

SHETLAND ISLANDS COUNCIL

CONTRACT STANDING ORDERS

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CONTRACT STANDING ORDERS

CONTENTS

Introduction:		Page
1.	Executive Summary	3
2.	Procurement Check List	6
Context:		
1.	Commencement	7
2.	Definitions	7
3.	Extent and Introduction	9
4.	EU, UK and Scottish Legislation	9
5.	Breach of Contract Standing Orders	10
6.	Reporting to Committees	10
7.	Conflicts of Interest	10
Contract Standing Orders		
Part 1 - Applicable Standards:		
1.	Exemptions from Contract Standing Orders	11
2.	Exceptions from Contract Standing Orders	11
3.	Budgetary Provision and Precautionary Tendering	12
4.	Business Cases	13
5.	Dispensing with Competition	13
6.	Periodic Supplies and Framework Agreements	14
7.	Aggregation of Demand, Partnership Working and Shared Services	14
8.	Freedom of Information	15
9.	Specifications	15
10.	Sustainability and Equal Opportunities	15
11.	Procurement, Project and Contract Risk; and Project Management	15
12.	Significant Trading Operations	16
13.	Reporting of Contracts and Contract Expenditure	16
14.	Construction (Design and Management) Regulations 2007	17
15.	Transfer of Undertakings (Protection of Employment) Regulations 2006	17
16.	Contract Register and Transparency	17
Part 2 - Operational Procedures:		
1.	Authority to Invite Tenders and Participate in Procurement Work	18
2.	Advertising of Tenders	18
3.	Framework Agreements	19
4.	Tendering via Restricted Procedures and Ad-hoc Lists	20
5.	Open Tendering	20
6.	Content of Invitations to Tender	20
7.	Supplier Selection And Contact Award Criteria	21
8.	Handling of Tenders	23

9.	Evaluation Procedures and Award of Contract	24
10.	Risk Management Procedures	25
11.	Quotations	26
12.	Contract Documents	27
13.	Termination of Contracts	27
14.	Engagement of Consultants	28
15.	Procedures for Procurement of Residual (“Part B”) Services	28
ANNEX 1	PRESCRIBED SUMS	30
ANNEX 2	PROCUREMENT (TENDER) PROCESS CHECKLIST	31
ANNEX 3	RETENTION SCHEDULE	32
ANNEX 4	DEFINITIONS OF SUPPLIES, SERVICES AND WORKS	33
ANNEX 5	CONTRACT REQUEST FORM	37
ANNEX 6	PROCUREMENT PROCEDURES SUMMARY GUIDANCE	39

INTRODUCTION

1. EXECUTIVE SUMMARY

All public procurement within the United Kingdom is governed by the Treaties of the European Union and European Union Procurement Directives. Implementation of the Directives in Scotland is achieved through the Public Contracts (Scotland) Regulations 2012 and the Utilities Contracts (Scotland) Regulations 2012. As a Scottish local authority, Shetland Islands Council is bound by the EU law together also with Scottish domestic law including the Local Government (Scotland) Act 1973 which places a duty on local authorities to make orders regulating contracts for goods, works and services.

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

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

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

Finally they draw attention to the fact that all parts of the Council constitute only one contracting authority, and that no establishment or operation within the Council is separate from it. As such they are applicable in all Services and in all establishments and operations to which responsibility for awarding contracts is delegated or outsourced.

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

The following procedures shall apply:

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

- 3) Where the estimated value of goods, works and services is between £10,000 and £50,000.
- Competitive tendering required unless the Sponsor has satisfied the Director of Corporate Services that the requirement is not readily obtainable from more than one supplier, service provider, or contractor, and it can be demonstrated that no equivalent is available, or otherwise for technical reasons or due to time restraints.
 - Advertising of the contract is not mandatory but is recommended where greater competition is likely to result (See Annex 6 for guidance).
- 4) a) Where the Public Contracts (Scotland) Regulations 2012 apply:
- Requirements with an estimated value in excess of £50,000 but less than £172,514 (Supplies and Services) or £4,322,012 (Works) are subject to competitive tendering and advertised in the media together with Council's website and/or via the Public Procurement Portal: www.publiccontractsscotland.gov.uk as appropriate.
 - Requirements with an estimated value in excess of £172,514 (Supplies and Services) or £4,322,012 (Works) are to be advertised in the Official Journal of the European Union (first), together with an appropriate level of advertising in the media and on the Council's website and/or via the Public Procurement Portal: www.publiccontractsscotland.gov.uk as appropriate.
- b) Where the Utilities Contracts (Scotland) Regulations 2012 apply:
- Requirements with an estimated value in excess of £50,000 but less than £345,028 (Supplies and Services) or £4,322,012 (Works) are subject to competitive tendering and advertised in the media together with Council's website and/or via the Public Procurement Portal: www.publiccontractsscotland.gov.uk as appropriate.
 - Requirements with an estimated value in excess of £345,028 (Supplies and Services) or £4,322,012 (Works) are to be advertised in the Official Journal of the European Union (first), together with an appropriate level of advertising in the media and on the Council's website and/or via the Public Procurement Portal: www.publiccontractsscotland.gov.uk as appropriate.

These Prescribed Sums are set out at Annex 1 to these Contract Standing Orders. Where the estimated value of the goods, works and services is less than £50,000 procurement is dealt with entirely by authorised staff within the sponsoring Services and will not ordinarily involve the Council's Procurement Section. However, specific advice and assistance is available upon request. Formal tenders for goods and services are managed by the Council's Procurement Section who will help the Sponsor in each case. Arrangements for competitive tendering for all requirements with an estimated value in excess of the prescribed sum shall be made by the Director of Corporate Services.

The single point of publication for these notices will be the Executive Manager – Capital Programme. This means that all Contracts subject to formal tendering procedures must be advertised via the Executive Manager – Capital Programme.

Where competitive tenders are advertised on a voluntary basis, the same requirement applies.

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

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

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

Procurement via collaborative contracts such as those awarded by Scottish Procurement & Commercial Directorate, Scotland Excel or the Crown Commercial Service (CCS) (see links below) may be undertaken without further competition. The Council is a member of the national procurement organisation Scotland Excel and as such will undertake to participate in Scotland Excel contracts unless: current arrangements preclude doing so; better value for money is achievable elsewhere; alignment with strategic or operational requirements preclude doing so; additional supply chain or sustainability costs negate or exceed any gross savings; or the rules of Best Value require otherwise.

<http://www.scotland.gov.uk/Topics/Government/Procurement/directory>

<http://www.scotlandexcel.org.uk/home/WhatWeDo/StrategicProcurement/ContractProcess.aspx>

<http://ccs.cabinetoffice.gov.uk>

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

PROCUREMENT 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 and/or Framework?	
Business Case	
Budgetary Provision	
Estimated Value Over 4 Years	
Governance	
Officers Have Appropriate Qualification, Skills, Experience And Training	
Contract Request Form	
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	
Pre Qualification Questionnaire (PQQ) Evaluation Criteria	
Invitation to Tender (ITT) Evaluation Criteria	
Contract Terms And Conditions	
Financial Vetting	
Pricing And Price Control	
Contract Management	
Management Information and Key Performance Indicators	
Ordering and Invoicing	

CONTEXT

1.0 Commencement

- 1.1 These Contract Standing Orders (“the Contract Standing Orders”) shall apply and have effect from 1st September 2013 and shall be subject to periodic 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 staff within the Procurement Section, members of the Council’s procurement network or whose job role involves the administration of contracts and where the relevant training has been provided.

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

“Contract” means an agreement between the Council and another legal entity having the following characteristics: offer and acceptance/agreement, intention to form legal relationships, capacity (of the parties to enter such an agreement) and legality. Assignments of work to any of the Council’s 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 Shetland Islands Council, 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.

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

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

“Most economically advantageous tender” means that tender 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.

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

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

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

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

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

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

“Public Procurement Regulations” means the Public Contracts (Scotland) Regulations 2012 and the Utilities Contracts (Scotland) Regulations 2012 and any addition, amendment or variation thereof.

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

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

“Services” means any of the activities set out under the headings “Priority Services” and “Part B or Residual Services” at Annex 4

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

“Service Director” includes the Chief Executive, and is taken to include any senior officer delegated by the Director of Corporate Services to undertake specific tasks relating to contracts.

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

“Service Provider”, “Supplier” and “Contractor” shall have the meanings ascribed to them as set out in the Public Contracts (Scotland) Regulations 2012 and the Utilities Contract (Scotland) Regulations 2012

<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 Sponsor/Sponsoring Director is the client side representative who acts as a single focal point of contact with the Project Manager for the day-to-day management of the interests of the client organisation.

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

“Works” 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 4.

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 Supplies, Services, or Works unless classified as being exemptions or exceptions from these Contract Standing Orders. For the avoidance of doubt, these Contract Standing Orders do apply to partnerships, 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 Council’s Procurement Strategy as published at the time of the requirement arising.

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

4.0 EU, UK and Scottish Legislation

These Contract Standing Orders will be operated in such manner as will comply in all respects with the requirements of European Community Law, United Kingdom and Scottish legislation. There should be no conflict between these Contract Standing Orders and the legislation, but for the avoidance of doubt, in all cases EU law takes precedence, followed by UK and Scots law. For the avoidance of doubt, this shall include but not be limited to The Public Contracts (Scotland) Act 2012, the Utilities Contracts (Scotland) Regulations 2012, 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

Officers who encounter difficulties with procurement or have any queries should contact the Executive Manager – Capital Programme in the first instance. Monitoring against any breach or non-compliance with these Contract Standing Orders is the responsibility of the relevant service Executive Manager. The Executive Manager – Internal Audit will undertake any necessary investigation and report the findings to the relevant Service Director and Chief Executive, as appropriate, 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 to the relevant Service Committee as specified. This will only be required where an exception to these Contract Standing Orders is required, where acceptance of the preferred tender will require the allocation of additional budget to the project, where a sponsor proposes an award to a contractor other than that providing the lowest cost or most economically advantageous tender, or where emergency circumstances have dictated that these Contract Standing Orders could not be adhered to. Where these emergency circumstances have occurred, a report must be provided as detailed in Contract Standing Orders Part 1, Section 2 (iii).

7.0 Conflicts of Interest

Staff involved in procurement activities are responsible for making themselves aware of the Council's Code of Conduct for Staff: http://intranet2/Policy/_layouts/listform.aspx?PageType=4&ListId={2AFF6F2D-3544-42E9-84C2-28D986D302BF}&ID=1129

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

CONTRACT STANDING ORDERS

PART 1 - APPLICABLE STANDARDS

1 EXEMPTIONS FROM CONTRACT STANDING ORDERS

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

- (i) All contracts with a total estimated cost not exceeding the Prescribed Sum for contracts without competitive tendering as set out at Annex 1;
- (ii) Any contract of employment;
- (iii) Any contract excluded under the terms of the Public Contract (Scotland) Regulations 2012 or the Utilities Contracts (Scotland) Regulations 2012;
- (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 (for example grant funded activities). In such circumstances the principles of the Following the Public Pound Code shall apply.

2 EXCEPTIONS FROM CONTRACT 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 Director of Corporate Services that the requirement is not readily obtainable from more than one supplier, service provider, or contractor, and it can be demonstrated that no equivalent is available; or 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 competitive process,
- the requirement for extension has been brought about by an unforeseeable circumstance not within the control of the Council.

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

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

- (iii) 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 as soon as possible, but no later than fourteen days from the decision to take emergency action, to the Director of Corporate Services and to the Relevant Service Committee; as detailed below; 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/ or the Council is bound by the terms of an agreement, by insurance requirements or by the terms of a warranty to use a specified contractor, supplier or provider; or
- (v) The contract is for the supply of goods acquired on the Commodities Market.
- (vi) If the contract is for the supply of used or second hand goods or materials, and the relevant Service Director, where he or she is satisfied that it is in the interests of the Council to purchase such goods or materials and that they are fit for the purpose for which they are being purchased, may submit or accept an offer for the purchase of such goods or materials, provided that all contracts for the supply of such goods or materials shall be in writing and subject to the Law of Scotland.

All instances of such exceptions arising shall be reported to the relevant Service Committee within six months of the exception occurring.

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 Contract Standing Orders.

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

4 BUSINESS CASES

- (i) Before committing funds to or commencing a tendering process 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 sufficiently research and identify the requirement and examine all possibilities for meeting it. It must also show that no other contract which could be used already exists within the Council.

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 the European Union. 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 Contract Standing Orders 1 and 2 above.
- (iii) Procurement *via* collaborative contracts such as those awarded by Scottish Procurement & Commercial Directorate, Scotland Excel or the Government Procurement Service may be undertaken without further competition depending on the particular procedure and conditions applied by the organisation concerned. In all cases periodic 'value for money' checks involving other alternatives should be carried out, as such organisations do not necessarily offer the best terms. The Council has currently committed itself to membership of Scotland Excel and as such will undertake to participate in Scotland Excel contracts unless current arrangements, alignment with strategic or operational requirements, additional supply chain or sustainability costs, or the rules of Best Value require otherwise. In such cases the Executive Manager – Capital Programme shall provide justification for non-participation to the Director of Corporate Services.

- (iv) Breaking down or disaggregating requirements in order to avoid the necessity of exposing them to competition is contrary to Public Procurement Regulations and must not be entered into under any circumstances.
- (v) For the avoidance of doubt all separate elements or sub-projects within any specific programme relating to a linked set of outcomes or requirements shall be aggregated for the purposes of valuation and exposure to competition. Within such aggregated requirements the overall contract notice may invite bids by element, specialism, geographical area or any other logical and objectively justifiable lot which conforms to the Council's EU Treaty obligations. In any case of doubt the matter will be referred to the Executive Manager – Capital Programme who will determine the correct application of the principle of Aggregation to be applied to the requirements in question.

6 PERIODIC SUPPLIES AND FRAMEWORK AGREEMENTS

- (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, only the establishment of the framework shall require formal tendering. Mini-competitions between suppliers appointed to the framework may be carried out where time permits and benefits may be accrued, subject always to the terms and conditions of the framework.
- (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.

7 AGGREGATION OF DEMAND, 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 unless such establishments, units, Services or other parts of the Council are discrete operating units.
- (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 Corporate Management Team for circulation throughout Services and shall be published on the Council Intranet.
- (iii) Partnership arrangements are a valid means of achieving best value through procurement. The establishment of partnerships must protect the

interests of the Council, by the use of formally agreed and written terms and conditions.

- (iv) 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.
- (v) 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 2002.

9 SPECIFICATIONS

- (i) Formal Specifications or statements of requirement shall be developed either by the Project Sponsor or by the Project Sponsor in conjunction with the Executive Manager – Capital Programme as appropriate for all tendered or quoted requirements for supplies, services (including each and every consultancy requiring competitive action), or works, which will fully define what the Contractor, Supplier, or Service Provider is to provide.

10 SUSTAINABILITY AND EQUAL OPPORTUNITIES

- (i) To the full extent permitted under legislation at the time of undertaking the Contract, and where the statutory duty of Best Value is not compromised by doing so, the Council shall take full account of the issues of socio-economic and environmental sustainability wherever they are material to the purposes of the Contract in accordance with the Council's duties under Regulations and the Climate Change Act 2009. These aspects are commonly referred to as community benefits.
- (ii) The Council shall comply in its contracting activities with the requirements of the Equality Act 2010.

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

11 PROCUREMENT, PROJECT, CONTRACT RISK AND PROJECT MANAGEMENT

- (i) These Contract Standing Orders are written in order to ensure that officials operate in a way that conforms to the requirements of relevant legislation and to ensure Best Value is obtained in procurement. In this way, the

Council and individuals are protected from legal risk as far as can be reasonably foreseen.

- (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. Officers responsible for procurement at any level in the Council must ensure that relevant professional advice is sought timeously.

12 SIGNIFICANT TRADING OPERATIONS

- (i) The Council has in place 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 an 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 an estimated 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.
- (iii) Requirements for the provision of supplies, services or works may be awarded to "in-house" providers without competition as long as such an award is supported by a sound business case and the estimated value of the requirement does not exceed the relevant Prescribed Sum.

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 be able to demonstrate that a sufficient approved budget exists to cover this in accordance with section 4 of Part 1 of these Contract Standing Orders. Sponsors must seek advice from the Executive Manager Capital Programme or the Executive Manager Finance to resolve any queries as to the adequacy or availability of approved funds.
- (ii) Where 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 Council's Corporate Management Team (CMT). CMT may approve such plans or require the Sponsor to seek approval from the relevant Committee. Where the Sponsor proposes to manage the cost down, care must be taken to ensure that the proposals do not change the scope or requirement such as to require a new formal tendering exercise.

14 CONSTRUCTION (DESIGN AND MANAGEMENT) REGULATIONS 2007

- (i) Duties under the Construction (Design and Management) Regulations 2007 require clients to provide pre-construction information to designers and contractors in any project involving works as defined in the CDM Regulations.
- (ii) Officers responsible for procurements affected by these CDM Regulations should seek relevant professional advice timeously. Further guidance is available from Governance and Law Service or Capital Programme 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 may affect any staff who have the essential part of their on-going duties delivering the service immediately before the contract 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 may be entitled to transfer to the new employer under TUPE.
- (ii) Officers responsible for procurements affected by these TUPE regulations should seek relevant professional advice timeously. Prior to the commencement of any procurement likely to involve contracting for services, TUPE guidance must be sought from Human Resources, Procurement, Payroll/Pensions, and Governance and Law and appropriate time must be built into the project plan for all necessary staff and Union consultations.

16 CONTRACTS REGISTER AND TRANSPARENCY

- (i) Capital Programme Service maintains a contracts register. All Sponsors must ensure that contracts with an estimated value equal to or greater than £10,000 are notified to Capital Programme Service for inclusion on the register.

PART 2 - OPERATIONAL PROCEDURES

1 AUTHORITY TO INVITE TENDERS AND PARTICIPATE IN PROCUREMENT WORK

- (i) Formal tendering exercises shall be managed by the Executive Manager – Capital Programme, subject to adequate approved budget being in place, unless authority to do so is delegated to other officers, either in the scheme of delegation, or as specifically approved by Committee. Tenders in respect of goods or equipment to be supplied by way of a lease arrangement may only be invited following approval from the Director of Corporate Services.
- (ii) Tenders with an estimated value in excess of the prescribed sums must be dealt with in accordance with the Public Procurement Regulations. Guidance on these can be found in the Scottish Government's Procurement & Commercial Directorate:

<http://www.scotland.gov.uk/Topics/Government/Procurement/policy/EUProcurement>

- (iii) For the avoidance of doubt no officer may undertake any of the work covered by these Contract Standing Orders, including but not being limited to the award of contract, at any value unless formally authorised to do so by the Director of Corporate Services or under such other delegation as out in paragraph (i) above.
- (iv) 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 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 the procurement. No action may be taken in respect of any project and no external communication may be issued except with the express authority of the Procurement Lead Officer.

2 ADVERTISING OF TENDERS

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

Where the estimated value of the requirement is less than £50,000 advertising of the contract is not mandatory but is recommended where greater competition is likely to result (See Annex 6 for guidance).

- a) Where the Public Contracts (Scotland) Regulations 2012 apply:
 - Requirements with an estimated value in excess of £50,000 but less than £172,514 (Supplies and Services) or £4,322,012 (Works) shall be subject to competitive tendering and advertised in the media together with Council's website and/or via the Public Procurement Portal: www.publiccontractsscotland.gov.uk as appropriate.

- Requirements with an estimated value in excess of £172,514 (Supplies and Services) or £4,322,012 (Works) shall be advertised in the Official Journal of the European Union (first), together with an appropriate level of advertising in the media and on the Council's website and/or via the Public Procurement Portal: www.publiccontractsscotland.gov.uk as appropriate.
- b) Where the Utilities Contracts (Scotland) Regulations 2012 apply:
- Requirements with an estimated value in excess of £50,000 but less than £345,028 (Supplies and Services) or £4,322,012 (Works) shall be subject to competitive tendering and advertised in the media together with Council's website and/or via the Public Procurement Portal: www.publiccontractsscotland.gov.uk as appropriate.
 - Requirements with an estimated value in excess of £345,028 (Supplies and Services) or £4,322,012 (Works) shall be advertised in the Official Journal of the European Union (first), together with an appropriate level of advertising in the media and on the Council's website and/ or via the Public Procurement Portal: www.publiccontractsscotland.gov.uk as appropriate.
- (ii) The single point of publication for these notices will be the Executive Manager – Capital Programme. This means that all contracts subject to formal tendering procedures must be advertised via the Executive Manager – Capital Programme. Where advertising is not demanded by these Contract Standing Orders but is considered beneficial, the same requirement to advertise via the Executive Manager – Capital Programme applies.

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 other 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.
- (iii) 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 Sponsor choose to use select list or restricted procedure tendering, then the requirement shall be advertised in accordance with Section 2 of Part 2 these Contract Standing Orders and expressions of interest invited. After the expiry of the period specified in the public notice, a select list of tenderers will be drawn up from the list of applicants returning questionnaires or providing other evidence of competence as set out in the advertisement. Invitations may then be progressed by the Procurement Lead Officer subject to financial and technical approval.

5 OPEN TENDERING

- (i) Should the Sponsor choose to use an open tendering procedure, then the requirement shall be advertised in accordance with Section 2 of Part 2 of these Contract Standing Orders, and expressions of interest invited. All persons responding must then be invited to tender.

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 and a statement that late tenders shall not be considered further
 - tender return envelope enclosed, where applicable
 - 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 non collusion certificate or certificate of bona fide tendering
 - that the Council is subject to the requirements of the Freedom of Information (Scotland) Act 2002
 - the proposed amendments to contract form, if any
 - that the Council will not accept liability for tender costs
- (ii) Tenders/ quotations shall be sought and obtained in writing and submitted in a sealed envelope bearing the words "Tender for....." followed by the name of the contract to which it relates by a time and date to be notified to all persons invited to tender or quote. If, in exceptional circumstances, the Director of Corporate Services considers that it would be appropriate to obtain tenders/ quotations by other means, this shall only be done where the means proposed are sufficient to ensure appropriate procedural safeguards are in place and any such proposal has been approved/checked by Finance, Procurement and Legal service.

- (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 tendering exercise. 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 Pre-Qualification questionnaires (if a two stage process 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. 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, the criteria and weightings must be set out in the OJEU 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 requirements. Where these criteria are not met, tenders must be rejected. The reasons for using the agreed evaluation criteria must be recorded.
- (ii) 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 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.
- (iii) 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 Public Procurement 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—
- The value of the consideration received;
 - When and where the work or works were carried out; and

- 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 tenderer is a new business, other technical and financial information can be sought as long as it is proportionate to the procurement concerned.

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.

- (iv) Awards of contract may only be made by the Director of Corporate Services, or staff delegated by him/ her to do so. Where a contract to be awarded is not the lowest priced or most economically advantageous, approval 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 Committee.
- (v) Appraisal criteria 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 process of ranking and elimination of bidders, but must only be used to determine the suitability or otherwise of each individual bidder.
- (vi) 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

- (vii) 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 Shetland Islands Council but rather to similar projects in any relevant organisation. Note that references 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.
- (viii) 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.

8 HANDLING OF TENDERS

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

A record of all tenders/ quotations received shall be kept by or on behalf of the Director of Corporate Services, including details of the names and addresses of tenderers, date of confirmation from Finance Service of their financial status, the tender amount, the date of acceptance and the amount or rates/prices accepted.

- (ii) Upon receipt, all tenders must be receipted and logged, and retained unopened and secure until the appointed 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”. This may be retained electronically.
- (iii) Tenders must be opened at the appointed time of opening or as soon as possible thereafter. In the case of tenders for contracts above the Exemption Limit for contracts using formal tender documents, tenders must be opened at the appointed time of opening or as soon as possible thereafter, by at least three persons, one of whom must be entirely independent of the exercise.
- (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) applicable to 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 – CONTRACTS ESTIMATED AT £50,000 AND OVER

- (i) Contracts must be awarded in accordance with the award 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: The technical evaluation panel must consist of at least two staff. The Procurement Lead Officer will ensure fair, equal, and justified application of the evaluation criteria
 - Financial Evaluation: Financial evaluation will be carried out by the Finance Service in line with Financial Assessment Register policy.
 - Tender Evaluation: the Procurement Lead Officer supported by the Executive Manager Capital Programme and/or Executive Manager Finance.

Quality/ Price Tenders

Following initial assessment and individual marking, formal evaluation meetings may 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.

Lowest Price Tenders

A tender report shall be prepared by the Procurement Lead Officer, detailing:

- Procedure followed, including relevant dates
- Expressions of interest
- Tenders invited
- Tenders received
- Prices submitted
- Clarification sought (if any)
- Evaluation
- Recommendation

- (iii) Clarification questions and responses at both PQQ and ITT stage will be dealt with by the Procurement Section who shall liaise with the Procurement Lead Officer or such other officers as appropriate.
- (iv) Tenders may be rejected immediately where they fail to meet the published criteria or where they are qualified by alternative terms and conditions that 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 standstill period of at least ten days must elapse between this date and contract award in order to allow unsuccessful tenderers the opportunity to appeal. This must be explained to the successful contractor in the letter of intention to award. In respect of non-EU contracts, the notifications of award and rejection can be issued immediately by the Procurement Section.
- (vi) Letters of award will be issued by the Executive Manager Governance and Law.

10 RISK MANAGEMENT PROCEDURES

- (i) In each formal tender, the Sponsor will assess the level of risk, in keeping with the Council's risk policy, 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 on risk issues can be obtained from Governance and Law.
- (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 Contract Standing Orders to determine exactly what levels of specialist insurance should be required for every area of specialist service provision, however where specialist services are being provided, the Team Leader Safety and Risk must be consulted when establishing a list of required insurances. Guidance relating to contracts and insurance can be found at the following intranet link:

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

- (iii) **Financial Vetting.** In respect of Contracts with an estimated value in excess of £50,000 or in respect of contracts which the Sponsor views as exposing the Council to excessive risk, a formal financial assessment of the potential tenderers' financial standing shall be undertaken prior to short listing of tenderers or at Pre-Qualification stage, depending upon the procedure used. In respect of projects with an estimated 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 contract award process.
- (iv) **Liquidated Damages.** Dependent on the terms of the contract document, where a breach, default or negligent act on the part of the Contractor could result in direct losses to the Council, it will be the duty of the Sponsor to take appropriate action. This includes deducting pre-estimated liquidated damages, and subtracting any appropriate retentions.
- (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 the Sponsor 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.** The Sponsor shall consider whether the nature of the project and the risks with the type of business concerned may require security for supplier/contractor performance. The Sponsor shall either confirm that no such security is necessary, in line with Council policy, or will decide what form of security may be appropriate.
- (viii) **Staged Payments and Retentions.** In accordance with Financial Regulations, no Supplies, Services or Works should be paid for until they have been formally agreed and any required testing carried out. In the event that stage payments are required for each phase of a project, formal agreement and any required testing of that phase must be complete prior to payment being made.

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 normally involve the Council's Procurement Section.
- (iii) For the avoidance of doubt however, the remaining provisions of these Contract Standing Orders will apply except that:

- a) Quotations shall be managed entirely within Services (Part 2 Section 2).
- b) Quotations 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 Section 2).
- c) Supplier selection by means of Pre-Qualification or Supplier Appraisal Questionnaires shall not be necessary as the Sponsor is deemed to have selected persons to provide quotations who he or she is willing to vouch as providing suitable competence and professional/financial standing.
- d) Quotations may be returned via the PCS “Quick Quote” system or in paper copy in envelopes which will remain unopened until expiry of the deadline for submission. Quotations submitted only via PCS “Quick Quote” may be opened by one person. Those involving submission of one or more bids via paper copy however must be opened by two.
- e) Evaluation of quotations will also take place entirely within Services, however technical and financial aspects should be evaluated separately by different staff.

12 CONTRACT DOCUMENTS

- (i) Every contract subject to these Contract Standing Orders shall be in writing in an appropriate form, and shall specify all the applicable terms and conditions as appropriate, including a statement to the effect that:
 - (a) Those terms and conditions shall apply, and that no others shall apply unless issued 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.

13 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.

14 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 relevant Director prior to the engagement of the Consultant. Where it is likely that a former employee of the Council may be interested in undertaking the work, then in addition to the safeguards outlined in these Contract Standing Orders, quotations or formal tenders shall be invited regardless of contract value. 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 Director of Corporate Services 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.

15 PROCEDURES FOR THE PROCUREMENT OF RESIDUAL (“PART B”) 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 the “Part B” category at Annex 4 to these Contract Standing Orders without seeking competition unless one of the Exemptions or Exceptions set out within these Contract Standing 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) **Exemptions**

- (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.
- (b) There will be no requirement to tender for legal services procured by Governance and Law for and on behalf of the Council.

(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 Contract Standing 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.
- (c) Where the estimated or actual costs of social care services with service providers exceeds £50,000, such as off island placements, these shall be reported annually to the relevant Service Committee by the Chief Social Work Officer.

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

	Estimated cost (£)
Exemption limit for contract using formal tender documents (Low value contract procedure applies - see Annex 6)	(Below) 50,000
Exemption limit for financial vetting	(Below) 50,000
Exemption limit for leases/ purchase/ sale of property and land only delegated to the Executive Manager – Capital Programme	(Below) 100,000
Exemption for leases (cumulative value) in consultation with Executive Manager Finance	(Below) 100,000
Exemption limit for significant trading operations retaining works in-house	(Below) 300,000
Exemption limit for significant trading operations retaining services or supplies in-house	(Below) 150,000
EU tendering threshold in respect of goods and services (The Public Contracts (Scotland) Regulations 2012)	172,514
EU tendering threshold in respect of works	4,322,012
EU tendering threshold in respect of goods and services (The Utilities Contracts (Scotland) Regulations 2012)	345,028
EU tendering threshold in respect of works, Utilities	4,322,012
Employers Liability insurance minimum indemnity limit (applies irrespective of contract estimate)	10,000,000
Public Liability insurance minimum indemnity limit (applies irrespective of contract estimate)	5,000,000
Professional Indemnity insurance (professional services and consultancy only)	See Insurance Section Guidance

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

ANNEX 2 PROCUREMENT (TENDER) PROCESS CHECKLIST

Ref	Check	Note
• 1	<ul style="list-style-type: none"> Checked for an existing contract for the proposed procurement, this should include checking whether this is already included under a centralised procurement function and/ or national contract. 	<ul style="list-style-type: none"> If not, you should refer the procurement to your line manager, your Service nominated procurement contact or the Procurement Section.
• 2	<ul style="list-style-type: none"> Verified there is a budget/fund available for the procurement and the procurement process. 	<ul style="list-style-type: none"> If not, you should refer the procurement to your line manager or your Service procurement representative.
• 3	<ul style="list-style-type: none"> Is there an existing contract or framework agreement for the goods, work or service in place with collaborative partners, e.g. Scotland Excel, Procurement Scotland; Government Procurement Service, etc? 	<ul style="list-style-type: none"> If not, discuss with your Service procurement contact and the Procurement Section.
• 4	<ul style="list-style-type: none"> Evaluated the Council's legislative obligations for the procurement – the requirement to meet Public Procurement Regulations, especially aggregation rules, and Contract Standing Orders 	<ul style="list-style-type: none"> If not consult the Procurement Section.
• 5	<ul style="list-style-type: none"> Where Public Procurement Regulations apply decide upon type of tender process – open, restricted, competitive dialogue, negotiated, etc. 	<ul style="list-style-type: none"> Consult the Procurement Section.
• 6	<ul style="list-style-type: none"> Identified the need for, and conducted a consultation – either a user group consultation or an Environmental Impact Assessment (EIA) consultation and/or acquire land, obtain consents etc? 	<ul style="list-style-type: none"> Consult the Capital Programme Service for project management advice. For an EIA consultation you must consult the SIC Planning Department. Potential land acquisition/access must be done in consultation with Legal Services and Asset & Property.
• 7	<ul style="list-style-type: none"> Considered an electronic tender option, either e-tender or e-auction. 	<ul style="list-style-type: none"> Consult Procurement Section
• 8	<ul style="list-style-type: none"> Considered Council policy and other legal obligations relating to your tender, for example the level of sustainability, equality of access, Race Equality provision. 	<ul style="list-style-type: none"> If not, consult your Service procurement representative, the Procurement Section, Waste Management.
• 9	<ul style="list-style-type: none"> Arranged for adequate advertising for prospective tenderers via a selection process or use of a select list. 	<ul style="list-style-type: none"> If not, consult Procurement Section prior to progressing.
• 10	<ul style="list-style-type: none"> Formed a project team to manage the procurement process 	<ul style="list-style-type: none"> If not consult your line manager, technical staff, users, your Service procurement representative, and the Procurement Section.

ANNEX 3 RETENTION SCHEDULE

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

<http://intranet2/Policy/Shared%20Documents/RetentionScheduleVersion%2010.1%202013.doc>

Legal Services
Contracts and Tendering
Sections 6.8 – 6.17

ANNEX 4 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

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
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

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;

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

ANNEX 5 CONTRACT REQUEST FORM

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

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

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

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

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

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

6. **Risk**

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

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

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

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

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

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

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

Contract Request form Received/Approved by

Name _____

Date _____

Procurement Office Use

Allocated Procurement Team:

Section Contact:.....

Governance and Law Contact.....

(To be confirmed by Team Leader Legal)

ANNEX 6 **PROCUREMENT PROCEDURES SUMMARY GUIDANCE (IMPORTANT – Read Note 1)**

CONTRACTS ESTIMATED UNDER £50,000								
ITEM	QUOTATIONS		Competitive Tenders		EU Thresholds		NOTES	
	Works/Supplies/Services	Works/Supplies/Services	Works/Supplies/Services		Works/Supplies/Services	Supplies/Services2		Works2
Estimated Cost (Value excluding VAT)	< £1,000	£1,001 - £10,000	£10,001 - < £50,000		£50,000 +	> £172k* or > £345k (Utilities)	> £4.3m	<p>1 These procedures must be followed unless the procurement in question is available through a national contract (e.g. Scotland Excel, Scottish Procurement, national or other Council collaborative framework contracts)</p> <p>2 Thresholds subject to EU Directives.* Where the Council is acting as a "Utility" the EU threshold for supplies and services is £345k</p> <p>3 It is deemed essential that Authorised Officers have the technical skills, training and competence to procure works on behalf of the Council.</p> <p>4 Where term contracts exist, quotation and tenders will not be necessary. Quotations should set out the price to be paid for a specific service to be delivered at a specific time.</p> <p>5 Where Quality/Price Tendering process applies, ie. not lowest tender, set out best value criteria beforehand and seek approval of Line Manager.</p> <p>6 It is recommended that all potential businesses register on the Public Contracts Scotland (PCS) web portal.</p>
Number of Tenders (Min/Max)	1 - 3	2 to 5	3 to 5		5 to 10	5 - 20	5 – 20	
Action By	Authorised Officer ³	Authorised Officer ³ and/or Consultants	Authorised Officer and/or Consultants with advice from the Procurement Section as necessary Use Minor Works PIDs (Project Initiation Documents) where appropriate		Client Sponsor/Procurement Lead Officer/Project Manager via the Procurement Section	Client Sponsor/Procurement Lead Officer/Project Manager via the Procurement Section	Client Sponsor/Procurement Lead Officer/Project Manager via the Procurement Section	
Basis and Source of Quotations/ Tenders	Written Quotation confirmed by Supplier. No competitive tendering – must demonstrate VFM ⁴	Written Competitive Quotations ⁴	Written Competitive Tenders ⁴ (Advertise where greater competition is likely to result)		Advertise/ progress via the Procurement Section	Advertise/ progress via the Procurement Section	Advertise/ progress via the Procurement Section	
Period for Submission of Quotations or Tenders	1 – 3 Days	3 – 10 Days	15 Days		As appropriate	Subject to EU procurement regulations	Subject to EU procurement regulations	
Evaluation and Assessment (Price Only and Quality/Price Submission) ⁵	Authorised Officer	Authorised Officer + Line Manager	Authorised Officer + Line Manager		Procurement Lead Officer with advice from Procurement Section and Legal	Procurement Lead Officer with advice from Procurement Section and Legal	Procurement Lead Officer with advice from Procurement Section and Legal	
Written Contract Acceptance/ Signing of Purchase Orders	In accordance with Authorised Signatory Rights	In accordance with Authorised Signatory Rights	In accordance with Authorised Signatory Rights		Executive Manager Governance and Law	Executive Manager Governance and Law	Executive Manager Governance and Law	
Signing of Valuations/Invoices	Authorised Signatory	Authorised Signatory	Authorised Signatory		Authorised Signatory	Authorised Signatory	Authorised Signatory	
Source of Business	PCS or such other source as deemed appropriate	PCS incl. Quick Quote or such other sources as deemed appropriate ⁶	PCS or other appropriate source ⁶ and/or Select List via media advertisement		Authorised Signatory Select List or Open procedure advertised in media together with SIC website and/or PCS portal as appropriate	OJEU Notice Select List or Open procedure also advertised in medal together with SIC website and/or PCS portal as appropriate	OJEU Notice Select List or Open procedure also advertised in medal together with SIC website and/or PCS portal as appropriate	

Drawings	Simple Sketch	Sketch/Outline Design	Detailed Design
Specification	Simple	Outline	Full
Performance Specification	Simple	Outline	Full
Bill of Quantities	Lump Sum Price	Lump Sum Price; Itemised Schedule	Itemised Bill; Prices or Schedule of Works
Pre-Tender Health & Safety Plan	No ⁷	Unlikely ⁷	Possible ⁷
Statutory Consents			
Building Warrant	Check	Check	Check
Planning Consent	Check	Check	Check
Health & Safety – F10 Notification	Check ⁸	Check ⁸	Check ⁸
Landlord's Consent/Permit to	Check ⁹	Check ⁹	Check ⁹
Documentation (Contractor's Submission)¹⁰			
Conditions of Contract		Scottish Minor Works	Scottish Minor Works
		JCT JA/90 Jobbing	JCT JA/90 Jobbing
		ICE Contract	ICE Contract
Contractor's Risk Assessments	Possible	Possible	Always
Contractor's Method Statements	Unlikely	Possible	Always
Health and Safety Plan	Possible	Possible	Yes
Construction Phase Health and Safety Plan			
Insurance Policies	Always	Always	Always
	Check	Check	Check

NOTES CONTINUED...

7 If the works include Demolition (regardless of size) the Construction (Design and Management) Regulations 2007 will apply.

8 If the works include Demolition (regardless of size), more than 30 days on site or 500 man hours effort, the HSE must be notified and the Construction (Design and Management) Regulations 2007 will apply.

9 Applies to works that may affect the fabric or structure of a building, all electrical and mechanical works including minor alterations, excavations, alternations to boundaries.

10 If Contractors are appointed from a departmental/ unit "Approved List" this documentation may not be required.

Single sourcing can be considered subject to the exception provisions of these Standing Orders where appropriate Line Management Approval is given. In such situations the Procurement Lead Officer must take advice from the Procurement Section and Legal.

