

EAST RENFREWSHIRE COUNCILREVISION OF CONTRACT STANDING ORDERS13 December 2023Report by Chief Officer Legal and Procurement**PURPOSE OF REPORT**

1. To seek the Council's approval of revised Contract Standing Orders.

**RECOMMENDATIONS**

2. The Council is asked to:
  - (i) approve the proposed amendments to the existing Contract Standing Orders, as summarised in Appendix 1 to this report, and adopt the Contract Standing Orders included in Appendix 2 to this report with immediate effect; and
  - (ii) note that changes made are to provide further clarity in order to drive greater compliance overall with procurement governance and best practice.

**BACKGROUND**

3. The Council is required to have standing orders under the Local Government (Scotland) Act 1973. The Contract Standing Orders provide controls and regulation around all of the Council's purchasing and contract management activity, and place requirements on Directorates to effectively plan and contract manage the resulting contracts. The Contract Standing Orders are reviewed annually and amended as required to support continuous improvement and reflect legislative changes.
4. This most recent review which included consultation with all services has highlighted that the operation of the current Contract Standing Orders amended in December 2018 require some further changes to provide greater clarity and to improve efficiency of purchasing practices within the Council. With these aims in mind, further amendments are suggested.
5. Initial drafts of the proposed Contract Standing Orders have been issued to all services for consultation and suggested changes have been received. These have been evaluated in consultation with the Chief Procurement Officer and if considered appropriate, incorporated into the proposed new set.

**REPORT**

6. The proposed amendments to the existing Contract Standing Orders are summarised in Appendix 1 to this report. A track changed version of the current Contract Standing Orders is included in Appendix 2 to this report for comparison purposes.

**FINANCE AND EFFICIENCY**

- 7. While there is no direct cost to the Council in implementing the recommendations, the additional clarity in the Contract Standing Orders will minimise unintentional non-compliance and so reduce financial risk to the Council.

**CONSULTATION**

- 8. This review of Contract Standing Orders was carried out in consultation with all Council Services and with the Chief Internal Auditor.

**IMPLICATIONS OF THE PROPOSALS**

- 9. There are no IT, sustainability, staffing or other implications arising from this report.

**CONCLUSIONS**

- 10. The incorporation of the changes proposed will help to provide clarity in order to drive greater compliance overall with procurement governance and best practice which will protect the Council from unnecessary expenditure and risk of challenge.

**RECOMMENDATIONS**

- 11. The Council is asked to approve revised Contract Standing Orders which form Appendix 2 to this report and agree that said standing orders shall take immediate effect.

**REPORT AUTHOR**

Report Author: Debbie Hill – Chief Procurement Officer  
Report Date: 24 November 2023

Background papers – none

## Appendix 1 – Proposed Amendments

Page 1 - Front Cover	<p>Date of effect amended to show December 2023.</p> <p>Amendment record at bottom of page updated to show date of change.</p>
Page 2 and 3 - Index	<p>Section names updated where appropriate and new sections included as follows:</p> <ul style="list-style-type: none"> <li>- Introduction</li> <li>- 7. Collaborative Procurements</li> <li>- 8. Conflict of Interest</li> <li>- 9. Contracts Register</li> <li>- 11. Includes Fair Work Practices</li> <li>- 13. Quick Quote</li> <li>- 14. Disaggregation and Lots</li> <li>- 16. Late Tenders</li> <li>- 20. Contract Management</li> <li>- 22. Modification to Contract</li> <li>- 25. Schedule of Rates Contracts</li> <li>- 28. Intellectual Property Rights</li> <li>- 29. Grants to other Organisations and Subsidy</li> <li>- 35. Performance Bonds and Parent Company Guarantee</li> <li>- 36. Reserved Contract</li> <li>- 37. Payments in Advance</li> <li>- 38. Contracts Termination</li> <li>- 39. Scots Law</li> <li>- Schedule 1 – Social Care Contracts</li> <li>- Schedule 2 – Procurement Thresholds</li> <li>- Schedule 3 – Procurement Process Maps</li> <li>- Schedule 4 – Contract Variation Flow Chart.</li> </ul>
Page 4 - Introduction	Introduction added to provide context to Contract Standing Orders.
Page 4 - 7 - Definitions	<p>Definitions numbered for easier reference for officers.</p> <p>Additional wording included where relevant to provide greater clarity for officers:</p> <p>New definitions included as follows:</p> <ul style="list-style-type: none"> <li>- “Act”</li> <li>- “Best Value” – to provide clarity.</li> <li>- “Cabinet” -</li> <li>- “Community Benefit”</li> <li>- “Corporate Procurement”</li> </ul>

	<ul style="list-style-type: none"> <li>- "Co-production"</li> <li>- "Fair Work First"</li> <li>- "Grants"</li> <li>- "Light Touch Regime"</li> <li>- "Procurement Category Manager"</li> <li>- "Procurement Manual"</li> <li>- "Procurement Thresholds"</li> <li>- "Procurement Journey Guidance"</li> <li>- "2015 Regulations"</li> <li>- "2016 Regulations"</li> <li>- "Regulations"</li> <li>- "Scotland Excel"</li> <li>- "Scottish Procurement"</li> <li>- "SME"</li> <li>- "SPD"</li> <li>- "Sustainable Procurement Policy"</li> <li>- "Social and other Specific Services"</li> <li>- "Tender Documents"</li> </ul>
Page 8 – Scope	Updated to include additional examples of when the Contract Standing Orders do not apply.
Page 9 – Application/Effect	<p>Date of effect updated to date of Cabinet meeting and reference included to additional documents officers are directed to read. These being:</p> <p>Scheme of Delegation to Officers Procurement Manual Councils Financial Regulations</p>
Page 9 – Variation, Revocation	Reference to E.U. Thresholds removed as no longer relevant since the UK exit from the EU.
Page 9 – Annual Plan	Amended to give officers longer to respond. Now advises no later than end of June.
Page 9 – Collaborative Procurements	Included to provide clarity on collaborative procurements and governance to be followed.
Page 10 – Conflict of Interest	Included to provide clarity on officer responsibility in relation to where a conflict of interest is declared.
Page 10 – Contract Register	Included to provide clarity on the new Online Contracts Register and the need to engage the Corporate Procurement Unit.
Page 11 – Contract Value and Budget	Included to provide clarity on officer responsibilities in relation to contract letting and management.
Page 12 – Community Benefits, Sustainable Procurement Policy & Fair Work Practices.	<p>Updated to include:</p> <p>Link to the Councils Sustainable Procurement Policy.</p>

	<p>Reference to the Councils Climate Change Impact Assessment and when this may be required for completion.</p> <p>Reference to Supported Businesses, supported employment programmes and supported factories and when it is possible to contract with them.</p> <p>Reference to engagement of SMEs and when to invite them to the Councils Quick Quote Process.</p> <p>Link included to the Councils Online Trading Network – database of suppliers who have registered interest for invitation to Quick Quote opportunities.</p> <p>Reference to Fair Work Practices which is to be applied to contracts in excess of £10,000.</p>
Page 13 – Contract Process	<p>Updated to include link to the Councils Quick Quote instruction guide. This will provide quick access and clarity for officers.</p> <p>Reference to VAT included to provide clarity for officers when considering the calculation of the estimated value of a contract.</p>
Page 13 - Quick Quote	Clarity on the Quick Quote process included.
Page 13 – Disaggregation and Lots	Included to provide clarity on aggregation of spend to ensure compliance with the Procurement Regulations and threshold values.
Page 14 – Publicity for Tenders and Contracts	Reference to Schedule 1 now included in these Contract Standing Orders – specifically to provide clarity on Social Care contracts.
Page 14 – Late Tenders	Included to provide clarity on the Councils position when a late tender is received.
Page 15 – Purchase Orders	Updated to include further clarity on the Councils No PO – No Pay policy.
Page 16 – Contract Management	Included to provide clarity on the Councils requirements for Contract and Supplier Management.
Page 16 – Contract Value Variations	<p>Current wording deleted as consultation feedback was that it was unclear.</p> <p>New wording simplified to provide better understanding for officers.</p> <p>Link included to Variation Form available from the Intranet.</p>

Page 18 – Modification to Contract	Included to provide clarity when a contract is being modified from the original scope as issued.
Page 19 – Exemptions from Competition	Amended to include clarity on exemption application process via the Online Contracts Register.  Also includes clarity on cumulative value of previous exemptions relating to the same matter.
Page 20 – Framework Agreements	Updated to include further information on Framework Agreements and when the Council can use these.
Page 21 – Schedule of Rates	Included to provide clarity on fixing an indicative total value for a contract including a schedule of rates.
Page 22 – Prior Approval for Specific Contracts	Updated to include correct title for Head of ICT
Page 22 – Contracts for Appointment of Consultants	Updated to include reference to location of consultancy register and link to Procurement Manual included which includes fuller detail on this process for officers.
Page 23 – Intellectual Property Rights	Included to provide the Council with protected rights for information we are paying for.
Page 23 – Grants to Other Organisations / Subsidy	Included to provide clarity on the issue of a grant and related subsidy rules.
Page 26 – Specification Standards	Updated to include clarity on departmental responsibilities.
Page 26 – Contract Provisions	Updated to include reference to SBCC and NEC as acceptable standard forms applicable to this clause.
Page 27 – Liquidate and Ascertained Damages	Updated to provide further clarity on the procuring department and corporate procurement working together on this area.
Page 27 – Performance Bonds and Parent Company Guarantees	Included to ensure additional protection for the Council and will be applied where considered necessary by the Director of the procuring service.
Page 27 – Payment in Advance	Included to provide clarity for payment in advance. Also includes reference to officers who are to be consulted for prior approval.
Page 28 – Contract Termination	Included to provide clarity on contract termination and also the officers who must be contacted for prior approval.
Page 28 – Scots Law	Included to provide clarity on the law that will be applied under the Councils contracts.
Page 29 – Schedule 1 – Social Care Contracts	Included to provide clarity for the application of social care contracts.
Page 32 – Schedule 2 – Procurement Threshold Values	Included to provide easy to find threshold values relevant to the application of contracts in the UK.

Page 33 – Procurement Process Maps

Included to provide easy to follow charts identifying the procurement route to be followed for goods, services and works.

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# ***East Renfrewshire Council***

## ***Standing Orders Relating to Contracts***

***With effect from ~~25 June 2020~~  
December 2023***

<u>Date of amendment</u> 25 June 2020 <u>30 June 2021</u> <u>14 December 2023</u>	<u>Amendment made</u> Quick Quote works threshold increased for 12 months from June 2020 <u>Quick Quote works threshold permanently increased from June 2021</u> <u>Review and update</u>
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## EAST RENFREWSHIRE COUNCIL STANDING ORDERS RELATING TO CONTRACTS

### INTRODUCTION

These Standing Orders Relating to Contracts of East Renfrewshire Council (“Council”) apply from 14 December 2023 and apply to contracts made by or on behalf of the Council for the procurement of the execution of works, supply of goods and materials and/or the provision of services. The Council makes these Standing Orders Relating to Contracts in terms of section 81 of the Local Government (Scotland) Act 1973.

These standing orders are subject to any overriding requirements of:

- (1) the Public Contracts (Scotland) Regulations 2015; the Concessions Contracts (Scotland) Regulations 2016; the Utilities Contracts (Scotland) Regulations 2016; all guidance made under and in terms of any of these Regulations; and all successor legislation or amendments to any of these Regulations (the “Procurement Regulations”);-the Procurement Reform (Scotland) Act 2014 and all regulations and guidance made under and in terms of that Act (the “Procurement Reform Rules”); and
- (2) the principles of fairness, equal treatment, non-discrimination, proportionality, and transparency (“the Principles of Procurement”).

### 1. DEFINITIONS

These words and expressions have the meanings given to them in this standing order:-

1.1 “Act” means the Procurement Reform (Scotland) Act 2014.

1.2 “Best Value” means the legal duty to secure continuous improvement in the performance of the Council’s functions as set out in Section 1 of the Local Government in Scotland Act 2003 having regard to the efficiency and effectiveness of services, the economic implications of providing that service and the need to meet equal opportunity requirements.

1.3 “Cabinet” means the political leadership of the Council.

1.4 “Call-off contract” means the mechanism by which specific purchases can be made under a Framework Agreement as indicated in that particular Framework’s terms.

1.5 “Contract” means a contract for the provision of services, supply of goods/materials or carrying out of public works or a combination of the same whether awarded through direct award without competition, appointment under Quick Quote process, award under tender process or call off from a framework agreement.

For the avoidance of doubt, the term ‘contract’ includes any form of agreement, written or unwritten, to which the Council is a party which creates rights and responsibilities for any of the parties involved.

1.6 “Community Benefit” means, benefits requested from suppliers within procurement exercises, which become contractual requirements. Community Benefits include

employment, education and community support and support for SMEs and Third Sector organisations.

- 1.7 “Consultant” means a professional person, or any firm or company employing such a person, engaged to provide professional advice in their particular field of expertise whether for a specific period or to complete a specific task, but excluding professional services provided by solicitors, counsel and actuaries.
- 1.8 “Contract Manager” means a person designated by the relevant department for a specific contract and named on the contract register as having day to day responsibility for supplier performance, contractual matters and managing the contract during its lifetime to ensure appropriate performance by the contractor.
- 1.9 “Contract for Social and other Specific Services” means a contract for any service as defined in Schedule 3 of the Public Contracts (Scotland) Regulations 2015. This includes, but is not limited to, contracts for social care provision, education and training services and event services. The award of any Social Care Contract shall also be subject to the rules set out in Schedule 1 of these standing orders.
- 1.10 “Contract for works” means a contract for the provision of any works as defined in Schedule 2 of the Public Contracts (Scotland) Regulations 2015. This includes, but is not limited to, contracts for construction, site preparation, demolition, civil engineering, roofing, plumbing and electrical installation.
- 1.11 “Corporate Procurement” means the centralised procurement team of officers that progress exercises for all procurements over the value of £50,000 for supplies and services and over £500,000 for works.
- 1.12 “Co-production” means the real and meaningful involvement of the citizens of East Renfrewshire including future recipients of the services and key stakeholders and suppliers (both current and potential) in how and what community services and related goods and works are delivered with regard to the National Standards for Community Engagement.
- 1.13 “Department” means any procuring Service of the Council as identified in its corporate structure, namely Chief Executive’s Office, ~~Corporate and Community Services~~ Business Operations & Partnerships, Environment, Education and Health and Social Care Partnership.
- 1.14 “Direct Award” means a form of call-off contract from a Framework Agreement whereby best value is pre-established within the framework terms, and a contractor is appointed without the requirement for further competition. Any direct award must be made in compliance with the Regulations, the 2014 Act, and any UK Government or Scottish Government guidance, as applicable.
- 1.15 “Director” means the Chief Officer of the department but also includes the Chief Executive, a Head of Service in that department or the Chief Officer- Legal and Procurement.
- 1.16 “Fair Work First” means, as promoted by the Scottish Government, the commitment by employers to investment in skills and training, no inappropriate use of zero hours contracts, action to tackle the gender pay gap, genuine workforce engagement, including with trade unions, and payment of the Real Living Wage.

- 1.17 “Framework Agreement” means an umbrella contract which sets out the terms and conditions under which specific purchases (call-offs) can be made throughout its lifespan. Framework agreements must be framed such that East Renfrewshire Council or Scottish Local Authorities are named as a participant.
- 1.18 “Grants” means financial contributions to a third party which help to meet the Council’s objectives in the wider community. The award of any grant shall also be subject to the rules set out in clause 30 of these standing orders.
- ~~“EU Threshold” means the value of a contract above which compliance with the full terms of the Public Procurement Regime is required.~~
- 1.19 “High Value/High Risk” means of a value or level of risk specified in guidance issued from time to time by the Chief Procurement Officer.
- 1.20 “IT related goods and services” means hosting or cloud based services, hardware, software, datasets, communication media, audio-visual equipment and applications and/or the installation, servicing or updating of these goods.
- 1.21 “Light Touch Regime” means those services that are listed in Schedule 3 and governed by Section 7 of the Regulations.
- 1.22 “Mini Competition” means a form of call-off contract from a Framework Agreement whereby competition is restricted to the named suppliers on the Framework.
- 1.23 “Procurement Category Manager” means an officer appointed to work within the corporate procurement team to carry out procurement activities on behalf of the Council.
- 1.24 “Procurement Manual” means the manual which sets out the fundamental rules, behaviours and standards applicable to procurement activity at East Renfrewshire Council. Officers who may be involved in the procurement activities Quick Quote / tendering are required to read it in conjunction with these standing orders.
- 1.25 “Procurement Thresholds” means the prescribed financial thresholds from 1 January 2022 of £5,336,937 (incl. VAT) (works contracts), £213,477 (incl. VAT) (supplies/services contracts) and £663,540 (incl. VAT) (Schedule 3 service contracts) as such contracts are defined or referenced in the Regulations.
- 1.26 “Procurement Journey Guidance” means the Scottish Government guidance for public sector buyers who procure goods, services and care and support services.
- 1.27 “Proprietary goods or services” mean goods or services that can only be obtained from one party because of technical or legal reasons.
- 1.28 “Quick Quote” means the online quotation process enabling the Council to obtain competitive quotes for lower value requirements provided as part of the Scottish Government Public Contracts Scotland Portal to be followed for goods, services and works as referred to in Clause 129, Contract Process.
- 1.29 “2015 Regulations” means the Public Contracts (Scotland) Regulations 2015 or successor legislation (as amended from time to time).
- 1.30 “2016 Regulations” means the Procurement (Scotland) Regulations 2016 or successor legislation (as amended from time to time).

- 1.31 “Regulated procurement” means a procurement for goods or services with a value of £50,000 or over or a public works contract with a value of £2,000,000 or over.
- 1.32 “Scotland Excel” means the joint committee of local authorities constituted under Section 57 of the Local Government (Scotland) Act 1973 for the purpose of regulating the joint discharge of their general purchasing functions.
- 1.33 “Scottish Procurement” means that part of the Scottish Procurement and Property Directorate of the Scottish Government, with responsibility for developing and implementing procurement strategies for national contracts on behalf of all Scottish public sector organisations and includes any successor organisation.
- 1.34 “SME” – means Small and Medium Enterprises (SMEs) which is defined as micro-enterprises with up to 10 employees. Small enterprises up to 50 employees and Medium-sized enterprises have up to 250 employees.
- 1.35 “SPD” means the Single Procurement Document used at selection stage of procurement exercise to identify suitably qualified and experienced bidders as specified in the Public Procurement Regulations.
- 1.36 “Supported Business” means such business as defined ~~in the European Procurement Regulations.~~ in Regulation 7 of the Public Contracts (Scotland) Regulations 2012.
- 1.37 “Supported Employment Programme” means such business as defined ~~in the European Procurement Regulations.~~ Regulation 7 of the Public Contracts (Scotland) Regulations 2012.
- 1.38 “Sustainable Procurement Policy” means the policy detailing the general principles the Council will follow across all its procurement and commissioning to ensure it is undertaken in a sustainable manner.
- 1.39 “Social and other Specific Services” means services as defined by the 2015 Regulations including:-
- Health, social and related services
  - Administrative social, educational, healthcare and cultural services
  - Other community, social and personal services
  - Legal services
  - Investigation and security services
  - Postal services
- 1.40 “Tender” means any offer received in relation to a Quick Quote, Mini Competition, Direct Bid process or Regulated Procurement exercise.
- 1.41 “Tender Documents” means the documents to be used in any tendering procedure. It includes, but is not restricted to, the SPD, the proposed conditions of contract, the specifications or the descriptions of the goods, services or works required by the Council and any Bills of Quantities and includes any such documents or drawings issued using electronic means.

1.42 "Total Value" means:-

- i. for a goods contract, the total price of the goods as identified in the contract;
- ii. for a services contract, the monthly spend under the contract multiplied by the duration of the contract in months (up to a maximum of 48);
- iii. for a works contract, the total price for the works as indicated in the contract plus the value of any supplies or services supplied by the Council to the contractor that are necessary for the works to be carried out

## 2. SCOPE

These standing orders apply to all Contracts made by or on behalf of the Council except:-

- a) any contract relating to the engagement of Counsel or other legal specialists;
- b) any tenders invited on behalf of any consortium, collaborative group or similar body the Council is a member of
- c) any procurement conducted under any Framework Agreement set up by the Council or another Public Contracting Authority as defined in the Public Contracts (Scotland) Regulations 2015 as amended, including, but not restricted to, Scotland Excel, Scottish Procurement, Crown Commercial Services, the National Health Service, HUB West Scotland or other grouping of Local Authorities or public bodies but only to the extent that these standing orders are inconsistent with the procedures set out in such agreements.
- d) Any contract relating to a private finance initiative or a public private partnership or to HUB West Scotland.
- e) Any contract progressed by the Council under the City Deal initiative (which will be subject to the procedures and strategy agreed by the Council and others for that particular purpose), but only to the extent that these standing orders are inconsistent with those procedures and strategy.
- f) Contracts of employment.
- g) Contracts solely relating to the lease, transfer, purchase or disposal of an interest in land or buildings.
- h) Where the nature of the care package being arranged for a person is unique and cannot be provided for under existing Council Frameworks or contracts.
- i) By statute.
- j) Contracts entered into on behalf of the Council by Strathclyde Partnership for Transport acting in their capacity as agents of the Council to secure the provision of school transport.
- k) Contracts for the commissioning of theatrical, musical, dramatic or other artistic performances, subject to the prior approval of the Chief Procurement Officer.

~~To avoid doubt, these Standing Orders do not apply to any employment contract or any contract relating to the lease, transfer, acquisition or disposal of an interest in land or buildings.~~



### 3. APPLICATION/EFFECT

- 3.1 These Standing Orders take effect from ~~19 December 2018~~ 14 December 2023 and must be read in conjunction with the Scheme of Delegation to Officers, the Procurement Manual and the Council's Financial Regulations. Any unfinished contract process started prior to that date must be concluded using the previous Standing Orders.
- 3.2 Failure to comply with these Standing Orders may result in investigations, which may lead to disciplinary action in accordance with Council policy and procedures regarding officer conduct.
- 3.3 Any query regarding the application or interpretation of these Standing Orders should be made in the first instance to the Chief Procurement Officer.

### 4. VARIATION, REVOCATION

- 4.1 The Chief Officer – Legal and Procurement can vary these standing orders to reflect changes in job titles, departmental restructuring, vacancies in posts or any change in the financial threshold values, ~~of the E.U. Thresholds~~ or Council documentation referred to herein. In all other respects these standing orders may be varied or revoked only by decision of the Council.

### 5. BEST VALUE, FAIRNESS AND TRANSPARENCY

- 5.1 A department must seek Best Value for the Council in all contract processes it starts. It must be able to demonstrate fairness and transparency to all parties having an interest in a contract. Best value is to be achieved through an appropriate balance of quality and cost to the Council, whilst having regard to efficiency, effectiveness, the economy, the need to meet equal opportunity and sustainability requirements and to minimise risk to health and safety.

### 6. ANNUAL PLAN

- 6.1 Before the end of March in each year and only where this is not possible no later than end of June, each Director must give the Chief Procurement Officer a list of proposed regulated procurements which their department expects to progress in the next two financial years. This will allow the Chief Procurement Officer to produce the Council's annual plan which must be submitted to Scottish Government as soon as practically possible following the end of the financial year.

### 7. COLLABORATIVE PROCUREMENTS

- 7.1 Where the Director considers it to be in the best interests of the Council and in accordance with Best Value to do so, he/she may seek to enter into a collaboration with one or more other public authorities in respect of the procurement of Supplies, Services or Works, subject to the following provisions.
- 7.2 Every collaborative exercise shall require to be approved in advance by the Chief Procurement Officer and the procurement process shall be undertaken in conjunction with the Corporate Procurement Unit.

7.3 Where it is proposed that the Council shall act as lead authority in a Collaborative procurement exercise, the terms of these Standing Orders shall apply to the procurement process and the written agreement of the other parties to the Collaboration, in the form of a Memorandum of Understanding, shall be obtained to this effect.

7.4 Where another authority acts as lead authority in a Collaborative procurement exercise for a contract on behalf of two or more public bodies, including the Council, the procurement and award process shall be conducted in accordance with the Standing Orders of the lead authority. In every such case however, the Director must first be satisfied that the procurement and award of any such contract ensures that the principles of Best Value are adhered to, and the best interests of the Council are served at all times.

## **8. CONFLICT OF INTEREST**

8.1 No officer who has a potential conflict of interest or a direct or indirect pecuniary interest in any procurement exercise is permitted to be involved in the development of the specification or contract strategy, evaluation, award of the contract or contract management process.

8.2 If any officer has a conflict of interest in any aspect of the procurement process, they must declare this interest as soon as it arises. The interest must be declared to their line manager and the Chief Procurement Officer.

8.3 Examples of Conflicts of Interest include members of the evaluation panel having a financial interest or having a relationship (spouse, partner, family member, close friend etc.) with someone in the bidder's organisation. Failure to declare a conflict of interest in a Procurement Exercise may result in disciplinary action.

## **9. CONTRACT REGISTER**

9.1 Prior to purchasing any Supplies, Services or Works, officers are required to check the Online Contract Register available on the Intranet and consult with the Procurement Unit to establish whether any existing contract or Framework Agreement accessible to the Council might fulfil their requirement.

9.2 If a contract exists for the specific Supplies, Services and Works required officers should check with the Procurement Unit that they are able to utilise the contract. If agreed that the contract can be used and represents best value officers must then use the existing contract. If not agreed, an alternative contract will be procured. To utilise an existing contract, a purchase order should be raised in advance of making any commitment to Suppliers. The purchase order should reflect the reference number of the contract being used.

## **107. CONTRACT VALUE AND BUDGET**

10.1 A department must identify the value of a prospective contract before placing it without competition or starting a tendering process for it. The Director must have a reasonable belief that there will be sufficient budget available to meet the net estimated cost of the contract. If funding is being provided by a third party, the Director

must ensure that the Council have approved acceptance of that funding prior to commencing the tendering process.

10.2 The Director has responsibility for all contracts tendered and let by their Directorate and is accountable to the Council for the performance of their duties in relation to contract letting and management, which are:

- (1) to ensure compliance with these Standing Orders.
- (2) to ensure no contract is entered into by the Council without seeking advice, where appropriate, from the Chief Procurement Officer and or the Chief Officer Legal and Procurement and having proper regard to such advice.
- (3) to ensure that appropriate contract security (for example guarantees or performance bonds) is obtained where required or considered prudent.
- (4) to prepare, in consultation with the Procurement Category Manager, appropriate tender documents which clearly specify the scope, quality and quantity of the works, goods or services.
- (5) Where the works or services are in connection with any Built Environment assets, then the Director is required to consult with the Director of Environment / Head of ICT & Resilience to ensure that proposals are competently prepared.
- (6) to check whether there is any existing Council or other collaborative Framework that can appropriately be used to achieve Best Value for the Council before undergoing a further competitive tender process.
- (7) to keep all bids confidential subject to any legal requirements.
- (8) to take appropriate measures to prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures so as to avoid distortion of competition and to ensure equal treatment of tenderers and to maintain written records of the measures taken and any conflicts arising.
- (9) to ensure that any evaluation panel is suitably competent, and trained to assess tenders.
- (10) to ensure no supplier is requested by the Council to provide goods, services or works without first having a valid purchase order in place.
- (11) to enter all purchase order information onto the relevant Council financial system prior to the service, goods or works being delivered.
- (12) to put in place arrangements for competent and efficient contract and supplier management including the identification of a Contract Manager and management of benefits and performance, for the entire duration of the contract or Framework. For Frameworks or contracts used by more than one Directorate the arrangements for contract and supplier management shall be made by the Director for the Directorate with the largest spend or anticipated spend.
- (13) to take immediate action in the event of a breach of these Standing Orders or non-compliance within his/her directorate.

(14) to consult with Elected Members on matters reasonably considered politically, reputationally or financially sensitive in relation to proposed procurement activity.

## **118. COMMUNITY BENEFITS, AND SUSTAINABLE PROCUREMENT POLICY & FAIR WORK PRACTICES**

11.1 All procedures for initiating procurement, inviting and receiving tenders, approval of contracts and all contractual arrangements entered into, shall support the delivery of the Council's Sustainable Procurement Policy.

<https://intranet.erc.insider/article/9550/Sustainability--Sustainable-Procurement-Policy> This shall include compliance with the Council's equality and sustainability duties and so far as practicable making procurement spend more accessible to local small businesses and the third sector, contributing to the Council's 2030 carbon-neutral target, encouraging and promoting Fair Work First principles, payment of the Real Living Wage and increasing community benefits delivered by suppliers.

11.2 In all quick quotes/ tenders of a value of £50,000 or more, the procuring department ~~must decide whether to will~~ require bidders to identify proposed community benefits where it is considered appropriate to the contract ~~they will provide together with and provide~~ a method statement as to how they will achieve these benefits. A decision to include such a requirement will be based on the nature and length of the contract and other local factors which should be discussed with a Procurement Category Manager.

11.3 Where community benefits are being sought from a contractor this fact should be included in any Quick Quote or contract notice

11.4 If community benefits are being sought, at the closing date for bids the preferred bid will be considered under the Council's Community Benefits policy current at that time.

~~For all proposed contracts with a value in excess of £25,000 relating to the matters specified in the Council's Sustainable Procurement Policy current at the time, an environmental opportunities checklist must be completed by the procuring department before they are advertised. When directed by Procurement or the Environment department, all contracts with a value in excess of £50,000 are required to complete the Climate Change Impact Assessment tool available on the Intranet. Consideration should also be given to utilising the Scottish Governments Sustainable Procurement Tools~~

~~<https://sustainableprocurementtools.scot/> and the involvement of Small or Medium Enterprises (SMEs), third sector bodies and supported businesses by using separate lots.~~

11.6 The Council reserve the right to issue a tendering procedure to providers operating supported businesses, supported employment programmes or supported factories where more than 50% of the workers are disabled or disadvantaged persons in accordance with the 2015 Regulations. Where this right is exercised by the Council the contract award procedures provided by the Regulations and Act shall be followed.

11.7 Where possible the Council shall seek to ensure that for purchases or contracts of an estimated value of £50,000 or less, at least one SME from East Renfrewshire or an SME who is a significant employer within East Renfrewshire is invited to respond. The Online Trading Network is a database of suppliers interested to work with the Council and should be checked for any appropriate suppliers to invite. <http://intranet.erc.insider/suppliersearch?1=1%3b%2fsuppliersearch>

11.8 All contracts with a value in excess of £10,000 shall set out the Council's commitment to fair working practices and the Council's expectation that contractors take a similarly positive approach as part of a fair and equitable employment and reward package for their staff. Every contract shall also set out that the Council is committed to proactively vetting our supply chain to ensure no instances of modern slavery are taking place.

## **912 CONTRACT PROCESS**

- i) Contracts for goods and services of a total value of £10,000 or less and for works of a total value of £20,000 or less will be progressed in a manner to be determined by the Director of the procuring department, subject to the general requirement to obtain best value and ensure fairness reflected in Standing Order 5.
- ii) Contracts for goods and services of a total value above £10,000 but under £50,000 and for works of a total value above £20,000 but under £500,000 will be progressed by means of the Quick Quote procedure. The Quick Quote instruction guide is available on the Procurement page of the Intranet. <https://intranet.erc.insider/article/9543/Quick-Quote>
- iii) Contracts for goods and services of a total value of £50,000 and above and for works of a total value of £500,000 and above will be progressed by the Chief Procurement Officer in consultation with the procuring service.
- 4) Wherever VAT may be payable under a contract, the Council must ensure that an allowance for VAT is included in the calculation of the estimated value of the contract for the purposes of determining whether the contract equals or exceeds the thresholds detailed.

## **13. QUICK QUOTE**

- 13.1 As outlined in the Quick Quote instruction guide available on the Procurement page of the Intranet a minimum of 5 suppliers must be invited to respond at least one of which should be local where possible. Where you are not able to identify 5 suppliers you should seek advice from your Procurement Category Manager.
- 13.2 No quotation shall be considered unless it is received in the format required by the Council and by the deadline set for the receipt of quotations.
- 13.3 The quotation post-box will be opened by the procuring service via the unlock facility on the portal.
- 13.4 Each quotation shall be evaluated in accordance with the criteria detailed in the Quick Quote instructions guide available on the Procurement page of the Intranet.

## **14. DISAGGREGATION AND LOTS**

- 14.1 No potential procurement shall be sub-divided with the effect of avoiding the application of any provision of Contract Standing Orders or any relevant legislation, unless subdivision can be objectively justified.

14.2 A known continuing annual requirement for the same type of service or works across Council Services must be aggregated into a procurement of a longer duration as required by these Contract Standing Orders and/or legislation. The estimated value so determined by the longer duration shall be the value of the contract.

14.3 While the Corporate Procurement Team will carry out monitoring and research to identify opportunities for aggregation, all officers with budgetary responsibility have a duty to advise the Corporate Procurement Team of any such opportunities which they become aware of.

14.4 The allocation or approval of budgets and the devolved management of budgets does not dispense with the requirement to comply with the provisions of these Contract Standing Orders and relevant legislative provisions.

14.5 The artificial splitting of purchase orders or requirements to avoid the application of these Standing Orders is not permitted.

#### **1015. PUBLICITY FOR TENDERS AND CONTRACTS**

15.1 This Standing Order does not apply to tenders for Social and other Specific Services which are subject to the terms of [Standing Order 17 schedule 1](#) or to contracts for the appointment of consultants which are subject to Standing Order [1927](#).

15.2 All other Contracts for goods and services of a total value of £10,000 or less and for works of a total value of £20,000 or less shall be advertised at the discretion of, and in a manner decided by, the Director of the procuring department taking account of the nature of the contract, its value and the need to ensure best value for the Council. The Director must record the reasons for deciding that a contract will not be advertised and must keep this record as evidence.

15.3 All other Contracts for goods and services valued between £10,000 and £50,000 and for works valued between £20,000 and £500,000 shall be advertised by the Director of the procuring department in accordance with the Quick Quote procedure.

15.4 All other Contracts for goods and services valued £50,000 and above and for works valued £500,000 and above will be advertised by the Chief Procurement Officer publishing an invitation to tender on the Public Contracts Scotland portal.

#### **16. LATE TENDERS**

16.1 No tenders received after the closing date and time for submission shall be considered. Where a tender is late due to a failure or lack of availability of the electronic tendering platform, and which is not attributable to the tenderer or as the case may be their agent, the express approval of the Chief Procurement Officer shall be required to admit the tender for consideration.

#### **1417. ACCEPTANCE OF TENDERS**

17.1 In all cases the tender to be accepted will be the most economically advantageous tender. Where the preferred tender falls within the approved budget it will be accepted:-

- ~~i.~~(1) If of a total value of £10,000 or less for goods and services or £20,000 or less for works, by the procuring department issuing a purchase order.
- ~~ii.~~(2) If a Quick Quote for a total value between £10,000 and £50,000 for goods and services or between £20,000 and £500,000 for works, by the placing of a contract award notice on the Quick Quote system by the procuring department
- ~~iii.~~(3) If for the supply of goods and services and of a total value between £50,000 and £150,000 inclusive, by the Chief Officer – Legal and Procurement, Chief Procurement Officer or the Principal Solicitor.
- ~~iv.~~(4) If of a total value in excess of £150,000 goods and services and £500,000 works by the Chief Officer – Legal and Procurement or the Principal Solicitor.
- (5) If a received tender has omitted to fill in all areas of the pricing document the procuring department will, after consultation between Procurement and the procuring department, disallow the tender.
- 17.2 If it is proposed to accept a tender and the price is in excess of the approved budgetary figure, the prior approval of the Chief Executive or the Chief Finance Officer must be obtained and a report submitted to the next meeting of the Cabinet or appropriate Committee.

#### **18.18. PURCHASE ORDERS AND CONTRACT REGISTER**

- 18.1 At the time of acceptance of any tender, Quick Quote or award of contract, the procuring department must issue a corresponding purchase order. It must thereafter follow the required procedures regarding goods received notification and prompt payment of invoices. For the avoidance of doubt, this clause also applies to call-offs from Framework Agreements in which case the Framework Agreement title and reference number should be stated.
- 18.2 The contract and the purchase order must be cross referenced and all payments in respect of the contract made in accordance with the contract and purchase order terms.
- 18.3 The value of any purchase order should reflect the value of the corresponding contract but may be increased during the life of a contract by a figure no more than 10% of the contract value in the case of goods and services contracts and no more than 15% in the case of works contracts to allow for contingencies which arise. Clause 14, Contract Value Variations, is to be read in conjunction with this Clause.
- 18.4 For contracts that have no guaranteed or fixed expenditure (such as framework agreements or measured term contracts) the purchase order value should be set in line with anticipated spend.
- 18.5 The use of retrospective orders is not permitted and can only be used when an extreme emergency arises which places property or life at risk.
- 18.6 The Council operates a “No PO – No Pay” policy, this means that any invoice received from a Supplier without a valid purchase order will be returned to the Supplier. Officers are therefore responsible for ensuring that Suppliers are given a valid purchase order to quote on their invoices to ensure that Suppliers are paid on time.

## **1319. CONTRACT STRATEGY**

- 19.1 Before issuing any tender for goods and services of a value of £50,000 and above and for works of £500,000 and above, the procuring department must liaise with the ~~Chief Procurement Officer~~ Procurement Category Manager to produce a contract strategy document, Procurement Route 2 or Route 3. Amongst other matters, the strategy will require to identify whether it is relevant and proportionate to evaluate contractors in relation to fair work practices and community benefits given the nature of the contract.
- 19.2 At the strategy development stage the procuring department should identify all risks associated with the procurement so as to include measures to mitigate them in tender documentation. The procuring department will enter the risk in their service risk register if the Director perceives the risk to be significant.
- 19.3 In developing the contract strategy, procuring departments should identify the appropriate level of contract management to be applied during the contract period taking into account the total contract value, complexity, risk and market conditions. This should be reflected in the invitation to tender.
- 19.4 After awarding the contract, the procuring department must identify a Contract manager to manage it in line with the standards identified in the tender. Contract management reviews shall cover the financial aspects of the contract and other relevant operational issues to establish a measure of supplier performance against the contract requirements with evidence being retained for audit purposes.

## **20. CONTRACT MANAGEMENT**

- 20.1 Throughout the life of a contract it should be managed by the Contract Manager in respect of
- (1) following the corporate Standard Operating Procedure:  
<https://intranet.erc.insider/article/9556/Contract-and-Supplier-Management>
  - (2) performance;
  - (3) compliance with the specification and other terms of the contract;
  - (4) cost and benefits;
  - (5) best value requirements;
  - (6) equality requirements;
  - (7) in line with the Sustainable Procurement Policy;
  - (8) delivery and risk management;
  - (9) continuous Improvement.

## **1421. CONTRACT VALUE VARIATIONS**

~~Contract value may, if necessary, be routinely extended by a sum no more than 10% of the initial contract value (in the case of contracts for goods and services) and 15% (in the case of contracts for works), provided the appropriate authorisation route as outlined below is complied with.~~

~~Variations greater than £100,000:-~~

~~All variations exceeding £100,000 must be reported to Cabinet for approval prior to the variation being instructed. If the variation is urgently required, approval may be given by two~~



~~members of Cabinet. In that case, the variation should be reported to full Cabinet as soon as practicable after such approval.~~

~~Variations up to and including £100,000:-~~

~~For any contract of quick quote value and below, the variation must be authorised by an appropriate line manager and a full audit trail retained.~~

~~For any contract above quick quote value, the procuring department shall provide to their Director for consideration and approval the following details: contract name and reference number, contract period, supplier name, contract award value, nature and value of the variation and confirmation of available budget. On approval, the same detail shall be furnished to Corporate Procurement for the amendment of the related contract records.~~

~~Contract value may exceptionally be extended by a sum in excess of the 10 and 15% thresholds provided the appropriate authorisation route as outlined below is complied with.~~

~~For any contract of quick quote value and below:-~~

~~Where the initial value of the contract plus the proposed variation amounts to a sum below or within quick quote thresholds, the variation must be authorised by an appropriate line manager and a full audit trail retained~~

~~Where the initial value of the contract plus the proposed variation amounts to a sum in excess of quick quote value, the procuring department shall provide to their Director for consideration and approval the following details: contract name and reference number, contract period, supplier name, contract award value, nature and value of the variation and confirmation of available budget. On approval, the same detail shall be furnished to Corporate Procurement for the amendment of the related contract records.~~

~~For any contract above quick quote value:-~~

~~Any desired variation in excess of the 10% or 15% limits must be referred to the Chief Officer – Legal and Procurement for consideration of its legal implications. If sanctioned by the Chief Officer Legal and Procurement the proposed variation must be reported to Cabinet for approval prior to the variation being instructed. If the variation is urgently required, approval may be given by two members of Cabinet. In that case, the variation should be reported to full Cabinet as soon as practicable after such approval.~~

21.1 All Contract Variations must be carried out within the scope of the original contract and must not materially affect or change the Contract.

21.2 There are significant limitations upon the Council being able to make such modifications, especially where the Procurement Legislation applies.

21.3 The provisions detailed here will apply to a proposed variation alone or in conjunction with previous variations of the contract.

21.4 Variations referred to herein are variations beyond the value of the original, accepted and / or ordered contract sum, whether for goods and supplies or for works.

21.5 Such variations must be approved by:

21.5.1 The Line Manager of the procuring service if the value of the variation is less than 10% goods and services or 15% works, or the revised total Contract Value is less than £100k.

21.5.2 The Chief Officer – Legal and Procurement if the value of the variation is in excess of the 10% goods and services , where total contract value is more than £100k for goods and services for consideration of its legal implications. If sanctioned by the Chief Officer Legal and Procurement the proposed variation must be reported to Cabinet for approval prior to the variation being instructed.

21.5.3 The Chief Officer – Legal and Procurement if the value of the variation is in excess 15% of the works, where total contract value is more than £200k for works for consideration of its legal implications. If sanctioned by the Chief Officer Legal and Procurement the proposed variation must be reported to Cabinet for approval prior to the variation being instructed.

21.5.4 If the variation is urgently required or required during recess, approval may be given by two members of Cabinet. In that case, the variation should be reported to full Cabinet as soon as practicable after such approval.

21.6 Where approval has been granted the Variation form available on the procurement page of the Intranet must be completed by the Director or delegated officer and a copy provided to Corporate Procurement for the contract file. <https://intranet.erc.insider/article/10442/Contract-Variation>

21.7 The provisions detailed here also apply regardless of the standard terms and conditions applied under the contract which may contain mechanisms for dealing with increases to the contract sum (for example SBCC, NEC etc.).

21.8 Where the contract has been awarded under the City Region, approval to vary the contract must be in line with any rules specified by the City Deal Partnership current at that time.

**22. MODIFICATION TO CONTRACT**

22.1 Consideration must be taken of the value, type and scope of the modification relevant to the original contract. Modifications cannot be considered if the terms and conditions of the contract do not allow for this or if the value and/or scope of the modification are significantly different from the original contract.

22.2 Any modifications to the scope, duration, terms and conditions or value, should not be agreed without the prior approval of the Chief Procurement Officer or in their absence the Chief Officer Legal and Procurement and without having necessary budget provision.

## **1523. EXEMPTIONS FROM COMPETITION**

- 23.1** Prior to the award of a contract, and provided best value is obtained, exemption from competition may be sought:-
- i. where the Director of the procuring department considers that the contract is urgently required to minimise risk of personal injury or damage to property. If the exemption is granted, a report will be submitted by the Director to the next meeting of the Cabinet or appropriate Committee detailing the risks identified and the action taken.
  - ii. where the Director of the procuring department is satisfied that special circumstances apply (such as an urgent need to fulfil an ongoing Council function otherwise incapable of performance).
  - iii. where the Director can establish that the contract relates to proprietary works, goods or services.
- 23.2** The Chief Procurement Officer will decide all exemption requests under i, ii and iii above for contracts valued within the Quick Quote thresholds.
- 23.3** The Chief Officer Legal and Procurement will decide all exemption requests under i above when the value of the contract is £50,000 and above (goods and services) or £150,000 and above (works).
- 23.4** The Chief Officer Legal and Procurement will decide all exemption requests under ii and iii above when the value of the contract is £50,000 and above but less than £100,000 (goods and services) or £150,000 and above but less than £200,000 (works).
- 23.5** The Director or delegated officer provided they are an authorised signatory shall complete the exemption form available within the Online Contracts Register <http://bhqconttest.erc.insider/login> outlining the basis on which the exemption is sought and e-mail it to the relevant approving officer, submit it to Procurement via the system.
- 23.6** Exemption requests under ii and iii above relating to contracts with a value of £100,000 or more (goods and services) and £200,000 or more (works) must be reported to the Cabinet or appropriate committee for approval prior to entering into the contract.
- 23.7** The cumulative value of previous exemptions relating to the same matter must be taken into consideration and reporting followed as outlined under clause 23. The report must outline the circumstances justifying use of this provision and a copy must be retained by the procuring department for audit purposes and a copy uploaded to the record held in the Online Contracts Register.
- 23.8** These exemptions do not apply where the contract value exceeds the EU Procurement thresholds detailed under Schedule 2.

## **1624. FRAMEWORK AGREEMENTS**

24.1 In cases where there is likely to be an ongoing demand for works, goods or services over an extended period, Directors should consider the use of a Framework Agreement to engage a variety of contractors.

24.2 The Director should seek advice from the Chief Procurement Officer to confirm the suitability of a framework arrangement and/or the availability of any pre-existing frameworks which can be used by the Council.

24.3 No Framework Agreement set up by the Council shall last longer than 4 years unless there are exceptional circumstance to justify a longer term. A written record of the exceptional circumstances must be kept with the Framework Agreement.

24.4 The way in which future contracts under a Framework are to be called off and the terms and conditions of those call-off contracts must be specified in the Framework agreement and must be honoured by the procuring department throughout the life of the Framework.

24.5 Where a pre-existing Framework does not specify the terms of a proposed call-off process, any process adopted by the procuring department must be in accordance with 24.6 below.

### 24.6

(1) The Framework must have been properly constituted by the Scottish Government; the Crown Commercial Service, or any other agency of the UK government; Scotland Excel; other Scottish Centres of Procurement Expertise; other local authorities; and other collaborative bodies where the Council is eligible to use these Frameworks and is permitted by the relevant body to do so.

(2) Where, in order to participate in an existing Framework of the type described above, the Council is required to enter into a participation agreement or other similar agreement regulating the use of the Framework by the Council, the Chief Procurement Officer shall enter into the agreement on behalf of the Council, subject to the prior agreement of the Chief Officer Legal and Procurement.

(3) Any such contracts must be entered into in accordance with the conditions applicable to the relevant Framework.

(4) Every contractor on the Framework capable of performing the contract shall be issued with an invitation to take part in the mini competition. All invitations shall be issued at the same time.

(5) The invitations shall specify the closing date and time for submission of tenders under the mini competition procedure.

(6) Any award of contract shall be made to the contractor or contractors who submitted the best tender or tenders on the basis of the award criteria specified in the Contract Documents based on the Framework documents.

(7) Where a Regulated Contract is awarded following a call-off or mini competition under a Framework, the Procurement Category Manager shall publish an award notice on the Public Contracts website.

## 25. SCHEDULE OF RATES CONTRACTS

25.1 In every works contract which is a schedule of rates contract, following discussion with the Procurement Category Manager and/or the appropriately competent project lead and prior to invitations to tender being issued, the Director of the procuring department shall fix an indicative total value for the contract.

## ~~17. CONTRACTS FOR SOCIAL AND OTHER SPECIFIC SERVICES~~

~~Standing Orders 9 and 10 do not apply to contracts for Social and other Specific Services.~~

~~The Director of the procuring department may decide on the procedure to be used to award any contract or framework for "Social and other Specific Services." In particular, the Director will decide whether the contract requires to be advertised for competition. To avoid doubt, Standing Order 5 continues to apply to all such procedures~~

~~For Contracts with a value in excess of £589,000, the Director will liaise with the Chief Procurement Officer to identify what formal notices, if any, require to be published before commencing the procedure.~~

~~The Director will provide the Chief Procurement Officer with all details required to enable the publication of any necessary notice.~~

~~The Director of the Health and Social Care Partnership (HSCP) may decide on the procedure to be used to award any contract or framework for social care services taking into account the specific nature of the services sought and the needs and requirements of the clients likely to use the services.~~

~~Any award of a contract or framework for social care services with a value in excess of £589,000 must be based on the best price quality ratio, taking into account the following criteria:-~~

- ~~-the need to ensure quality, continuity, accessibility, affordability, availability and comprehensiveness of the services;~~
- ~~-the specific needs of different categories of users, including disadvantaged and vulnerable groups;~~
- ~~-the involvement and empowerment of users; -~~
- ~~-innovation; and~~
- ~~-any other relevant consideration~~

~~The Director of the HSCP will keep a full written record of his/her position regarding the specialist nature of the services to be procured and/or the availability of appropriate providers and will retain the record with the contract.~~

~~The Director of the HSCP must submit an annual report to the Council detailing the contracts awarded in relation to the provision of specialist social care services. This report will not identify the recipients of such services but will be submitted on an anonymised basis.~~

~~In the event that the contract involves the provision of services across a range of Council functions eg Education and Social Care, the Director of the HSCP will consult with any other relevant director prior to commencing the award process.~~

## **1826. PRIOR APPROVAL FOR SPECIFIC CONTRACTS**

26.1 Prior to commencing a process to let any of the following types of contract (of whatever value), the procuring department shall liaise with and seek approval of the senior officer identified below.

- (1) any contract for the purchase of IT related goods and services, the Head of ICT and ~~Digital Enablement Resilience~~
- (2) any contract involving work to Council land and buildings, the Head of Housing, Property and Technical Services
- (3) any contract involving the handling of records containing personal data, the Council's Chief Officer - Legal and Procurement.

## **1927. CONTRACTS FOR APPOINTMENT OF CONSULTANTS**

27.1 Where the fee for the desired consultancy work is likely to be less than £10,000 the Director of the Procuring department may decide on the procedure to be used to make the appointment, but must always take into account the need for equal treatment, best value and transparency in reaching such a decision. The procuring department shall provide to the consultant, as a minimum, a statement of requirements and terms and conditions of contract and shall also require the consultant to complete a pricing schedule. The procuring department must be satisfied that best value is being achieved prior to the commencement of the consultancy.

27.2 Where it is anticipated that a fee bid is likely to exceed £10,000, the appointment process will be conducted as per Standing Orders 9-12 (ii) and (iii).

27.3 A central log of all consultancy awards will be maintained in Share Point and shall include detail regarding the objective of the award, its rationale, the budget allocated for the provision of the services, actual spend incurred in relation to the consultancy and details of the consultant. Services must input relevant information to the log within 14 days of awarding the contract. Full details on this can be found within the Procurement Manual <https://intranet.erc.insider/article/9547/Important-Documents>

27.4 Any consultant appointed will be required to comply with these Standing Orders as though they were officers of the Council.

27.5 Any consultant appointed will be required, upon request at any time during the contract, to produce all records maintained by them in relation to the contract and on completion of the contract deliver all such records to the Director of the procuring department, if so requested.

27.6 All contracts for consultancy services must set out clear output targets for performance by the consultant under the contract.

## **28. INTELLECTUAL PROPERTY RIGHTS**

28.1 The procuring department shall, in so far as practicable, ensure that in contracts for the supply of reports, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs, the intellectual property rights in the material produced by the Supplier shall vest in the Council absolutely.

## 29. GRANTS TO OTHER ORGANISATIONS / SUBSIDY

- 29.1 Grants are financial contributions to a third party which help to meet the Council's strategic objectives in the wider community and are subject to the requirements to secure Best Value. In effect, a grant is a gift of financial assistance from the Council with conditions attached. The attached conditions must be either grant conditions approved by the Council or grant conditions required to be included by an external organisation providing funding for the purpose of the grant. Whereas these conditions impose limits and instructions on how the grant may be used, they do not set out the precise details of any services to be provided nor do they prescribe how the specified purpose will be achieved. Grants are different from loans in that there is no expectation that any part of the grant will be repaid provided the conditions of grant are complied with. If the conditions are breached, the Council's only remedy is to demand that the grant be repaid.
- 29.2 The following characteristics will normally help determine whether a grant is the suitable funding route: -
- (1) it should not be for critical service requirements or those the Council has a statutory responsibility to deliver, grant funding is for discretionary objectives;
  - (2) funds will normally be given subject to desired outcomes being met but the Council will not normally receive services;
  - (3) the Council is providing funding to support activities that will help it to meet its commitments to East Renfrewshire and where the organisation does not have sufficient resources to deliver those activities on a self-sustaining basis itself;
  - (4) a grant will normally be out with the scope of VAT and procurement;
  - (5) there is no financial threshold above which a grant becomes a contract but if the investment is significant this may reflect a significant need in which case greater control and/or a more defined specification may be advisable. Advice should be sought from the Chief Procurement Officer or in their absence the Chief Officer Legal and Procurement.
- 29.3 The Council is committed to the principles of collaboration and co-production. Co-production means the real and meaningful involvement of the citizens of East Renfrewshire and recipients of services in delivering better outcomes. Grant recipients shall be encouraged to communicate effectively and to work together with recipients of services and communities of interest to achieve improved outcomes.
- 29.4 Grant funding is to be outcome driven, accessible and transparent, supporting innovation and projects that meet the needs of the citizens of East Renfrewshire.
- 29.5 The distribution and allocation of grant funding should be prioritised based on an assessment of need where applicable and reviewed annually.
- 29.6 All grants paid must have specific grant agreements which are to include a service level agreement and should be suitable and proportionate to the level of funding and reflect the activities and outcomes to be delivered.
- 29.7 Grant agreements should detail as a minimum: what the grant is being given for (measurable outcomes, impacts, outputs or activities), how long the grant period relates to, the amount being paid, dates of payment and payment process, terms for

repayment of any unspent grant and the requirements to provide regular reports and allow for site visits.

29.8 For each grant the relevant Director shall appoint a grant monitoring officer to set targets, to oversee the process, manage any issues with individual recipients and ensure outcomes are achieved and managed.

29.9 Grant agreements shall require the grant recipient to comply with applicable legislative requirements, be properly constituted, have in place proper employment recruitment and selection practices, carry out disclosure checks where appropriate, comply with all equal opportunities requirements and encourage payment at the current Living Wage rate.

#### **Grant up to £100,000**

29.10 For Grants up to £100,000 the application shall be assessed and evaluated by more than one Council officer or a peer group panel. The applicant organisation should be able to demonstrate their links or proposed links to the relevant community of interest and the local business plan.

#### **Grants Applications exceeding £100,000**

29.11 For Grant applications which exceed or may exceed £100,000 in total the process to determine successful grant applicants shall be determined by the relevant Director and the successful applicants shall be reported back to any relevant Committee or board.

29.12 To encourage the future financial sustainability and diversity of funding sources, applicants should be encouraged where possible to seek and secure alternative sources of funding in addition to Council funding.

29.13 The Council will not normally provide more than 95% of an organisations turnover in grant funding.

#### **State Aid - Subsidies Rules**

29.14 Provision of a grant must not provide an unfair advantage on an organisation or distort competition. Examples include:

(1) The Council gives a sum of money to only one of a number of local organisations who provide a service to the community, without there being any competition for that funding. The other organisations could claim that there has been an unfair subsidy paid to the organisation that was given the grant because they too could have provided the service if they had been given the opportunity.

(2) For a grant to be classed as a subsidy the following criteria requires to be met:- It affects international trade. This can be trade with any World Trade Organisation member or, more specifically, between the UK and a country with whom it has a Free Trade Agreement. For example, if the subsidy is going towards a good or a service which is traded between the UK and the EU this could affect trade between the EU and the UK. (Please note that you are not being asked whether the subsidy could harm trade but merely whether there could be some sort of effect.) Subsidies to truly local companies or a small tourist attraction are unlikely to be caught as this is unlikely to affect international trade.



(3) A breach of the subsidy rules could have serious consequences for the Council. Therefore, any concerns about whether a grant could be considered a subsidy must be referred to the Chief Officer Legal and Procurement. National guidance can be referred to at <https://www.gov.scot/publications/subsidy-control-guidance/>

(4) It is the responsibility of the relevant Director to consider whether there could be any Subsidy involved in a contract.

### **3020. PRE- CONTRACT CONFIRMATIONS**

Before any contract is awarded, ~~the Council~~ the procuring department shall satisfy itself that a preferred bidder:-

- (1) is complying with the responsibilities placed on them by the Equality Act 2010 relating to discrimination in employment.
- (2) if the contract is valued in excess of £50,000, is of satisfactory financial standing as confirmed by the Chief Procurement Officer checking with a reputable credit reference agency.

Where it has been established at the contract strategy stage that the contract is deemed to be of high value and / or high risk, supplementary financial checks will be carried out to assess turnover and review solvency and profitability. Only where a tenderer passes those checks and receives a satisfactory credit rating as advised by the Procurement Category Manager shall a contract be awarded.

- (3) is operating health and safety policies which conform to current legislation including, where appropriate, the Construction (Design and Management) Regulations 2015 or any future amendment or replacement of those regulations.

### **3124. INSURANCE**

31.1 The Director of the procuring department must identify the level of liability insurance relevant to any prospective contract based on the risks to the Council inherent in the contract. This should be stated in the tender documentation. Before any contract is awarded, contractors must provide details of all insurances held by them relevant to the contract, including, but not restricted to, Public Liability, Employers' Liability, Professional Indemnity, Product Liability and Contract Works. No contract shall be awarded to a contractor who does not exhibit the relevant level of insurance cover.

31.2 A contractor's insurance cover should be checked annually by the contract manager during the term of the contract. Evidence of checking should be saved into the Online Contracts Register.

**32122. SPECIFICATION STANDARDS**

32.1 Any tender submitted in response to an invitation to tender shall require to comply with any relevant and recognised British, European or International standard current at the date of tender return and the goods, materials or services to be used or supplied and all relevant workmanship shall meet that standard as a minimum requirement.

32.2 A written specification shall be prepared by the procuring department, which must contain sufficient detail to enable the supplier to determine what is expected in terms of performance of the contract and to enable the Council to monitor the quality of that performance.

32.3 As a minimum the specification will incorporate:

- (1) a clear description of what the supplier will be expected to provide under the contract;
- (2) information about how the Council will pay for what is to be provided under the contract;
- (3) details of the level of service to be provided under the contract, including, but not restricted to, timescales for delivery or performance and any performance measures set by the Council;
- (4) the evaluation criteria to be used for the award of the contract;
- (5) the terms and conditions applicable to the contract;

32.4 Any contract shall be awarded to the supplier/s who has submitted the Most Economically Advantageous Tender (MEAT), taking into account the price offered and the supplier's response to any quality or other criteria set by the Council.

**3323. CONTRACT PROVISIONS**

33.1 Every Contract issued by the Council will include a clause :

- (1) prohibiting the contractor from transferring or assigning to a 3rd party any part of the contract without the prior written consent of the Chief Procurement Officer or Director of the procuring department;
- (2) identifying the extent to which the contract may be sub-contracted, if at all;
- (3) entitling the Council to cancel the contract and to recover from the contractor any loss resulting from the cancellation, if the contractor or the contractor's representative (whether with or without knowledge of the contractor) has colluded in tendering for that contract or any other contract with the Council or has employed any corrupt or illegal practices in either the procurement or the execution of the contract or any other contracts with the Council.
- (4) requiring the contractor to maintain relevant levels of insurance throughout the terms of the contract.

33.2 Use of standard forms of contract such as SBCC or NEC, as appropriately completed by Technical Services shall be deemed to comply with the above criteria.

**3424. LIQUIDATE AND ASCERTAINED DAMAGES**

34.1 If the contract must be performed by a particular date or with reference to a series of dates, the ~~Director~~ appropriately competent project team lead of the procuring department may, if it is deemed appropriate to the contract will identify a genuine pre-estimate of any loss that may arise from its non-performance in that timeframe so that a clause may be inserted into the contract allowing recovery of such sums should the contractor default.

34.2 Procuring departments are required to co-operate with the corporate procurement department in these exercises and shall provide any reasonably required relevant information.

34.3 Use of standard forms of contract such as SBCC or NEC, as appropriately completed by Technical Services shall be deemed to comply with the above criteria.

**35. PERFORMANCE BONDS AND PARENT COMPANY GUARANTEES**

35.1 Where considered necessary by the Director or the appropriately competent project lead of the relevant service the preferred supplier being recommended for contract award shall take out a bond, obtain and deliver a formal parent company guarantee or provide other sufficient security for the due performance of the contract.

**3625. RESERVED CONTRACT**

36.1 In respect of a Regulated Procurement, the procuring department may reserve the right to participate in the procurement exercise to Supported Businesses only or provide for a contract to be performed in a Supported Employment Programme. Any such decision must be recorded in the Contract Strategy Document before the procurement begins.

**37. PAYMENT IN ADVANCE**

37.1 In any contract for the supply of goods and materials where the purchase price, or any instalment of it, is to be paid in advance by the Council to any contractor prior to completion of the contract or the relevant stage or section of the contract, the following shall apply:-

- (1) The Director of the relevant service must be satisfied that payment in advance is the only available option if the contract is to proceed.
- (2) If a proposal requires payment in advance for goods or materials which are to be retained in the possession of the contractor (e.g. until further work has been completed) then a document either vesting ownership in the Council, or otherwise protecting the Council's interest, prior to the payment of the first instalment must be obtained by the Director of the relevant service in consultation with the Chief Officer Legal and Procurement.
- (3) The Director of the relevant service shall ensure that any such goods or materials are insured while retained on the Contractor's premises.
- (4) The Director of the relevant service shall obtain the prior written approval of the Chief Procurement Officer and the Head of Accountancy Services when

entering into any agreement to make payment in advance other than as permitted under this Standing Order.

- (5) Use of standard forms of contract such as SBCC or NEC, as appropriately completed by Technical Services shall be deemed to comply with the above criteria.

### **38. CONTRACT TERMINATION**

38.1 The relevant Director may terminate or suspend a contract or Framework Agreement in accordance with the express or implied terms of the contract and may also take such further action with regard to any contract or Framework Agreement as the Council is legally entitled to take, subject to consultation with the Chief Procurement Officer.

38.2 Any termination shall be subject to the relevant Director seeking appropriate advice from the Chief Officer Legal and Procurement and them being satisfied that it is reasonable and in the interests of the Council to exercise that power.

### **39. SCOTS LAW**

39.1 Except where otherwise agreed between the Director of the relevant service and the Chief Officer Legal and Procurement, every contract entered into by the Council shall be in writing and shall be subject to Scots Law and the exclusive jurisdiction of the Scottish Courts.

## SCHEDULE 1

### STANDING ORDERS RELATING TO SOCIAL CARE CONTRACTS

#### 40. CONTRACTS FOR SOCIAL AND OTHER SPECIFIC SERVICES

40.1 Health, social care and community services shall be procured in accordance with the Act, the 2015 Regulations, the 2016 Regulations, the Procurement of Care and Support Services 2016 (Best Practice), any statutory guidance issued under the Act and the principles of Co-production.

#### 41. PROCUREMENT THRESHOLDS FOR SOCIAL CARE

##### 41.1 Contracts valued at £663,540 (incl. VAT) and above

In accordance with the Regulations, health, social and related services are classed as Schedule 3 services. Commissioning Staff will therefore be required to adhere to certain requirements prescribed in the Regulations and comply with the Procurement Journey Guidance where the value of the contract is equal to or above the value threshold for Schedule 3 (light touch regime) services contracts.

41.2 Any award of a contract or Framework for social care services with a value in excess of £663,540 (incl. VAT) must be based on the best price quality ratio, taking into account the following criteria:-

- (1) the need to ensure quality, continuity, accessibility, affordability, availability and comprehensiveness of the services;
- (2) the specific needs of different categories of users, including disadvantaged and vulnerable groups;
- (3) the involvement and empowerment of users; .
- (4) innovation; and
- (5) any other relevant consideration

##### 41.3 Contracts valued at £50,000 (excl. VAT) or above, but below £663,540 (incl. VAT)

Although it is not mandatory to advertise any Regulated Social Care Contract, a decision must be made on a case-by-case basis whether to seek offers in relation to the proposed contract or directly award the contract to a particular Provider. In each case regard must be made to the Procurement Journey Guidance and the Statutory Guidance made under the 2014 Act. The Best Practice Guidance must also be taken into account when commissioning staff wish to make a direct award of the contract rather than seek offers.

41.4 The Director of the HSCP will keep a full written record of his/her position regarding the specialist nature of the services to be procured and/or the availability of appropriate Providers and will retain the record with the contract.

## 42. NEGOTIATED PROCEDURE WITHOUT PRIOR PUBLICATION

42.1 The Director of the HSCP or Chief Social Worker, with the agreement of the Chief Procurement Officer and Chief Officer Legal and Procurement, will decide on a case by case basis whether there are circumstances justifying a departure from competitive process which would allow the use of the negotiated procedure without prior publication as set below.

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

## 43. ANNUAL REPORT

43.1 The Director of the HSCP must submit an annual report to the Council detailing the contracts awarded in relation to the provision of specialist social care services. This report will not identify the recipients of such services but will be submitted on an anonymised basis.

43.2 In the event that the contract involves the provision of services across a range of Council functions e.g. Education and Social Care, the Director of the HSCP will consult with any other relevant Director prior to commencing the award process.

## 44. PROVIDERS

44.1 Whenever the Council intends to permit a Provider to deliver Social Care on its behalf, the Director of the HSCP shall ensure that the Provider is a suitable person / organisation/ company to provide such services by ensuring that they:

- (1) are, where applicable, the holder of a current and valid Certificate of Registration with Social Care and Social Work Improvement Scotland (SCSWIS) commonly known as the Care Inspectorate as Registration Authority in terms of the Public Services Reform (Scotland) Act 2010;

- (2) have produced satisfactory evidence to the Chief Officer regarding their economic and financial standing; insurance arrangements; legal capacity and health, safety and environmental procedures;
- (3) have the professional or technical capability to provide the services required by the Council; and
- (4) have confirmed in writing that they will enter into a contract with the Council (or an approved sub-contracting arrangement), should the Council require the Provider to deliver Social Care services.

#### **45. ADVERTISING**

45.1 Where a contract is for Health or Social Care Services and the estimated value of the contract is in excess of the threshold for Social and Other Specific Services, £663,540 (incl. VAT), the Director will liaise with the Chief Procurement Officer to identify what formal notices, if any, require to be published before commencing the procedure. The Director will provide the Chief Procurement Officer with all details required to enable the publication of any necessary notice.

#### **46. AWARD PROCEDURE**

46.1 Where a contract is for Health or Social Care Services and the estimated value of the contract is less than the threshold for Social and Other Specific Services, the Director of East Renfrewshire Health and Social Care Partnership may elect to follow the procedures set out in the Procurement Reform Rules. In such circumstances, the Director in conjunction with the Chief Procurement Officer may decide, that offers shall not be sought

46.2 Any Social Care Contract for the delivery of care packages to individuals assessed by the Chief Officer as having complex sensitive care requirements shall be excluded from these Standing Orders. The Chief Officer shall prepare and retain for audit purposes a written report recording, on an anonymised basis, the individual care requirements in each case, the reason(s) why the particular Provider was selected, and why the cost represented best value to the Council in the circumstances.

SCHEDULE 2Thresholds under the Procurement Regulations applicable to the Council from 1 January 2022 (all figures are inclusive of VAT)Public Contracts

<u>SUPPLIES</u>	<u>£213,477</u>
<u>SERVICES</u>	<u>£213,477</u>
<u>WORKS</u>	<u>£5,336,937</u>
<u>SOCIAL AND OTHER SPECIFIC SERVICES</u>	<u>£663,540</u>

Concession Contracts £5,336,937

Utilities Contracts

<u>SUPPLIES</u>	<u>£426,955</u>
<u>SERVICES</u>	<u>£426,955</u>
<u>WORKS</u>	<u>£5,336,937</u>

Thresholds will next be reviewed– 1 January 2024



SCHEDULE 3

PROCUREMENT PROCESS MAPS

East Renfrewshire Council Procurement Process for Goods and Services



Goods and Services  
Process Map - FINAL.docx

East Renfrewshire Council Procurement Process for Works



Works Process Map -  
FINAL.docx

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