as a minimum:
 - a. Requirements with a value in excess of £50,000 but less than £164,176 (Supplies and Services) or in excess of £2,000,000 but less than £4,104,394 (Works): Council's own Website via the Public Procurement Portal: www.publiccontractsscotland.gov.uk
 - b. Requirements with a value equal to or in excess of £164,176 (Supplies and Services) or £4,104,3940 (Works): Official Journal of the

European Union (first) and the Council's own Website, both via the Public Procurement Portal

The single point of publication for these notices will be the Corporate Procurement Lead Officer. This means that all Contracts subject to formal tendering procedures must be advertised via the Corporate Procurement Lead Officer, and that where quotation level requirements are advertised on a voluntary basis, the same requirement applies

3 TENDERING VIA RESTRICTED PROCEDURES AND AD-HOC LISTS.

- (i) Sponsors may only choose to use ad-hoc list or restricted procedure tendering in accordance with the guidance note at Annex 6 to these Orders. Where this route is chosen, then the requirement shall be advertised in accordance with Part 2 Para 2 of these 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 either a Single European Procurement Document (ESPD) or (only where this is not available) a questionnaire or providing other evidence of competence as set out in the advertisement. Invitations may then be made as detailed in part 7 of the Highland Council Procurement Manual.
- (ii) Where a Restricted procedure is used, The ESPD must be made available electronically and freely to all candidates at the time of publishing the Contract notice, along with all other relevant procurement documentation. In selecting the candidates to be invited to tender, the Sponsor must accept the ESPD, consisting of an updated self-declaration as preliminary evidence confirming that the relevant candidate fulfils the conditions necessary for being invited to tender. The sponsor may require candidates and tenderers at any moment during the procedure to submit all or any of the supporting documents where this is necessary to ensure the proper conduct of the procedure.

4 OPEN TENDERING

- (i) Should the Sponsor choose to use an open tendering procedure, then the requirement shall be advertised in accordance with Part 2 Para 2 of these Orders, and expressions of interest invited. All persons responding must then be invited to tender as detailed in the Highland Council Procurement Manual.
- (ii) Where an Open procedure is used, The ESPD must be made available electronically and freely to all potential tenderers at the time of publishing the Contract notice, along with all other relevant procurement documentation. In carrying out appraisal of tenderers, the Sponsor must accept the ESPD, consisting of an updated self-declaration as preliminary evidence confirming that the relevant tenderer fulfils the conditions necessary for being invited to tender. The sponsor may require tenderers at any moment during the procedure to submit all or any of the supporting documents where this is necessary to ensure the proper conduct of the procedure.

5 USE OF PERFORMANCE DATA IN TENDERING

- (i) In selection of tenderers, The Council is entitled to ask for completion certificates or other written evidence of the successful completion of project over the previous three years (services and supplies projects) or five years (works) by candidates or tenderers. Where this cannot be provided, it can be requested from relevant Contracting Authorities. The examples cited can be used as proof of expertise but the documentation requested in itself cannot be scored as confirmed by Statutory Guidance currently being drafted in support of the new Regulations: *“This question should not be scored by the buyer, as it is only used to verify any examples provided by the bidder in response to the Experience question.”*
- (ii) As set out in the same Statutory Guidance, potential tenderers can be excluded where they have “shown significant or persistent deficiencies in the performance of a substantive requirement under a previous contract, **which led to early termination of that contract, damages or other comparable sanctions**”. . This must be based on objective proof only.
- (iii) Where the Contracting Authority has either obligations or concerns to ensure particular standards relevant to the delivery of a contract on the basis of compliance with Health and Safety or other similar Regulations, the Contracting Authority may either set a minimum relevant and proportionate standard which it must declare: failure of any potential tenderer to meet such a standard would automatically result in the disqualification of that candidate. This may be, for instance, a requirement to have had no HSE, SEPA, VOSA, or Traffic Commissioner’s (as relevant) actions or judgements against the candidate in the last x years.
- (iv) Where a potential tenderer is excluded from tendering on the basis of any of the above grounds, the length of that exclusion must be proportionate with the seriousness of the reason for exclusion:
 - a) In the case of a potential tenderer being excluded on the basis of paragraph 6(ii) above, a proportionate period of time must be allowed for during which an excluded potential tenderer may improve or “self-cleanse” their practices and after which potential tenderers may not be automatically excluded only on that basis and must be allowed to take part in competitive tendering on the basis of new information provided by them.
 - b) In the case of a potential tenderer being excluded on the basis of paragraph 6 (iii) above, once the requirements of appropriate regulatory Authorities and any minimum proportionately applied period since the last offence has passed, potential tenderers must be allowed once again to submit tenders.
- (v) Use of performance data or tendering history other than as described above is prohibited

6 CONTENT OF INVITATIONS TO TENDER

- (i.) For each contract the potential tenderers shall be issued a formal invitation to tender, detailing 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
 - the return address
 - that the Council is not bound to accept the lowest or any tender
 - whether or not variant bids will be allowed (must be specified in the contract notice)
 - The evaluation criteria to be used in priority order and with any weighting given.
 - the draft contract document
 - the no collusion certificate or certificate of bona fide tendering
 - that the Council is subject to the requirements of the Freedom of Information (Scotland) Act, with non-disclosure items form
 - the proposed amendments to contract form
 - That the Council will not accept liability for bid costs.
- (ii) Detailed procedures in respect of the recording, handling, and management of tender documents are shown in the Highland Council Procurement Manual.
- (iii) The confidentiality of tenders must be respected, and no details may be disclosed to any tenderer regarding any tender other than their own during the conduct of a tender. 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. All communications with bidders will be passed only through the procurement lead officer. Staff of other organisations shall only be permitted to participate in or act as observers to any part of a procurement project with the express prior authority of the procurement lead officer

7 SUPPLIER SELECTION AND CONTRACT AWARD CRITERIA

- (i) 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 both Selection questionnaires (if a two stage competition is involved) and tenders. Selection criteria must be set in such a way as to ascertain and select tenderers who are qualified to tender. Contract award criteria must be set in such a way as to ascertain and award contract(s) in favour of the most appropriate tender(s) put forward in response to the invitation in terms of the most economically advantageous tender. The Council must identify the most economically advantageous tender on the basis of the best price-quality ratio, which must be assessed on the basis of criteria linked to the subject-matter of the public contract in question and must include the price or cost, using a cost effectiveness approach.
- (ii) These criteria must be weighted according to the needs of the contract, and both the criteria and their weightings must be published in the Selection/tender documentation. In the case of both Regulated and EU Regulated contracts

the criteria and weightings must be set out in the Contract notice or Selection and Invitation to Tender. Supplier selection Criteria must include technical capability and compliance with any relevant health and safety or other relevant regulatory body's requirements, payment of social security liabilities, and taxation requirements. Where these criteria are not met, tenders must be rejected. The reasons for using the agreed evaluation criteria must be provided to unsuccessful candidates to tenderers at the time of their application/tender being rejected.

- (ix) Selection questionnaires and tenders must be checked and evaluated only on the basis of the published criteria, and no others, and contract awards must be made solely on the basis of that evaluation. Evaluation matrices are available within part 7 of the procurement manual. Evaluation of Selection questionnaires must be based on assessment of the financial, legal, and technical standing of the potential tenderer only, and tender evaluation criteria must be based on assessment of actual proposals for meeting the requirement. The criteria used for Selection may not be used in tender evaluation and the two sets of criteria must be distinct from each other.

With regards to the use of past performance as a contributing factor in supplier selection, it may only be used in determining technical competence in accordance with the Regulations. Technical competence in terms of whether an economic operator meets any minimum standards of technical or professional ability required of economic operators may be assessed by the contracting authority through various means. These include (but are not limited to) a list of contracts executed over the past five years (or other period proportionate with the value and risk involved) along with certificates of satisfactory completion for the most important of those contracts, indicating in each case—

- (i) The value of the consideration received;
- (ii) When and where the work or works were carried out; and
- (iii) Specifying whether they were carried out according to the rules of the trade or profession and properly completed;

Where such certificates are not issued by Authorities, bidders may be asked to provide such a list which would then be verified with the Authority(ies) concerned. Such projects could include ones delivered to the Council, but must not be limited to them exclusively. Where a bidder is a new business, an average of all scores in this criterion may be applied to that bidder's submission.

This system may only be used where no governing body exists which will certify an economic operator's competence to provide goods, works, or services relevant to the requirement. Such valid and current certificates issued by regulating bodies must be accepted as evidence of technical competence.

Unless certification by a regulating body is a requirement of operating in the industry relevant to the requirement, bidders must not be asked to demonstrate competence merely by membership of a given institution. Rather they must be required to prove competence and should they choose to do so

through membership of an institute or professional association, must be required to demonstrate objectively why membership denotes competence.

- (iii) Awards of contract may only be made by the Procurement SRO, or staff delegated by him to do so. Where a contract to be awarded is not the lowest priced or most economically advantageous, the view of the relevant Committee (or time not permitting, the Chair or Vice Chair of the relevant Committee) must be sought prior to award being made by the relevant Director or Procurement Officer and the reasons for making the award must be reported to the next available meeting of the relevant Service Committee.
- (iv) Acceptable standards or pass marks relating to the financial, legal, and technical standing of the potential tenderer and supplier evaluation methodologies to be applied in Supplier Selection/Shortlisting/SELECTION assessments must be stated within the appropriate questionnaire. Selection Questionnaires used in open tendering should not be scored for the purpose of ranking and elimination of bidders, but must only be used to determine the suitability or otherwise of each individual bidder.
- (v) Contract Award/Evaluation criteria may include
- Price (Whole Life Cost including running costs)
 - Quality defined in terms of
 - Technical Merit
 - Aesthetic and Functional Characteristics
 - Environmental Characteristics
 - Effectiveness
 - After Sales Service/Support
 - Technical Assistance/Training
 - Delivery Date/Installation
 - Social Issues
- (vi) For the avoidance of doubt, experience of the supplier/service provider/contractor, shall not be used as a contract award criterion, but only as a means of determining relevant technical expertise at SELECTION stage, and where used for that purpose, must not relate solely to experience of working with Highland Council but rather to relevant projects in any referent organisation. Requests for evidence of work on relevant projects must not be so prescriptive as to deter competition, nor must they be disproportionate to the risk under consideration. Instead they must be drafted in a way which will encourage competition and wherever reasonable, open up the opportunity to new businesses. References must not be scored and may only be used for the purposes of verifying other information. It is permissible to ask in at selection stage what proportion of a contract a bidder would intend to sub-contract, but only with a view to asking at tender stage how this would be managed, and the response in the questionnaire must not be scored.
- (v) In all cases, these must be relevant and objectively measurable, and all criteria and their associated weightings must be published either with the contract notice or the invitation to tender. Selection criteria applied to selection must be proportionate to the requirement in hand, i.e. requirements for turnover and number of staff must not be more restrictive than required for safe delivery of the requirement, and increased scoring should not be given for

levels of such metrics over and above that required. Where membership of a particular organisation or qualification is required, the principle of mutual recognition must be upheld, and the words “or equivalent” inserted.

8 MANAGEMENT OF TENDERS

- (i) Competitions must be managed so as ensure transparency, proportionality, and equality of treatment both a quotation and formal tender level. In respect of both quotations and tenders, the Council’s tender/quotation tracking form must be used in full and where a project is not being managed by the Council’s Procurement Services Section, must be returned to that section following completion of the competition.
- (ii) Tenderers will be required to return their tenders via the national electronic tendering system (Public Contracts Scotland-Tender (PCST)) or the Tender Post Box in the Public Contracts Scotland Portal, or via the PCS Quick Quote System, or by hard copy only if none of these methods are possible. Tenderers must be advised that open e-mail is not an acceptable method for returning tender documents. Late tenders and late submissions of outline and detailed solutions in Competitive Dialogue procedures may not be considered and if submitted in hard copy must be returned unopened to the tenderer unless tenderers can prove that lateness was caused by factors beyond their control.
- (iii) Upon receipt, all tenders must be receipted and logged, and retained unopened and secure until the advertised time of opening. A record of each tender received, showing the name of the tenderer, date received, date of tender, and value of tender must be retained on file. Where prices are submitted as a schedule, the pricing field on the tender recording form may be endorsed “see attached schedule” and a copy of the tender’s pricing pages attached to the form and retained with it. This may be retained electronically.
- (iv) Tenders must be opened at the advertised time of opening or as soon as possible thereafter, simultaneously, by at least three persons, one of whom must be entirely independent of the exercise, unless the Council’s electronic tendering system is used in which case tenders may be opened by one officer. In such cases however, a tender opening form must still be completed by at least three members of the evaluation team as soon as possible after the closing date for submissions
- (v) Tenders which include Bills of Quantities 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) that is appropriate for the contract. If no particular code applies, the same opportunity must be afforded to such tenderers on the understanding that none of the individual figures constituting the wrongly calculated cost may be altered.

9 EVALUATION PROCEDURES AND AWARD OF CONTRACT

- (i) Contracts must be awarded in accordance with the published criteria and no others.

- (ii) Evaluation will be split and Selection Questionnaires and tenders will be separated so that initial evaluation and scoring will be carried out as follows
 - a) Technical Evaluation: Specifiers/Requirement Owners supported by the procurement lead officer. The technical evaluation panel must consist of at least two staff. The Procurement lead officer will not carry out technical evaluation, but will ensure fair, equal, and justified application of the evaluation criteria
 - b) Financial Evaluation: The procurement lead officer supported by Finance as appropriate (e.g. for complex evaluations). See Paragraph (iii) of this section of the Orders
 - c) Contract Evaluation: the procurement lead officer supported by Legal Services as appropriate
 - d) Sustainability Evaluation (where relevant): the procurement lead officer or Specifiers/Requirement Owners supported by Policy as appropriate (e.g. for complex evaluations)

Following initial assessment and individual marking, formal evaluation meetings will be convened by the Procurement lead officer, to allow for finalisation of all markings on the same day, or where this is impossible, on consecutive days. Any discrepant marks will be examined to ascertain whether they arose from an erroneous reading of the tender, and once scorers are content with their scores and any reasons for discrepant scores formally recorded, scores will be fed into the evaluation spreadsheet which will generate overall final scoring.

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

- (iii) Clarification questions and responses at both selection and ITT stage will be dealt with by the Procurement lead officer only.
- (iv) Tenders may be rejected immediately where they fail to meet the published criteria or where alternative terms and conditions are put forward which are unacceptable to the Council.
- (v) Following evaluation, notification of intention to award a contract and rejection of tenders on the basis of the evaluation criteria must be issued simultaneously, in respect of contracts tendered via OJEU, and a period of at least ten days must elapse between this date and contract commencement in order to allow unsuccessful tenderers to appeal². This must be explained to the successful contractor in the letter of intention to award. In respect of other contracts, the procurement lead officer may issue the notifications of award and rejection immediately. Information relating to the addressees and the information with which they must be provided is set out at regulation 32 of the Public Contracts (Scotland) Regulations 2015.
- (vi) Prior to the award of any formally tendered contract, the procurement lead officer will produce a tender report based on the template set out within the Council's Procurement Manual to these Orders for consideration by the project sponsor.

- (vii) In respect of tenders with a value requiring advertising via OJEU, a formal tender board meeting shall be convened chaired by the Director of the sponsoring service, and the tender evaluation panel will present the report and their conclusions to the tender board for consideration.
- (vii) Project sponsors may elect to convene tender boards in respect of contracts with lower values, but in all cases the tender report must be accepted by the project sponsor before any indication of the Council's intention to award a contract is published.
- (viii) Letters of award in respect of all contracts within the Corporate Procurement Lead Officer's remit will be issued from the HC procurement office and awarded in accordance with the Scheme of Delegation to the Procurement SRO. Letters of award in respect of contracts delegated to other Directors will be signed and issued by them and copied to the Highland Council Procurement Office. Letters of award in respect of contract award via quotations exercises or directly without competition will be copied to the Highland Council Procurement office.

10 RISK MANAGEMENT PROCEDURES

- (i) In each formal tender, the Sponsor will assess the level of risk they wish to undertake and that which they wish to transfer to a Contractor 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 performance bonds. Risk management tools include the following and further advice can be obtained from Internal Audit and Risk Management
- (ii) 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 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 Council's Insurance manager should be consulted when establishing a list of required insurances.
- (iii) Financial Vetting: In respect of Contracts with a value in excess of the prescribed sum, or in respect of contracts which the Sponsor views as exposing the Council to excessive risk, a formal financial assessment of the potential tenderers' financial standing shall be undertaken prior to shortlisting of tenderers or at Selection stage, depending upon the procedure used. In

respect of projects with a value in excess of the OJEU tendering threshold, checking of potential contractors' financial standing must be undertaken via Finance at Selection stage and again prior to final commitment and award of Contract, at the discretion of the Project Sponsor. Minimum standards must be defined by the project team and made known to all bidders at commencement of the advertising of the competition.

- (iv) Liquidated Damages: Dependent on the terms of the contract document, where a breach, default or negligent act on the part of the Contractor 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 making any appropriate retentions where such retentions are agreed as genuine pre-estimates of loss and may not be construed as unenforceable penalty clauses,
- (v) Conditions of Contract: these must ensure clear contract arrangements and should contain clauses that will protect the Council against a variety of risks, and sponsors must ensure that the conditions of contract are sufficient to deal with the risks involved in the project/contract.
- (vi) 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. .
- (vii) Forms of Security: Where a contract pre-tender estimate exceeds the prescribed sum, or, where the Sponsor ascertains that the Council is exposed to sufficient risk, the Sponsor shall consider whether the Council should require security for its due performance. He shall either certify that no such security is necessary or will decide what form of security may be appropriate. Forms include Parent Company Guarantees, Escrow Agreements, or Performance Bonds for the due performance of the contract. Note: "On Demand" Bonds are deemed unfair and should not be used. Where bonds are required, they should be from reputable UK based issuers.
- (viii) Staged Payments and Retentions: In accordance with Financial Regulations, no Supplies, Services or Works should be paid for until they have been formally accepted and any required testing carried out. In the event that stage payments are required for each phase of a project, formal acceptance and any required testing of that phase must be complete prior to payment being made.

11 QUOTATIONS

- (i) It is recognised that Quotation level requirements carry less risk than those requiring formal tender.
- (ii) On that basis, Quotations are dealt with entirely within sponsoring Services and will not involve the Council's Procurement Team
- (iii) For the avoidance of doubt however, the remaining provisions of these Orders will apply except that

- a) Contract budgets need not be reported to the Corporate Procurement Lead Officer, nor contracts to the Weekly Business meeting, and any necessary reduction of costs will be a matter for the project Sponsor (Part 1 Para 13)
 - b) Quotations shall be managed entirely within Services (Part 2 Para 1)
 - c) Quotations need not be advertised but may be sought via the www.publiccontractsscotland.gov.uk (PCS) portal or from other sources should suitable contractors not be available through that service (Part 2 Para 2)
 - d) Part 2 Paras 3 to 5 shall not apply
 - e) Supplier selection by means of Selection Questionnaires shall not be necessary as the Sponsor is deemed to have selected Companies to provide quotations who he or she is willing to vouch as providing suitable competence and professional/financial standing (part 2 Para 7)
 - f) 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 (Part 2 Para 8)
 - g) Evaluation of quotations will also take place entirely within Services, however technical and financial aspects should be evaluated separately by different staff
- (iv) Detailed instructions relating to the conduct of Quotation exercises relating to services, supplies, and works are at <http://ntintra1/fin/purchasing/contract-docs/quotation-instructions.pdf>

12 CONTRACT DOCUMENTS

- (i) Every contract subject to these Orders shall be in writing in an approved form, and shall specify all the applicable terms and conditions, drawn from the Highland Council standard terms and conditions of contract or other specialist or professional bodies’ 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 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;
- (ii) Where external bodies’ 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. Such conditions must be drawn from the Council’s set of Corporate terms and conditions and the resulting contract shall not open the Council to a level of risk higher than that covered by the Council’s own Corporate Conditions.

13 CONTRACTUAL KEY PERFORMANCE INDICATORS

- (i) Contracts must be managed in order to ensure that contractors/service providers/suppliers execute their contracts correctly and in full. Each contractor/service provider/supplier will therefore be required to complete and return a regular performance report based on the template contained in the Council's standard contractual document.
- (ii) The specific Key Performance Indicators used must be linked to the specification/statement of requirements, and the frequency of reporting must be based on the assessed level of risk involved in the contract. In all cases however, performance levels in respect of the payment of sub-contractors and sub-sub-contractors must be included, and where the delivery of community benefits forms part of the contract, these must be reported at least annually.

14 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) No contract may be varied away from its advertised value, scope, requirement or nature without a fresh call for competition being issued unless
 - (a) The proposed variation was specifically allowed for in the initial call for competition or
 - (b) The variation modifies the contract to less than a 50% change in its originally advertised value or scope or
 - (c) a new contractor replaces one to which the contracting authority had initially awarded the contract or framework as a consequence of complete or partial succession into the position of the initial contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that fulfils the criteria for qualitative selection initially established, provided that this does not entail other substantial modifications to the contract or framework and is not aimed at circumventing the application of this Order; and
 - (d) where all of the following conditions are fulfilled—
 - (i) the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen;
 - (ii) the modification does not alter the overall nature of the contract or framework;
 - (iii) any increase in price does not exceed 50 % of the initial contract value or framework agreement;

15 ENGAGEMENT OF CONSULTANTS

- (i) Consultancy is subject to the full rigour of 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 Procurement SRO 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 Standing Orders, quotations or formal tenders shall be invited regardless of contract value. No contract shall be awarded to a former employee in receipt of a Council pension without the specific approval of the Chief Executive

- (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 a Service Director of the Council;
 - (b) at any time during the carrying out of the contract, produce to the Procurement SRO on request, all relevant records or copies maintained in relation to the contract; and
 - (c.) on completion of a contract, transmit appropriate records or copies to the appropriate Service Director.

16 PROCEDURES FOR THE PROCUREMENT OF SOCIAL AND OTHER SPECIFIC SERVICES

- (i) In respect of the Services listed at Schedule 3 of the Public contracts (Scotland) Regulations 2015 and as subsequently amended, requirements with a value equal to or exceeding the level of threshold 3 of Annex 1 of these Orders, shall be opened up to competition in accordance with Regulations 74 to 76 of those Regulations
- (ii) In respect of the Services listed at Schedule 3 of the Public contracts (Scotland) Regulations 2015 and as subsequently amended, requirements with a value equal to or exceeding the level of threshold 4 but less than threshold 4 of Annex 1 of these Orders, shall be opened up to competition in accordance with the requirements of the Procurement Reform (Scotland) Act 2014 and with due regard to the linked Statutory Guidance on the Procurement of Care and Support Services.
- (iii) Whilst the Council recognises that the Statutory Guidance referred to above at 16.2 does not cover the majority of the Services listed at Schedule 3 of the Regulations, it takes the view that it would be illogical to impose a competitive regime in respect of such requirements valued at between thresholds 3 and 4 of Annex 1 of these Orders, than the Regulations apply in respect of requirements with a value equal or exceeding threshold 3

**ANNEX 1
CONTRACT STANDING ORDERS
PRESCRIBED SUMS:**

1	Exemption limit for contracting using formal tendering (Services and Supplies).	(Below) 50,000
2	Exemption limit for contracting using formal tendering (Works)	2,000,000
3	Exemption Limit for contracting as per the Public Contracts (Scotland) Regulations 2015 (Social and Other Specific Services, as per Schedule 3 of the Regulations)	625,050
4	Exemption Limit for contracting as per the Procurement reform (Scotland) Act 2014 (Social and Other Specific Services, as per Schedule 3 of the Regulations)	50,000
5	For the purposes of the Procurement Reform (Scotland) Act, threshold at which contracts shall be considered "major" (Services, Supplies, and Works)	4,000,000
6	Exemption limit for contract using quotations (services, supplies and works)	(Below) 5,000
7	Exemption limit for financial vetting	(Below) 500,000
8	Exemption limit for leases to be approved by the Procurement SRO	(Below) 100,000
9	Contract limit for performance bonds	(Over) 500,000
10	EU tendering threshold in respect of goods and services	164176
11	EU tendering threshold in respect of works	4,104,394
12	Minimum value for employers' liability insurance	5,000,000
13	Minimum value for public liability insurance	5,000,000
14	Minimum value for professional indemnity insurance (professional services and consultancy only)	1,000,000

Annex 2

**CONTRACT STANDING ORDERS
PROCUREMENT SRO DELEGATED AUTHORITY TO PARTICIPATE IN
PROCUREMENT TASKS**

It shall be a condition of exercising the undernoted duties that each Officer entitled to do so shall have this form completed and authorised by the Procurement SRO prior to doing so.

OFFICER'S NAME:		TITLE:	
SERVICE:		SECTION:	LOCATION/ AREA:
Contract and/or any Value Limits to which Authority extends :			
Date Authorisation Limited Until:			
Works (Y/N) : (requires CDM training)		Supplies and All Services (Y/N):	

PLEASE COMPLETE BY TICKING THE RELEVANT BOXES BELOW:

ACTIVITY: QUOTATIONS (UP TO THE PRESCRIBED SUM)	
Administration of Quotation Procedures	
Draw up Specifications and Statements of Requirements	
Utilise Standard Templates to Create Quotation Documents	
Prepare Lists of Prospective Suppliers	
Award Contracts at Less Than Formal Tender Value	
ACTIVITY: TENDERS (FOR THE PRESCRIBED SUM AND OVER)	
Select Method of Tendering	
Draw up Specifications and Statements of Requirements	
Formulate Contractual Terms and Conditions	
Determine Evaluation Criteria	
Draft Contract Notice (Advert)	
Draft Contract Specific Selection Questions	
Evaluate SELECTION Submissions	
Issue Invitations to Tender and Contract Documents (Works / Care Contracts Only)	
Participate in Selection Tender Evaluation	
Recommend Award of Contract	
Award Contracts (Works / Care Contracts Only)	
Obtain Committee / Committee Chair Approval	

Accepted by:	(Authorised Officer)	Date:
Authorised By:	(Service Line Manager)	Date:
Approved by:	(for Procurement SRO)	Date:

Annex 3 Procurement Tasks and Responsibilities

No	Task	Who is responsible?	How Long does it Take, and are there any Special requirements?
1	Obtain Business Case approval and draft Specification/Statement of Responsibilities	Service	This depends. Anything from a day or two to a month or two depending on the complexity of the contract
2	Discuss and Agree Specification, Evaluation Criteria, Procedure, staff to be involved, and timescales	Procurement in the case of the Procurement SRO remit, or the project manager for devolved areas of procurement and Service	This depends. Anything from a day or two to a month or two depending on the complexity of the contract
3	Prepare Contract Documents, Selection Questionnaires, Invitation to Tender and Draft Contract	Procurement in the case of the Procurement SRO remit, or the project manager for devolved areas of procurement	This depends. Anything from a day or two to a month or two depending on the complexity of the contract. Drafts will be returned to the Service, whose staff will have 5 working days to request any alterations and return to Procurement. Procurement will finalise the documents within another 5 working days
4	Advertise Contract	Procurement	This will not take place until all contract documents are ready for issue.
5	Deal with enquiries from Suppliers	Procurement in the case of the Procurement SRO remit, or the project manager for devolved areas of procurement will receive and answer all queries, with reference to Service for Technical details	This takes place throughout the competition from the time the contract is advertised. It is important that all suppliers are treated equally, hence Service staff should not deal with queries themselves, but pass them onto Procurement who will ensure all suppliers have the same information made available at the same time
6	Receive Selection submissions for Restricted (2 stage) procedures	Procurement in the case of the Procurement SRO remit, or the project manager for devolved areas of procurement	As set out in the Public Contracts (Scotland) Regulations 2015 for projects advertised in OJEU, whatever is agreed to be reasonable in terms of the effort required to complete them by bidders for lower value projects.
7	Obtain any missing or incomplete documents and pass to Service	Procurement in the case of the Procurement	Often policies or other required documents are missing; Procurement will check the completeness of all

Annex 3 Procurement Tasks and Responsibilities

	once complete	SRO remit, or the project manager for devolved areas of procurement	submissions and chase any missing documentation as appropriate. A week is generally allowed for this
8	Read and draft score Selection submissions (Restricted Procedure)	Service and Procurement in the case of the Procurement SRO remit, or the project manager for devolved areas of procurement	Time take will depend on the number received, hence will vary from tender to tender. It is important Services recognise that this is time consuming and factor resources in accordingly. See 9 below for the detail of who does what.
9	Evaluate Selection submissions (restricted Procedure)	Procurement in the case of the Procurement SRO remit, or the project manager for devolved areas of procurement will organise and Chair, Service to provide staff to advise	<p>Generally 2 days are allowed for this, though depending on the number to be evaluated it may need more or less time.</p> <p>Technical Evaluation: Specifiers/Requirement Owners supported by Procurement or Service contracting teams where the Project is covered by delegated procurement. The technical evaluation panel must consist of at least two staff. Procurement staff will not carry out technical evaluation, but will ensure fair, equal, and justified application of the evaluation criteria</p> <p>Financial Evaluation: Procurement staff in respect of the Corporate Procurement Lead Officer's remit, or the project manager in respect of other requirements, supported by Finance as appropriate (e.g. for complex evaluations)</p> <p>Sustainability Evaluation (where relevant): Procurement staff in respect of the Corporate Procurement Lead Officer's remit, or the project manager in respect of other requirements with reference to Specifiers/Requirement Owners supported by Policy as appropriate (e.g. for complex evaluations)</p>
10	Invite Tenders	Procurement in the case of the	As set out in the Public Contracts (Scotland) Regulations 2015 for

Annex 3 Procurement Tasks and Responsibilities

		Procurement SRO remit, or the project manager for devolved areas of procurement	<p>projects advertised in OJEU, whatever is agreed to be reasonable in terms of the effort required to complete them by bidders for lower value projects.</p> <p>Open or one stage Procedure: As required by the Public Contracts (Scotland) Regulations 2015 for projects advertised in OJEU, whatever is agreed to be reasonable in terms of the effort required to complete them by bidders for lower value projects.</p>
11	Receive and Open Tenders	Procurement in the case of the Procurement SRO remit, or the project manager for devolved areas of procurement with Service Representation	A Service representative requires being present for the opening unless wholly electronic tenders are received. Should be scheduled to take place as soon as practically possible after closure of the tendering period and should be completed within one day.
12	Obtain any missing or incomplete documents and pass to Service	Procurement in the case of the Procurement SRO remit, or the project manager for devolved areas of procurement	A week is generally allowed for this. Often policies or other required documents are missing, Procurement will check the completeness of all submissions and chase any missing documentation as appropriate
13	Read tender submissions and score in draft	Service	This is essential so that Service staff are prepared for the Evaluation panel meeting. Time take will depend on the number received, hence will vary from tender to tender. It is important Services recognise that this is time consuming, and factor resources in accordingly.
14	Undertake Financial and Legal checks where required	Procurement in the case of the Procurement SRO remit, or the project manager for devolved areas of procurement	Any required supplier checks will be co-ordinated by Procurement during both the Selection and Tender stages. Time taken will depend on the number and level of detail required.
15	Tender Evaluation Panel Meeting	Procurement in the case of the Procurement SRO remit, or the project	<p>Generally 2 days are allowed for this, though depending on the number to be evaluated it may not take as long.</p> <p>Technical Evaluation:</p>

Annex 3 Procurement Tasks and Responsibilities

		<p>manager for devolved areas of procurement will organise and chair, Service to provide staff to evaluate</p>	<p>Specifiers/Requirement Owners supported by Procurement or Service contracting teams where the Project is covered by delegated procurement. The technical evaluation panel must consist of at least two staff. Procurement staff will not carry out technical evaluation, but will ensure fair, equal, and justified application of the evaluation criteria</p> <p>Financial Evaluation: Procurement staff in respect of the Corporate Procurement Lead Officer's remit, or the project manager in respect of other requirements, supported by Finance as appropriate (e.g. for complex evaluations)</p> <p>Contract Evaluation: Procurement staff in respect of the Corporate Procurement Lead Officer's remit, or the project manager in respect of other requirements with reference to Legal Services as appropriate</p> <p>Sustainability Evaluation (where relevant): Procurement staff in respect of the Corporate Procurement Lead Officer's remit, or the project manager in respect of other requirements with reference to Specifiers/Requirement Owners supported by Policy as appropriate (e.g. for complex evaluations)</p>
16	Write Tender Report	<p>Procurement in the case of the Procurement SRO remit, or the project manager for devolved areas of procurement, with Service staff checking final draft</p>	<p>A week is allowed for this</p>
17	Organise Tender Board Meeting	<p>Service</p>	<p>This generally takes place the week after 16 above</p>
18	Award of contract and debriefs	<p>Procurement in the case of the Procurement</p>	<p>This takes place following 17 above, and for over the OJEU threshold contracts requires a week to draft the</p>

Annex 3 Procurement Tasks and Responsibilities

		SRO remit, or the project manager for devolved areas of procurement with Service input as required	letters and debrief information followed by a 10 day standstill period
19	Post award contract management	Service with Procurement support as appropriate in the case of the Procurement SRO remit, or the project manager for devolved areas of procurement	Throughout the life of the contract

Annex 4 Sustainable Procurement Impact Assessment

Sustainability Objective	Current Impacts			Justification	Action				
	Magnitude	Probability	Significance		SELECTION	Specification	Contract Conditions	Evaluation	Development
ENVIRONMENTAL									
Fuel			0						
Carbon			0						
Water			0						
Waste			0						
Resource Depletion			0						
Emissions to Air and Water			0						
Hazardous Substances			0						
Biodiversity			0						
SOCIAL									
Equality, Diversity & Inclusion			0						
Labour Standards			0						
Health & Safety			0						
SME/ Soc Ent/Vol Org/SE			0						
Employment & Skills Opportunities			0						
Poverty			0						
ECONOMIC									
Economic Regeneration			0						
Costs of Prosecutions			0						
Cost Reduction & Performance Improvement			0						
Efficiency			0						
Value for Money			0						
Whole Life Costing			0						
Monetisation of Impacts e.g. Cost of NOx SOx COx			0						

Annex 5 Sustainable Procurement Self-Assessment Framework

	Foundation Level 1	Embed Level 2	Practice Level 3	Enhance Level 4	Lead Level 5
People	Sustainable procurement champion identified. Key procurement staff have received basic training in sustainable procurement principles. Sustainable procurement is included as part of a key employee induction programme.	All procurement staff have received basic training in sustainable procurement principles. Key staff have received advanced training on sustainable procurement principles.	Targeted refresher training on latest sustainable procurement principles. Performance objectives and appraisal include sustainable procurement factors. Simple incentive programme in place.	Sustainable procurement included in competencies and selection criteria. Sustainable procurement is included as part of employee induction programme.	Achievements are publicised and used to attract procurement professionals. Internal and external awards are received for achievements. Focus is on benefits achieved. Good practice shared with other organisations.
Policy, Strategy & Communications	Agree overarching sustainability objectives. Simple sustainable procurement policy in place endorsed by CEO. Communicate to staff and key suppliers.	Review and enhance sustainable procurement policy, in particular consider supplier engagement. Ensure it is part of a wider Sustainable Development strategy. Communicate to staff, suppliers and key stakeholders.	Augment the sustainable procurement policy into a strategy covering risk, methods integration, marketing, supplier engagement, measurement and review. Strategy endorsed by CEO.	Review and enhance the sustainable procurement strategy, in particular recognising the potential of new technologies. Try to link strategy to EMS and include in overall corporate strategy.	Strategy is: reviewed regularly, externally scrutinised and directly linked to organisations' EMS. The Sustainable Procurement strategy recognised by political leaders, is communicated widely. A detailed review is undertaken to determine future priorities and a new strategy is produced beyond this framework.
Competition	Expenditure analysis undertaken and key sustainability impacts identified. Key contracts start to include general sustainability criteria. Contracts awarded on the basis of value-for-money, not lowest price. Procurers adopt Quick Wins.	Detailed expenditure analysis undertaken, key sustainability risks assessed and used for prioritisation. Sustainability is considered at an early stage in the procurement lifecycle of most contracts. Whole-life-cost analysis adopted.	All contracts are assessed for general sustainability risks and management actions identified. Risks managed throughout all stages of the contract lifecycle. Targets to improve sustainability are agreed with key suppliers.	Detailed sustainability risks assessed for high impact contracts. Project/contract sustainability governance is in place. A life-cycle approach to cost/impact assessment is applied.	Life-cycle analysis has been undertaken for key commodity areas. Sustainability Key Performance Indicators agreed with key suppliers. Progress is rewarded or penalised based on performance. Barriers to sustainable procurement have been removed. Best practice shared with other organisations.
Engaging Suppliers Measurements &	Key supplier spend analysis undertaken and high sustainability impact suppliers identified. Key suppliers targeted for engagement and views on procurement policy sought.	Detailed supplier spend analysis undertaken. General programme of supplier engagement initiated, with senior manager involvement.	Targeted supplier engagement programme in place, promoting continual sustainability improvement. Two way communication between procurer and supplier exists with incentives. Supply chains for key spend areas have been mapped.	Key suppliers targeted for intensive development. Sustainability audits and supply chain improvement programmes in place. Achievements are formally recorded. CEO involved in the supplier engagement programme.	Suppliers recognised as essential to delivery of organisations' sustainable procurement strategy. CEO engages with suppliers. Best practice shared with other/peer organisations. Suppliers recognise they must continually improve their sustainability profile to keep the clients business.
Results	Key sustainability impacts of procurement activity have been identified.	Detailed appraisal of the sustainability impacts of the procurement activity has been undertaken. Measures implemented to manage the identified high risk impact areas.	Sustainability measures refined from general departmental measures to include individual procurers and are linked to development objectives.	Measures are integrated into a balanced score card approach reflecting both input and output. Comparison is made with peer organisations. Benefit statements have been produced.	Measures used to drive organisational sustainable development strategy direction. Progress formally benchmarked with peer organisations. Benefits from sustainable procurement are clearly evidenced. Independent audit reports available in the public domain

Annex 6 How to Decide When to Use A Restricted /Two Stage Competition with European Single Procurement Document (ESPD) (formerly a Pre-Qualification Questionnaire)

General

1 Is your contract worth at least the current value of the EU Tendering Threshold?

If no, then don't use a Restricted Competition unless there is a clear risk justifying it which you can describe to the tenderers themselves.

For "over the threshold" projects only:

1 Is there a large market with lots of competition?

If yes, use a Restricted Competition as it will save you time in assessing large numbers of bids and bidders time in developing them.

2 Is this a specialist market with only a few operators capable of doing what you need, or is the successful bidder easily replaced?

If yes, then don't use a Restricted Competition. You will be able to ask a very small number of pass/fail questions in a single stage assessment which will eliminate unsuitable bidders, and if you publish these in advance with your advert, those bidders are likely to "self-deselect"

3 Do you want to encourage competition where you think there may be very little?

If yes, don't use a Restricted Competition as the restricted route is seen by businesses as being more complex and onerous than open route. Note that the selection stages of competitions attract more complaints than actual awards of contract!

4 Can you define your requirement, your contract, and your financing options properly?

If no, you are more likely to be using a more complex procurement route such as a competitive dialogue and in this case a Restricted Competition will be needed.

5 Do you have concerns that the industry you are working with may be subject to organised crime or have issues with adherence with specific environmental, social, legal or financial requirements?

If yes, you should use a Restricted Competition as this will allow you to deal with these issues before allowing undesirable operators the chance to bid, and the opportunity to test and score based on objective factors, the areas where you have concerns.

ANNEX 7 DOCUMENT RETENTION SCHEDULE

Note: These records may be electronic or digital rather than hard copy. Note also that these are minimum standards. In some cases, for example in respect of EU funded projects, the funding authority may require longer retention periods, or the contract itself may contain long term liability conditions which will require them to be retained for the period of the liability. Care should be taken in each case to ensure that the correct period is used.

Document	Retention Period
Contract documents (per Limitations Act 1980)	Current + 5 Years
Evaluation reports	"
Hire/Rental Agreements	"
HM Revenue and Customs Import documentation	"
Maintenance/Software licence agreements	"
Purchase Orders	"
Specifications	"
Successful Tenders	"
Successful Quotations	"
Variation Orders	"
Unsuccessful Quotations	Current + 1 Year
Unsuccessful Tenders	"
Selection Questionnaires	"
Tender Envelopes (from award) All procurement documentation relating to projects benefiting from European funding.	1 Month 10 years from the date of final payment of any related account

ANNEX 8 DEFINITIONS OF SUPPLIES, SERVICES, AND WORKS

For the avoidance of doubt, the scope of works/construction contracts and services contracts is broken down as follows, in line with definitions set out within the Consolidated Procurement Directive

CONSTRUCTION

Construction of new buildings and works, restoring and common repairs including

Site preparation

Demolition and wrecking of buildings; earth moving:

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,

Site preparation for mining including overburden removal and other development and preparation of mineral properties and sites

Building site drainage

Drainage of agricultural or forestry land

Test drilling and boring including test drilling, test boring and core sampling for construction, geophysical, geological or similar purposes

General construction of buildings and civil engineering works including

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

This class excludes:

Erection of complete prefabricated constructions from self-manufactured parts not of concrete,

Erection of roof covering and frames including erection of roofs roof covering waterproofing

Construction of highways, roads, airfields and sports facilities including

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

ANNEX 8 DEFINITIONS OF SUPPLIES, SERVICES, AND WORKS

Painting of markings on road surfaces and car parks

This class excludes:

Preliminary earth moving,

Construction of water projects including

Construction of:

Waterways, harbour and river works, pleasure

Ports (marinas), locks,

Dams and dykes

Dredging

Subsurface work

Other construction work involving special trades including

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

Building installation: Installation of electrical wiring and fittings including

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

Insulation work activities including

Installation in buildings or other construction projects of thermal, sound or vibration insulation

Plumbing including

Installation in buildings or other construction projects of:

Plumbing and sanitary equipment

Gas fittings

Heating, ventilation, refrigeration or air-conditioning

ANNEX 8 DEFINITIONS OF SUPPLIES, SERVICES, AND WORKS

Equipment and ducts
Sprinkler systems

Other building installation including

Installation of illumination and signalling systems for roads, railways, airports and harbours
Installation in buildings or other construction projects of fittings and fixtures

Building completion

Plastering including:

Application in buildings or other construction projects of interior and exterior plaster or stucco, including related lathing materials

Joinery installation including:

Installation of non-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

Floor and wall covering including:

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

Painting and glazing including:

Interior and exterior painting of buildings

Painting of civil engineering structures

Installation of glass, mirrors,

Other building completion including:

Installation of swimming pools

Steam cleaning, sand blasting and similar activities for building exteriors other building completion and finishing work

PRIORITY SERVICES

Maintenance and repair services (excluding the fabric of buildings and other constructions)

Land transport services and courier services, except transport of mail

Air transport services of passengers and freight, except transport of mail

Transport of mail by land and by air

Telecommunications

Financial services:

(a) Insurance services

(b) Banking and investment services (4)

Computer and related services

ANNEX 8 DEFINITIONS OF SUPPLIES, SERVICES, AND WORKS

Research and development services

Accounting, auditing and bookkeeping services

Market research and public opinion polling services

Management consulting services and related services

Architectural services; engineering services and integrated engineering services;

Urban planning and landscape engineering services; related scientific and technical consulting services; technical testing and analysis services

Advertising services

Building-cleaning services and property management services

Publishing and printing services on a fee or contract basis

Sewage and refuse disposal services; sanitation and similar services

Also excluded: services involving the acquisition or rental, by whatever financial procedures, of land, existing buildings, or other immovable property or concerning rights thereon;

SOCIAL AND OTHER SPECIFIC SERVICES

Note that the Common Procurement Vocabulary (CPV) reference numbers have been removed from this list for ease of reading. Where the Council is contemplating relying on Regulations 74 to 76 of the Public Contracts (Scotland) Regulations 2015, Schedule 3 must be referred to directly and use will be limited to the specific CPV codes listed in that Schedule. Note also that this list is exclusive: no service excluded from the list below can be covered by either the miscellaneous services category or the “other services” category previously available

Health, social and related services:

1. (Supply services of domestic help personnel)
2. Supply services of nursing personnel)
3. Supply services of medical personnel)
4. (Private households with employed persons)
5. (Manpower services for households, Agency staff services for households, Clerical staff services for households, Temporary staff for households,
6. Home-help services and Domestic services)

Administrative social, educational, healthcare and cultural services

1. (Administration, defence and social security services),
2. Education and training services
3. (Exhibition, fair and congress
4. organisation services
5. (Seminar organisation services),
6. (Event services),
7. (Cultural event organisation services
8. (Festival organisation services),
9. (Party organisation services),
10. (Fashion shows organisation services),
11. (Fair and exhibition organisation services)

Compulsory social security services

ANNEX 8 DEFINITIONS OF SUPPLIES, SERVICES, AND WORKS

Benefit services

Other community, social and personal services including services furnished by trade unions, political organisations, youth associations and other membership organisation services

Religious services

Hotel and restaurant services

1. Catering services for private households,
2. Meals on wheels services,
3. Meal delivery service)
4. Catering services,
5. Catering services for transport enterprises,
6. Catering services for other enterprises or other institutions,
7. School catering services
8. Canteen services,
9. Canteen and other restricted-clientele cafeteria services
10. Canteen management services,
11. School-meal services

Legal services, to the extent not excluded by regulation 11(1)(e)

Other administrative services and government services

Provision of services to the community

Prison related services, public security and rescue services to the extent not excluded by regulation 11(1)(k)

Investigation and security services

1. 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) (Graphology services),
2. Waste analysis services)

International services

1. Services provided by extraterritorial organisations and bodies) and Services specific to international organisations and bodies

Postal services

2. Postal and telecommunications services
3. Post and courier services
4. Postal services
5. Postal services related to newspapers and periodicals
6. Postal services related to letters
7. Postal services related to parcels
8. Post office counter services
9. Mailbox rental

ANNEX 8 DEFINITIONS OF SUPPLIES, SERVICES, AND WORKS

10. Post-restante services

11. Internal office mail and messenger services

Miscellaneous services

1. Tyre-remoulding services

2. Blacksmith services

ANNEX 9 INFORMATION REQUIRED FOR TUPE PURPOSES

Information on staff to be provided by the Highland Council or incumbent service provider to enable tender pricing

Information Item	Employee 1	Employee 2	Employee 3	Employee 4 etc.
Date of Birth				
Age				
Continuous Service Start Date With Current Employer				
required periods of notice				
gender				
pensionable service in years/days as at DDMMYY				
employers contributions				
employees contributions				
job title				
salary				
hourly rate				
employment status				
contracted hours				
annual holiday entitlement				
holiday pay entitlement				
sick pay entitlement				
overtime allowance in last 12 months				

Annex 10 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 section 9*)

- 2. Project Sponsor** (*State the name of the project sponsor who has approved the business case and budget, Contract Standing Orders 3ii, 4i*)

- 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. Estimated Value / Budget Approval / Contract Duration**

- a. *State the estimated value of the tender over the full contract period; and*
b. *confirmation that the budget has been approved by the appropriate budget holder; and*
c. *The duration of the contract to be tendered, including any proposed extensions. This should usually be between two to four years with potential for one or two year's extension.*

(Contract Standing Orders section 7)

- 5. 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*

(Contract Standing Orders Applicable Standard section 11)

- 6. Approved Business Case** (*Enclose a copy of the approved business case for this tender as required in The Highland Council Contract Standing Orders 4i. Also, sustainability and Equal Opportunities Impact Assessment as per Contract Standing Orders section 10 if applicable*)

Annex 10 Contract Request Form

7. Evaluation Team Members *(As per Contract Standing Orders 11ii, 7 and 9. Evaluators must have suitable technical skills and be suitably knowledgeable or qualified in relation to the subject matter of the tender. All evaluators must also have procurement authorisation)*

8. Intended Date of Commencement of Full Operations *(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.)*

9. Any Period required for Setting up Operations

10. TUPE Issues *(State whether or not members of council staff or staff of the existing contractor may be affected by a transfer to a new service provider)*

11. Service Contact Name and telephone number

Tender Request form Received/Approved by

Name _____

Date _____

Procurement Office Use

Allocated Procurement Team:-

- Corporate
- Facilities Management
- Technical